

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/644

<u>Applicant</u>	: Mr. Tang Kin Wai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 283 S.A RP (Part) in D.D. 109, Kam Tin Road, Kam Tin, Yuen Long
<u>Site Area</u>	: About 868.3m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Temporary Shop and Services (Real Estate Agent, Grocery, Metalware Retail Shop and Car Beauty Product) with Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (real estate agent, grocery, metalware retail shop and car beauty product) with ancillary office for a period of 3 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use in “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by various shop and services uses and storage, some of which is under valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is the subject of eight previous applications for various shop and services uses which were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2011 and 2018. However, except two applications (Nos. A/YL-KTN/430 and 611), all planning permissions were revoked due to non-compliance of approval conditions related to landscape, drainage and/or fire safety aspects. The last application No. A/YL-KTN/611 covering the western portion of the Site was approved with conditions by the Committee on 3.8.2018 for a period of 3 years. The planning permission is valid until 3.8.2021.

1.3 The Site is divided into eastern and western portions by a local track. According to the applicant, the applied use involves 6 one-storey structures with building height ranging from 3m to 4.6m and a total floor area of about 221.25m² for shop and services (real estate agent, grocery, metalware retail shop and car beauty product) with ancillary office, ancillary storage and fire water tank uses. The Site is accessible from Kam Tin Road. One loading/unloading space for light goods vehicles will be provided within the Site. The operation hours are from 9 a.m. to 7 p.m. daily, including public holidays. No workshop activity will be carried out at the Site. The vehicular access plan and layout plan submitted by the applicant are at **Drawings A-1 to A-2**.

1.4 A comparison of the major development parameters of the current application and the last approved application (No. A/YL-KTN/611) is given in the following table:

Major Development Parameters	Last Approved Application No. A/YL-KTN/611 (a)	Current Application (b)	Differences (b) – (a)
Site Area (m ²)(about)	867	868.3	+1.3 (+0.1%) (about 559m ² overlap)
Applied Use	Temporary Shop and Services (Grocery, Metalware Retail Shop and Car Beauty Product) for a Period of 3 Years	Temporary Shop and Services (Real Estate Agent, Grocery, Metalware Retail Shop and Car Beauty Product) with Ancillary Office for a Period of 3 Years	Additional real estate agent use and ancillary office
No. of Loading/Unloading Spaces	1	1	No change
No. of Structure(s)	9	6	-3 (-33%)
Total Floor Area (m ²)	257.3	221.25	-36.05 (-14%)
Building Height of Structure(s) (m)	3 to 6	3 to 4.6	-1.4 (-23%)

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

- (a) Application form with planning statement and plans received on 18.1.2019 **(Appendix I)**
- (b) Further Information (FI) received on 1.3.2019 in response to departmental comments **(Appendix Ia)**

2. **Justifications from the Applicant**

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

- (a) The development 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. Only one loading/unloading space will be provided to minimize traffic impact.
- (b) The Site involves various similar planning applications approved by the Committee and the current application combines two of them. The applied use intends to serve locals.

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

The applicant is not a “current land owner” 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 a site notice and notifying the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is not subject to any enforcement action.

5. **Previous Applications**

- 5.1 The Site is the subject of eight previous applications (Nos. A/YL-KTN/365, 403, 409, 417, 430, 438, 547 and 611) for various shop and services uses covering different parts of the Site. Application No. A/YL-KTN/547 was submitted by the applicant of the current application and the other applications were submitted by different applicants. All of them were approved with conditions by the Committee between 2011 and 2018 for 3 years. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 The western portion of the Site involves 5 applications (Nos. A/YL-KTN/365 and 430) for real estate agency on one site, Nos. A/YL-KTN/409 and 438 for grocery and metalware retail shop on another site, and No. A/YL-KTN/611 for grocery, metalware retail shop and car beauty product covering the whole western portion) approved on 6.12.2011, 7.2.2014, 19.7.2013, 25.4.2014 and 3.8.2018 respectively for similar reasons that temporary approvals would not jeopardize the long-term planning intention of “V” zone; the developments would serve some local needs; not incompatible with the surrounding land uses and unlikely generate significant

environmental nuisance to the surrounding areas; similar applications were approved within the same “V” zone; and relevant government departments consulted had no adverse comment on the application. Application Nos. A/YL-KTN/365, 409 and 438 were revoked in 2014 due to non-compliance with approval conditions related to landscape, drainage and/or fire safety aspects. All approval conditions for application No. A/YL-KTN/430 had been complied with and the planning permission lapsed on 8.2.2017. The planning permission of Application No. A/YL-KTN/611 is valid until 3.8.2021.

- 5.3 The eastern portion of the Site involves 3 applications (No. A/YL-KTN/403 for grocery and metalware retail shop, No. A/YL-KTN/417 for pet grooming and retail shop and No. A/YL-KTN/547 for real estate agency) approved with conditions on 5.4.2013, 11.10.2013 and 3.2.2017 respectively for similar reasons as stated in paragraph 5.2 above. However, all of them were revoked in 2013, 2015 and 2019 respectively due to non-compliance with approval conditions related to landscape, drainage and/or fire safety aspects.

