

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/KTN/50**

<b><u>Applicant</u></b>	Mr. Poon Ka Lok represented by Mr. Kwok Chi Man
<b><u>Site</u></b>	Lots 632 RP (part) and 633 (part) in D.D. 96 and adjoining Government land, Kwu Tung North, Sheung Shui, New Territories
<b><u>Site Area</u></b>	About 1,910m <sup>2</sup> (including 30m <sup>2</sup> of Government land)
<b><u>Lease</u></b>	Old Schedule lot held under the Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<b><u>Zoning</u></b>	“Government, Institution or Community” (“G/IC”)
<b><u>Application</u></b>	Proposed Temporary Shop and Services (Pet Supplies and Food Retail Shop), Office, Warehouse and Guard Room for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (pet supplies and food retail shop), office, warehouse and guard room at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “G/IC” on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ and ‘Office’ are Column 2 uses within “G/IC” zone, which require planning permission from the Town Planning Board (the Board). For ‘Warehouse’ use, while it is not a Column 1 or Column 2 use under the “G/IC” zone, temporary use not exceeding a period of 3 years can be submitted to the Board for consideration. The Site is currently used as shop and warehouse (not for pet supplies and food) without valid planning permission.
- 1.2 According to the applicant’s submission, the proposed development will utilize the 6 existing structures at the Site with a total gross floor area (GFA) of about 840 m<sup>2</sup> and a maximum building height of 5 m (1 to 2 storeys) (**Drawing A-1**) for warehouse (730m<sup>2</sup>), shop and office (70m<sup>2</sup>) and guard room (40m<sup>2</sup>). Besides, an existing canopy of 75m<sup>2</sup> is proposed for storage use.

- 1.3 The Site is accessible via a local track from Castle Peak Road – Chau Tau (**Plan A-2**). One private car parking space and one goods vehicle loading/unloading space are proposed at the Site. No visitor parking space will be provided on site. The proposed opening time is 9:00 a.m. to 7:00 p.m. from Mondays to Saturdays and no operation on Sundays and public holidays. Existing trees on site will not be affected. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with attachments received on 19.7.2018 (**Appendix I**)
  - (b) Supplementary information dated 19.7.2018 (**Appendix Ia**)
  - (c) Further Information (FI) dated 20.8.2018 (**Appendix Ib**)  
*(accepted and exempted from publication and recounting requirements)*
  - (d) FI dated 24.8.2018 (**Appendix Ic**)  
*(accepted and exempted from publication and recounting requirements)*
  - (e) FI dated 27.8.2018 (**Appendix Id**)  
*(accepted and exempted from publication and recounting requirements)*

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in **Appendix Ic**. They are summarized as follows:

- (a) The proposed development is in line with the planning intention of “G/IC” zone, and is not incompatible with the surrounding rural environment.
- (b) The Site was used as a farm with structures before 1990. The proposed development is on a temporary basis and will not jeopardize the future Kwu Tung North New Development Area (KTN NDA) development. It will cease operation upon the implementation of KTN NDA.
- (c) The Site is currently accessible via a proper, paved local track from Castle Peak Road – Chau Tau. Besides, there will be no significant adverse traffic impact to the surrounding areas. The major operation mode of the proposed shop is online shopping, and that no visitor parking space will be provided on site. Customers are not encouraged to buy goods on site. There will be one light goods vehicle entering/exiting the Site once a day and one medium/heavy goods vehicle entering/exiting the Site twice a month to deliver goods/supplies during non-peak hours. No reversing of vehicle on the local road is allowed.
- (d) The applicant has made effort to minimize the environmental impact on the surrounding areas and residents by avoiding tree falling, pond filling, land excavation and affecting the water supply, etc. No chemical wastes and pollutants will be generated from the proposed development. Besides, no site formation works is required for the proposed development.

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

The applicant is not the current land owner but has complied with the requirements as set out in the Town Planning Board (TPB) 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 site notice at the Site and sending notice to the Sheung Shui District Rural Committee (SSDRC) by local registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land, the “Owner’s Consent/Notification” Requirements as set out in TPB PG-No.31A are not applicable.

