RNTPC Paper No. A/YL-KTN/611 For Consideration by the Rural and New Town Planning Committee on 3.8.2018

<u>APPLICATION FOR PERMISSION</u> UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/611

Applicant: Mr. TANG Kwok TUNG represented by R-riches Property

Consultants Limited

Site : Lot 283 S.A RP (Part) in D.D. 109, Ko Po Tsuen, Kam Tin,

Yuen Long

<u>Site Area</u> : About 867 m²

<u>Lease</u> : Block Government Lease (demised for agricultural use)

Plan : Approved Kam Tin North Outline Zoning Plan (OZP) No.

S/YL-KTN/9

Zoning : "Village Type Development" ("V")

[maximum building height of 3 storeys (8.23m)]

<u>Application</u>: Temporary Shop and Services (Grocery, Metalware Retail Shop

and Car Beauty Product) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant sought planning permission to use the application site (the Site) for temporary shop and services (grocery, metalware retail shop and car beauty product) for a period of 3 years. According to the Notes of the OZP, 'Shop and Services' is a Column 2 use under "V" zone which requires planning permission from the Town Planning Board (the Board). The Site is currently used for storage and shop and services uses without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is the subject of four previous applications (Nos. A/YL-KTN/365, 409, 430 and 438) covering parts of the Site and submitted by different applicants as the current application for various shop and services uses. All the previous applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2011 and 2014. However, except application No. A/YL-KTN/430, all approvals were revoked due to non-compliance of approval conditions related to drainage and fire safety aspects. Planning permission of application No. A/YL-KTN/430 lapsed on 8.2.2017.

- 1.3 According to the applicant, a total of nine 1-to 2 storeys structures with a total floor area of about 257.3m² and building height ranging from 3m to 6m will be erected on site for shop and services (grocery and metalware retail shop and car beauty product), office, storage and electricity meter room. According to the applicant, the proposed storage use is ancillary to the shop and services use on site. No workshop related activities will be carried out. One loading/unloading space for light goods vehicle will be provided and no vehicle exceeding 5.5 tonnes will enter the Site. The Site is accessible via a local track branching off Kam Tin Road. The operation hours are between 9:00 a.m. to 7:00 p.m. daily. The layout plan, landscape, drainage and fire service installation (FSIs) proposals as submitted by the applicant are shown at **Drawings A-1 to A-4**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with planning statement and plan (Appendix I) received on 6.6.2018.
 - (b) Supplementary Information (SI) received on 14.6.2018. (Appendix Ia)
 - (c) Further Information (FI) received on 10.7.2018 in (Appendix Ib) responses to departmental comments.

 (accepted and exempted from publication and recounting requirement)
 - (d) FI received on 17.7.2018 in responses to departmental comments.

 (accepted and exempted from publication and recounting requirement)

 (Appendix Ic)
 - (e) FI received on 19.7.2018 in responses to departmental (Appendix Id) comments.

 (accepted and exempted from publication and recounting requirement)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement and FI in **Appendices I and Ib to Ic**. They can be summarized as follows:

(a) The development is a Column 2 use under the "V" zone and is compatible with the surrounding land uses. No land filling/excavation works will be carried out to minimize any adverse environmental impacts on the nearby areas. In addition, only one loading/unloading space will be provided to minimize traffic impact.

- (b) The Site is involved in various similar planning applications approved by the Committee. The proposed use intends to serve the local community and will be operated by local residents.
- (c) The construction and operation of the development will not obstruct any construction of roadsworks implemented by the Government, and future operator of the development will coordinate closely with the roadworks contractor.

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. 31) by posting site notice and sending notice to Kam Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The southern part of the Site is subject to an on-going enforcement action (No. E/YL-KTN/463) against an unauthorized development (UD) involving services provision. The middle part of the Site is subject to an on-going enforcement action (No. E/YL-KTN/464) against an UD involving retail use. Enforcement Notices (ENs) were issued to the concerned parties on 19.7.2018 respectively requiring the discontinuation of the UDs. If the requirement of the EN is not complied with upon expiry of the compliance period of the notice, the concerned parties will be subject to further enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of four previous planning applications (No. A/YL-KTN/365, 409, 430 and 438) covering two different parts of the Site and submitted by different applicants. All the previous applications were approved by the Committee between 2011 to 2014. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Application No. A/YL-KTN/365 and 430 for temporary shop and services (real estate agency) on about the same site were approved with conditions by the Committee on 6.12.2011 and 7.2.2014 respectively for the similar reasons that temporary approvals would not jeopardize the long-term planning intention of "V" zone; the developments would serve some local needs; the development was considered not incompatible with the surrounding land uses and unlikely to generate significant environmental nuisance to the surrounding areas; there were similar application approved within the same "V" zone and relevant government departments consulted had no adverse comment on the application. Applications No. A/YL-KTN/365 was revoked on 6.1.2014 due to non-compliance with approval conditions related to drainage aspect. All approval conditions for

- application No. A/YL-KTN/430 had been complied with and the planning permission lapsed on 8.2.2017.
- 5.3 Application No. A/YL-KTN/409 and 438 for shop and services (grocery and metalware retail shop) on one site for a period of 3 years were approved with conditions by the Committee on 19.7.2013 and 25.4.2014 respectively on similar reasons as stated in paragraph 5.2. However, both applications were revoked on 19.1.2014 and 25.7.2014 respectively due to non-compliance with approval conditions related to landscape, drainage and fire safety aspects.