6. Similar Applications

- 6.1 There are two similar applications (Nos. A/YL-KTN/572 and 602) for shop and services uses within the same “V” zone. Details of the application are at **Appendix III** and the location is shown on **Plan A-1a**.
- 6.2 Application No. A/YL-KTN/572 for book shop was approved with conditions by the Committee for 3 years on 8.9.2017 for the reasons that approval on a temporary basis would not jeopardize the planning intention of the “V” zone; there was no adverse departmental comment; and the development was not incompatible with the surrounding environment and unlikely to cause adverse environmental impacts on the surrounding areas.
- 6.3 Application No. A/YL-KTN/602 for temporary shop and services (motor vehicle showroom) with storage of vehicles/vehicles parts and ancillary offices use located at the further east of the same “V” zone and involving larger site area and structures (5,310m² and total floor area of 4,548.8m²) than the current application, was rejected by the Board on review on 28.12.2018 on the grounds that the development was not in line with the planning intention of the “V” zone; and the scale of the development was excessive and not compatible with the developments in the surrounding area.

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

- 7.1 The Site is:
- (a) paved and is currently occupied by various shop and services uses (including metalware retail, car beauty product and bookshop) and storage. The metalware retail and car beauty uses are subject to valid planning permission under Application No. A/YL-KTN/611; and

(b) accessible via a local track branching off Kam Tin Road to its south.

7.2 The surrounding area is predominantly 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. Some of the open storage/storage yards and parking of vehicles are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its east and northeast are residential dwellings/structures and other commercial uses on the ground floor of the village houses, parking of vehicles (one of them with valid planning permission), storage yards and vacant land;
- (b) to its immediate south is a refuse collection point. To its further south across Kam Tin Road are unused land, parking of vehicles 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”). 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 immediate north are storage yards. To its further north are residential dwellings/structures, parking of vehicles and open storage/storage yards.

8. Planning Intention

The planning intention of the “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. 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) Part of Lot No. 283 S.A RP in D.D. 109 is covered by Short Term Waiver (STW) No. 3688 to permit structures erected thereon for the purpose of “Temporary shop and services (Real Estate Agency, Grocery and Metalware Retail Shop)”.
- (c) The Site is accessible from 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 STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application 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 at 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 incorporated.
- (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/New Territories 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) 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.
- (b) If septic tank and soakaway system is used, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department”. The applicant is also advised that effluent discharges from the applied use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge licence under the WPCO should be obtained before a new discharge is commenced.

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 point of view.
- (b) The Site is subject of 8 previous applications. The last application No. A/YL-KTN/611, to which she had no objection to the planning application, was approved by the Committee on 3.8.2018.
- (c) According to the aerial photo of 2018, the surrounding area comprises village houses, temporary structures, car parks and scattered tree groups. The applied use is considered not incompatible with the existing landscape setting in proximity.
- (d) According to the site visit conducted on 15.2.2019, the Site was fenced off with temporary structures erected and in operation. Existing trees in fair to poor condition were found in southern part of the Site. Further adverse landscape impact arising from the applied use is not anticipated.

- (e) In consideration that the Site is not located at landscape sensitive areas and the development is unlikely to cause further adverse visual and landscape impacts, should the application be approved, the condition on the maintenance of the existing trees within the Site in healthy condition at all times during the planning approval period should be included.
- (f) Her detailed comments are at **Appendix IV**.

Nature Conservation

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

Noting that the Site has been paved and is located within a developed area in “V” zone, he has no comment on the application from nature conservation perspective.

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, implementation and maintenance of drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be included.

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 (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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 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.

District Officer's Comments

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

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

- 9.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 29.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 19.2.2019, no comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (real estate agent, grocery, metalware retail shop and car beauty product) with ancillary office for a period of 3 years at the Site zoned “V”. The planning intention of the “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 locals. 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. 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. Other relevant department consulted, including, C for T, 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 and types of vehicles are recommended in paragraph 12.2 (a) to (b) 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 the Environmental Aspects of Open Storage and Other Temporary Uses”. 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 (c) to (i) below.
- 11.4 The Site is the subject of eight previous applications for various shop and services uses covering different parts of the Site and submitted by different applicants (except application No. A/YL-KTN/547) which were approved with conditions for 3 years by the Committee between 2011 and 2018 mainly for the reasons as stated in paragraph 5.2 above. The last application No. A/YL-KTN/611 covering the western portion of the Site was approved with conditions by the Committee in 2018 and the planning permission is valid until 3.8.2021. There is also one similar application

within the same “V” zone approved with conditions for 3 years by the Committee in 2017. Another similar application (No. A/YL-KTN/602) which was rejected by the Board on review on 28.12.2018 is located at the further east of the Site and involving much larger site area and structures when compared with the current application, and was rejected considering that the development was excessive and not compatible with the surroundings.

11.5 No public comment was received during the statutory publication period.

12. Planning Department’s Views

12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the temporary shop and services (real estate agent, grocery, metalware retail shop and car beauty product) with ancillary office 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 8.3.2022. 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 medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) existing trees within the Site shall be maintained at all times during the planning approval period;
- (e) 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 8.9.2019;
- (f) in relation to (e) 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 8.12.2019;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of 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 8.9.2019;

- (i) in relation to (h) 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 8.12.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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
- (k) if any of the above planning conditions (e), (f), (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.

Advisory Clauses

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

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

the development is not in line with the planning intention of the "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. Land within the "V" zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form with planning statement and plans received on 18.1.2019
Appendix Ia	FI received on 1.3.2019 in response to departmental comments
Appendix II	Previous applications covering the Site
Appendix III	Similar application within the same “V” zone on the Kam Tin North OZP
Appendix IV	Detailed comments of CTP/UD&L, PlanD
Appendix V	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Layout Plan
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
MARCH 2019**