

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/H8/429

<u>Applicant</u>	Mr. Kwan Man Fong and Ms. Pun Kwai Hing represented by Liu, Chan & Lam, Solicitors
<u>Premises</u>	G/F (Portion), North Point View Mansion, 54 Kai Yuen Street, Hong Kong
<u>Total Floor Area</u>	About 56 m ²
<u>Lease</u>	Inland Lot 2168 section A sub-section 6 & Ext. (a) Residential use only (b) Number of storeys and maximum roof-over area restrictions (c) Allowance of additional car port storey on G/F (d) Not less than 1 car per flat (e) Offensive trades clause
<u>Plan</u>	Approved North Point Outline Zoning Plan (OZP) No. S/H8/26
<u>Zoning</u>	“Comprehensive Development Area (2)” (“CDA(2)”) [Restricted to a maximum plot ratio (PR) of 8, and maximum building height (BH) of 130 metres above Principal Datum (mPD)]
<u>Application</u>	Proposed Shop and Services (Retail Shop)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises located at G/F (Portion) of North Point View Mansion (the Premises), 54 Kai Yuen Street in North Point for ‘Shop and Services (Retail Shop)’ use (**Plan 1**). According to the Notes of the OZP for “CDA(2)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The applicant proposes to convert the Premises which is currently used as a car repair workshop for a retail shop selling daily necessities including products for the elderly and stationary to serve the neighbourhood. The proposed opening hours of the shop is 9am to 7pm from Monday to Saturday and no operation on Sunday (**Appendix Ia**).
- 1.3 The floor plans of the Premises submitted by the applicant are at Drawings **A-1** to **A-2**.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 15.1.2019 (Appendix I)
 - (b) Applicant's letter dated 28.2.2019 (FI-1) providing responses to departmental comments and public comments (Appendix Ia)
 - (c) Applicant's letter dated 1.3.2019 (FI-2) providing responses to departmental comments (Appendix Ib)

2. Justifications from the Applicant

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

- (a) there are only very few shops in Kai Yuen Street area which can satisfy the demand of the local residents. The proposed development will help stimulate retail activities in the area which will bring benefits to the residents and local community in general;
- (b) the demand for car parking space in the area has fallen. On the contrary, the aging population in the area generates a stronger demand for ordinary household goods and daily services;
- (c) the change of use from a car parking space into a shop for retail and services will not create any adverse effects to the building. The loading/unloading activities for the shop will be carried out immediately outside the entrance of the Premises. The goods will be unloaded from goods van within a few minutes. Large lorry will not be involved. No traffic impact on other people or fire services vehicles/ambulances will be caused; and
- (d) the Premises is currently used for making internal repair to vehicles. The existing use is the usage of the current tenant. The Premises will be leased to a new tenant for retail store. The store will operate from 9am to 7pm from Monday to Saturday to sell daily necessities to residents in the area. There will be no operation on Sundays. The daily necessities include stationery, diaper for elderly people and small items that elderly people need from time to time such as ointments and ordinary pre-packaged medication and health care products.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is the sole "current land owners" of G/F Block B in sub-section 6 of section of I.L. 2168 and the extension thereto. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for Use/Development within “CDA” Zone (TPB PG-No. 18A) for “Submission of Master Layout Plan (MLP) under section 4A(2) of the Town Planning Ordinance” is not applicable to this application as according to the Guidelines, submission of MLP and supporting information including various detailed assessments is not required for an application for change of use in an existing building within a “CDA” zone (irrespective of whether building works are undertaken) before completion of comprehensive development in the “CDA” zone, unless it is considered necessary by relevant government departments.

5. Background

In 2005, the Premises was located in an area zoned “Residential (Group A)” (“R(A)”) on the then OZP No. S/H8/19. With imminent redevelopment pressure and proliferation of high rise development, a review on land use and building height of North Point OZP was conducted by the Planning Department (PlanD) and completed in 2007. In view of the traffic constraints at the Kai Yuen Street area and taking into account the findings of a traffic impact assessment, areas along Kai Yuen Street were rezoned to “CDA(2)” on 8.6.2007 with the stipulation of corresponding building height restriction under the then OZP S/H8/20. This was to facilitate comprehensive development of the area in order to secure the widening of the upper section of Kai Yuen Street for pedestrian safety and to cater for a redevelopment with a plot ratio of 8.