6. <u>Similar Applications</u>

- 6.1 There are four similar applications (Nos. A/YL-KTN/403, 417, 547 and 572) within the same "V" zone on the OZP. All applications were approved with conditions by the Committee for a period of 3 years from 2013 to 2017. Details of the applications are at **Appendix III** and the locations are shown on **Plan A-1a**.
- 6.2 Application No. A/YL-KTN/403 for temporary shop and services (grocery and metalware retail shop), Application No. A/YL-KTN/417 for temporary shop and services (pet grooming and retail shop), Application No. A/YL-KTN/547 for temporary shop and services (real estate agency) and Application No. A/YL-KTN/572 for shop and services (book shop) at the sites to the east of the Site were approved with conditions by the Committee for a period of 3 years on 4.5.2013, 11.10.2013, 3.2.2017 and 8.9.2017 respectively for similar reasons that there was no Small House application approved or under processing at the sites; temporary approvals would not jeopardize the long-term planning intention of "V" zone; the development was considered not incompatible with the surrounding land uses and unlikely to generate significant environmental nuisance and relevant government departments consulted had no adverse comment on the application. However, Applications Nos. A/YL-KTN/403 and 417 were revoked in 2013 and 2015 respectively due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) paved and fenced off, and occupied by temporary structures for storage and shop and services uses without valid planning permission; and
- (b) accessible via a local track branching off Kam Tin Road to its south.
- 7.2 The surrounding areas are rural in character predominated by residential structures/dwellings with scattered open storage/storage yards, parking lots and vacant/unused land. Some shops/commercial uses are located on the ground floor of the village houses in the vicinity. The open storage/storage yards and parking

lots are suspected unauthorized development subject to enforcement action by the Planning Authority;

- (a) to its east and northeast are residential dwellings/structures, a book shop, office and other commercial uses on the ground floor of the village houses, parking of vehicles, storage yards and unused land;
- (b) to its immediate south is a refuse collection point. To its further south across the Kam Tin Road are unused land, parking lots and some residential structures/dwellings;
- (c) to its immediate west is the Salvation Army Kam Tin Integrated Service Centre zoned "Government, Institution or Community" ("G/IC") on the OZP. Residential dwellings/structures, real estate agency and animal clinic on the ground floor of village houses, and unused land are located to the further west; and
- (d) to its north are residential dwelling/structure, parking of vehicles, open storage /storage yards and unused land.

8. 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.

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) Lot No. 283 S.A RP (Portion) in D.D. 109 within the Site is covered by a Short Term Waiver (STW) No. 3688 to permit structures erected thereon for the purpose of "shop and services (real estate agency)".
- (c) The Site is accessible to Kam Tin Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should the application be approved, the owner(s) of the lot will need to apply to his offices for modification of the STW conditions to permit the structures to be erected or regularize any irregularities on site. Such application(s) 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 premium or fee, as may be imposed by the LandsD.
- (f) There is no Small House application approved or under processing within 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 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 (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/NT West, Highways Department (CHE/NTW, HyD):
 - (a) His department does not and will not maintain 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) No environmental compliant has been received in the past 3 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 perspective.
 - (b) The Site was the subject of 4 previous applications for shop and services to which she had no objection to the last application (No. A/YL-KTN/438) from the landscape planning perspective. The proposed temporary shop and services use is not incompatible with the surrounding village setting.
 - (c) According to the site inspection taken on 27.6.2018, existing trees in good condition are found within the Site. Further adverse impact on existing landscape resources due to the applied use is not anticipated.
 - (d) Should the application be approved, approval condition requiring the maintenance of all landscape planting within the Site to satisfactory healthy conditions at all time during the planning approval period should be included.
 - (e) The applicant should closely monitor the topped tree and restore the tree form to a satisfactory condition. If tree felling is necessary,

a tree felling proposal should be submitted to LandsD for consideration.

Nature Conservation

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

He has no comment on the application from nature conservation point of view as the Site is located in "V" zone and has been paved and occupied by a temporary structure.

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 and implementation of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.
 - (c) His detailed comments on the submitted drainage proposal are at **Appendix IV**.

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 (Cap. 123),

- detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.
- (d) Regarding the submitted FSIs proposal, relevant pump and tank of the modified Hose Reel system should be clearly marked on the floor plan.

Building Matters

- 9.1.9 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) are to be carried out on the Site, the prior approval and consent of the BD 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 Buildings Ordinance (BO).
 - (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are UBW under the BO and should not be designated for any proposed use under the application.
 - (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
 - (d) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
 - (e) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Food and Environmental Hygiene

- 9.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):
 - (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
 - (b) No FEHD services including street cleansing and refuse collection will be affected.
 - (c) For any waste generated from the such activity / operation, the applicant should arrange its disposal properly at her own expenses.
 - (d) Applicant shall handle any trade waste so generated on their own/ at their expenses and shall not dispose to the refuse collation point (YL-168) situated at the government land lot to the immediate south of the Site.
 - (e) Proper licence / permit issued by FEHD is required if there is any catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

Project Interface

9.1.11 Comments of the Project Manager/ West, Civil Engineering and Development Department (PM/ W, CEDD):

The construction and operation of the temporary shop shall not obstruct the construction of roadworks under PWP Item No. 804CL 'Site formation and infrastructure works for development at Kam Tin South, Yuen Long – advance works' in the vicinity of the Site, which is planned for commencement in mid 2018 for completion in end 2021 tentatively. The future contractor and operator of the temporary shop shall coordinate with the contractor of advance works contract of PWP Item No. 804CL for any works in the vicinity.

District Officers Comments

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

His office has not received any locals' comment on the application.

- 9.2 The following Government departments have no comment on the application:
 - (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
 - (b) Director of Electrical and Mechanical Services (DEMS); and
 - (c) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 15.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.7.2018, one public comment was received (**Appendix V**). The commenter objects to the application on the ground that the applied use would result in higher rent, which affects the concerned parties.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (grocery, metalware retail shop and car beauty product) for a period of 3 years in area zoned "V". The planning intention of "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. Selected commercial uses are always permitted on ground floor of a NTEH. Other commercial uses may be permitted on application to the Board. According to the applicant, the applied shop and services use intends to serve the local community. In addition, DLO/YL, LandsD has no adverse comment on the application and advised that there is no Small House application approved or under processing at the Site. In this regards, it is considered that approval of the application on a temporary basis for a period of 3 years would not jeopardize the planning intention of the "V" zone.
- 11.2 The development is considered not incompatible with the surrounding land uses which are rural in character predominated by residential structures/dwellings with scattered 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.
- 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 and DEP has no adverse comment on the application. Relevant department 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, types of vehicles and prohibiting workshop activities are recommended in paragraph 12.2 (a) to (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Other Temporary Uses" in order to alleviate any potential environmental impact. In addition, 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 (d) to (i) below.

- 11.4 The Site is the subject of four previously approved applications (Nos. A/YL-KTN/365, 409, 430 and 438) for various shop and services uses for a period of 3 years which were approved by the Committee between 2011 and 2014 mainly for the reasons as stated in paragraph 5.2 above. While three of these applications were revoked due to non-compliance of approval conditions, the current application is submitted by a different applicant. Under the current application, the applicant submitted landscape, drainage and FSIs proposals. In addition, there are four similar applications approved by the Committee between 2013 and 2017 within the same "V" zone on the OZP for various shop and services uses. Approval of the current application is in line with the Committee's previous decisions.
- One public comment objecting the application during the public inspection period was received as mentioned in paragraph 10 above. In this regards, the above planning assessments and considerations are relevant.

12. Planning Department's Views

- Based on the assessment made in paragraph 11 and public comment as mentioned in paragraph 10, the Planning Department considers that the temporary shop and services (grocery, metalware retail shop and car beauty product) 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 3.8.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

(a) no operation between 7:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities, as proposed by the applicant, shall be carried out on the Site at any time during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes including container tractors/trailers, as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) maintenance of all landscape planting within the Site to satisfactory healthy conditions at all times during the planning approval period;
- (f) 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 <u>3.2.2019</u>;
- (g) in relation to (f) 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 3.5.2019;
- (h) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 3.2.2019;
- (i) in relation to (h) above, the provision of fire service installations within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 3.5.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (e) 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:
- (k) if any of the above planning conditions (f), (g), (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; and
- (l) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

<u>Advisory Clauses</u>

The recommended advisory clauses are attached 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 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. No strong planning justification has been given in the submission to justify 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.
- Alternatively, should the Committee decide to reject the application. 13.3 Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. **Attachments**

Application Form with planning statement and plans received on Appendix I 662018

Appendix Ia Supplementary Information received on 14.6.2018.

Further Information received on 10.7.2018 clarifying parking **Appendix Ib** provision and trip generation, and providing further justification

Further Information received on 17.7.2018 clarifying operation **Appendix Ic** details and vehicle types

Appendix Id Further Information received on 19.7.2018 providing landscape,

drainage and fire service installations proposals

Previous applications on the site **Appendix II**

Similar applications within the same "V" zone on the Kam Tin North **Appendix III**

OZP

Appendix IV Detailed Comments from CE/MN of DSD **Appendix V** Public Comment

Appendix VI Advisory Clauses

Drawing A-1 Layout Plan

Drawing A-2 Landscape Proposal

Drawing A-3 Drainage Proposal

Drawing A-4 Fire Service Installations Proposal

Plan A-1a Location Plan with Similar Applications

Plan A-1b Previous Application Plan

Plan A-2 Site Plan

Plan A-3 Aerial Photo

Plan A-4 Site Photos

PLANNING DEPARTMENT AUGUST 2018