6. Previous Applications

6.1 The Premises falls within a larger area zoned “CDA(2)” which was the subject of two previous applications. Application No. A/H8/395 for a proposed comprehensive residential development with a total PR of 8 and maximum BHs of 123mPD and 130mPD for the eastern and western parts of the “CDA(2)” zone was approved with conditions by the Metro Planning Committee (the Committee) on 4.12.2009. The approved scheme was divided into two phases. Phase 1 (i.e. Fleur Pavilia) covers the eastern part of the “CDA(2)” zone has already been completed, and future phase includes the western part of the zone (i.e. covering the Premises) under multiple ownerships. According to the approved MLP, there is no retail provision in the proposed residential development.

6.2 Application No. A/H8/401 was for amendments to the approved MLP which was approved with conditions by the Committee on 12.2.2010. The major changes involved a minor relaxation of the BH restriction for the eastern part of the “CDA(2)” zone from 120mPD to 125.6mPD and revision to the boundary of Phase 1.

6.3 Details of the previous applications are at **Appendix II**.

7. Similar Applications

There is no similar application for shop and services (retail shop) within the “CDA(2)” zone in North Point OZP Planning Area.

8. The Premises and its Surrounding Areas (Plans A-1 and A-2 and photos on Plans A-3 to A-4)

8.1 The Premises is:

- (a) located on the G/F (portion) of a 7-storey building, North Point View Mansion at Kai Yuen Street on a upper platform of about 37mPD;
- (b) enclosed with partitions and currently used as a garage. According to approved building plan of the North Point View Mansion, the entire G/F is for carport; and
- (c) leading onto Kai Yuen Street which is a sub-standard and steep local road (1:6) with a carriageway width of about 5.5m.

8.2 The surrounding areas have the following characteristics:

- (a) to the north and west are groups of residential developments including the Fortune Building, Feiloon Terrance and King's Court;
- (b) to the east of Kai Yuen Street is Fleur Pavillia (a newly completed high-rise residential development without retail shop);
- (c) to the south are vegetated natural slopes zoned "Green Belt"; and
- (d) retail shops can be found nearby along Tanner Road and King's Road.

9. Planning Intention

The "CDA(2)" zone is intended for comprehensive development/redevelopment of the area primarily for residential uses. As the area within this zone is subject to traffic constraints due to the substandard conditions of the local road, suitable traffic and road improvement measures should be proposed and implemented upon development and/or redevelopment of the area. The zoning is to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of the environmental, traffic, infrastructure and other constraints.

10. Comments from the Relevant Government Departments

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

Land Administration

10.1.1 Comments of the District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD):

- (a) the Premises falls within the private lot I.L. 2168 s.A ss.6 & Ext. (the Lot) which is held under Government Lease of I.L. 2168

dated 30.8.1917 as extended and modified by Conditions of Extension and Modification No. 5710 dated 21.3.1957 under M/N UB354050. The relevant extracts of the above lease conditions are as follows:-

- (i) the building will comply with the following coverage limitation:

Height of Building	Max. roofed-over area
5 storeys	45% of lot area (including extension area)
6 storeys	40% of lot area (including extension area)
 - (ii) provision for car parking will be provided at a rate of not less than 1 car per flat. Car ports at Ground floor level will be permitted under the proposed building in addition to the number of storeys stated in (i) above;
 - (iii) the lot together with the extension area will be used for residential purpose only; and
 - (iv) offensive trades clause.
- (b) the proposed shop and services use will contravene the lease conditions (i) to (iii) above. If the proposed shop and services use includes general restaurant use, the above mentioned lease condition (iv) will also be contravened; and
- (c) if planning permission from the Board is given for the proposed use, the owner needs to apply to his office for modification of lease conditions to effect the approval. Given the modification involves modifying the development conditions of the lease governing the Lot and the subject Lot is now in multiple ownerships, a modification letter should be entered into with all legal owners of the property in these circumstances. However, there is no guarantee that such lease modification application will be approved and if approved by LandsD acting in its capacity as the landlord at its discretion, it will be subject to such terms and conditions, including, among others, payment of premium and fees, as imposed by LandsD.

Traffic Aspect

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

- (a) the applicant should demonstrate that the remaining parking spaces of subject development can still meet the requirements stipulated in the land lease after converting the concerned parking space into shop. The applicant should also ensure that loading/unloading activities would not cause adverse impact to the traffic at Kai Yuen Street; and
- (b) having reviewed the further information submitted by the applicant that the Premises is currently used for purpose other than car parking space and the traffic condition of Kai Yuen

Street, no comment on the application from traffic engineering point of view.

Building Aspect

10.1.3 Comments of the Chief Building Surveyor/Hong Kong East & Heritage, Buildings Department (CBS/HKE&H, BD):

- (a) the proposed shop and services (retail shop) at the ground floor should be accountable for gross floor area (GFA) calculation;
- (b) the domestic and non-domestic plot ratio (PR) calculations for the subject site should be re-assessed taking into account the GFA of the proposed shop and services (retail shop) under regulation 21 of Building (Planning) Regulations (B(P)R);
- (c) there should be structurally adequate for the existing structure affected by the proposed change in use;
- (d) there should be adequate provision of means of escape and fire resisting construction for the proposed shop and services (retail shop) so as to comply with the B(P)R 41(1) and Building (Construction) Regulation 90;
- (e) there should be adequate provision of access and facilities for persons with a disability for the proposed shop and services (retail shop) so as to comply with B(P)R 72; and
- (f) detailed checking for compliance with Buildings Ordinance will be made at building plan submission stage.

Fire Safety Aspect

10.1.4 Comments of the Director of Fire Services (D of FS):

- (a) no objection in-principle to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

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

- (a) Director of Environmental Protection;
- (b) Chief Highway Engineer/Hong Kong, Highways Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Chief Engineer/Hong Kong & Islands, Drainage Services Department (CE/HK&Is, DSD);
- (e) Director of Food and Environmental Hygiene;
- (f) Commissioner of Police; and

- (g) District Officer (Eastern), Home Affairs Department.

11. Public Comments Received During Statutory Publication Period

- 11.1 During the statutory publication periods of the application (ended on 15.2.2019), 64 public comments were received. Out of which, 15 opposing comments from a DC member (Mr Cheng Tat Hung), the chairperson of Hong Kong Island East District Branch of the Liberal Party (Ms. Pearl Tsang), Incorporated Owners (IOs) of 38-44 Kai Yuen Street, IOs Committee of Blocks A, B, C, D, E, E1 and F of the North Point View Mansion, IOs Committee of King's Court, a concerned group (北角繼園街重建關注組), a member of the Area Committee (North Point West), vice president of the District Fire Safety Committee (Eastern District) and other individuals; and 49 from individuals providing views with negative comments. A full set of the public comments received is at **Appendix III** for Members' reference.
- 11.2 The major grounds of the opposing public comments can be summarised as follows:
- (a) the proposed use is not in line with the planning intention of the "CDA(2)" zone and contravene the lease;
 - (b) the Premises is with illegal structures and illegal use;
 - (c) the conversion of carport to retail shop would reduce car parking space available in the area;
 - (d) there is inadequate technical assessment to support the planning application;
 - (e) the proposed loading/unloading space will block the existing right of way of the nearby development; and
 - (f) there is no demand for shop and services in the neighbourhood.

12. Planning Considerations and Assessments

- 12.1 The application is to seek planning permission to convert the Premises currently used as a car repair workshop for 'Shop and Services (Retail Shop)' use, which falls within an area zoned "CDA(2)". The "CDA(2)" zone is intended for comprehensive development/redevelopment of the area primarily for residential uses.
- 12.2 The Premises is located at the G/F of the North Point View Mansion. All buildings around the Premises are for residential purposes without any retail shop. It is generally a pure residential neighbourhood. The proposed shop is not in keeping with the residential character of the neighbourhood. Besides, retail shops can also be found along Tanner Road, Tsat Tsz Mui Road and King's Road. There is no strong planning justification for the proposed change of use within a pure residential neighbourhood. The approval of the application will

set an undesirable precedent. The cumulative impact of other similar applications will result in change of a pure residential neighbourhood.

- 12.3 There are public comments raising concerns on the land use, traffic, as well as environmental impact aspects, the assessments above and the comments from the relevant government departments in paragraph 10 above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 above, and having taken into account the public comments mentioned in paragraph 11 above, PlanD does not support the application for the following reason:

there is no strong planning justification for the change of uses in the area which is primarily for residential uses. The approval of the application would set an undesirable precedent for other similar applications, the cumulative effect of approving such applications would result in change of a pure residential neighbourhood.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 8.3.2023, and after the said date, the permission shall cease to have effect unless prior to the said date either the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of fire service installations and water supplies for fire-fighting proposals in the application premises before operation of the proposed use to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition (a) is not complied with, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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 conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

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

Appendix I	Application form received on 15.1.2019
Appendix Ia	Applicant's letter dated 28.2.2019 (FI-1) providing responses to departmental comments and public comments
Appendix Ib	Applicant's letter dated 1.3.2019 (FI-2) providing responses to departmental comments
Appendix II	Previous applications within the application site
Appendix III	Public comments received during the statutory publication period
Appendix IV	Recommended advisory clauses
Drawing A-1	Block plan
Drawing A-2	G/F plan
Plan A-1	Location plan
Plan A-2	Site plan
Plans A-3 to A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2019**