**4. Background**

The use/development on the Site is under investigation. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

**5. Town Planning Board Guidelines**

The TPB Guidelines for ‘Application for Development/Redevelopment within “G/IC” Zone for Uses Other Than Government, Institution or Community (GIC) Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 16) promulgated in January 1999 are relevant to this application. The main planning criteria set out in the Guidelines relevant to the subject application are as follows:

- (a) the proposed development should not delay the implementation of the planned GIC facilities within the “G/IC” site;
- (b) the proposed development should be compatible in land use terms with the surrounding areas;
- (c) the scale and intensity of the proposed development should be in keeping with that of the adjacent area;
- (d) the proposed development should be sustainable in terms of the capacities of existing and planned infrastructure;
- (e) there should be adequate provision of parking and loading/unloading facilities to serve the proposed development to the satisfaction of the Transport Department (TD). Adequate vehicular access arrangements should also be provided to the satisfaction of TD; and
- (f) the proposed development should not cause, directly or indirectly, the surrounding areas to be susceptible to adverse environmental impacts and should not be susceptible to adverse environmental impacts from pollution sources nearby including heavily trafficked road; other adequate environmental mitigation, monitoring and audit measures must be provided.

**6. Previous Application**

There is no previous application at the Site.

**7. Similar Application**

There is no similar application for ‘Shop and Services’, ‘Office’ and/or ‘Warehouse’ uses within the same “G/IC” zone.

**8. The Site and Its Surrounding Areas (Plans A-1, A-2 and photos on Plans A-3, A-4a and A-4b)**

8.1 The Site is:

- (a) paved, gently flat and fenced off, and currently used as shop and warehouse (not for pet supplies and food); and
- (b) accessible from a local vehicular track leading to Castle Peak Road – Chau Tau.

8.2 The surrounding areas have the following characteristics:

- (a) to its north are an open storage of construction machinery, a vehicle repair workshop, a storage yard, vacant/unused land and some domestic structures;
- (b) to its northeast and east are an emergency access point of MTR Lok Ma Chau Spur Line, a plant nursery, a warehouse and some domestic structures;
- (c) to its south and southwest are some domestic structures, and to its further southwest is a vegetated hillslope; and
- (d) to its west are vacant land and some domestic structures.

**9. Planning Intention**

The planning intention of the “G/IC” zone is primarily for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishments. Currently, there is no GIC facility planned on the Site.

**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 Old Schedule Agricultural Lots 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) no permission is given for occupation of Government land of about 30m<sup>2</sup> in area (subject to verification) included in the Site. The act of occupation of Government land without Government's prior approval is not allowed;
- (c) the Site is accessible from Castle Peak Road – Chau Tau through Government land. His office provides no maintenance work for the Government land involved and does not guarantee any right-of-way; and
- (d) should planning approval be given to the application, the lot owners will need to apply to his office to permit the structures to be erected or regularize any irregularity on site. 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. Furthermore, the applicant has to either exclude the Government land from the Site or apply for a formal approval prior to the actual occupation of the Government land. Applications for any of the above will be considered by his department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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 his department.

### **Traffic**

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

- (a) the application can be tolerated from traffic engineering viewpoint based on the transport-related information submitted by the applicant;
- (b) the Site connects to Castle Peak Road – Chau Tau via a local village track, which is not managed by his department. The applicant should check the land status of the access with the lands authority, and clarify its management and maintenance responsibilities with the relevant lands and maintenance authorities accordingly.

### **Future Development**

#### 10.1.3 Comments of the Chief Estate Surveyor/Acquisition, Lands Department (CES/A, LandsD)

part of the Site (i.e. portion of Lot 633 in D.D. 96) falls within the project limit of the Advanced Works of KTN NDA project (Road Works) which is planned to be implemented in 2019. The remaining part of the Site falls within the Remaining Works Packages of KTN NDA project without any actual implementation schedule at the moment. The applicant should be advised that the Site might be subject to land resumption at any time before the expiry of the planning permission.

#### 10.1.4 Comments of the Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD):

he has no comment on the application from the project interface point of view. The applicant should be aware that his office will have construction activities near the Site.

### **Railway Development**

#### 10.1.5 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD):

- (a) he has no in-principle objection to the application for 3 years from the development point of view of the proposed Northern Link (NOL). The Site falls within the administrative route protection for the proposed NOL. Although the programme and the alignment of the proposed NOL are still under review, those areas within the administrative route protection boundary may be required to be vacated at the time for the construction of the NOL; and
- (b) the Site also falls within the railway protection boundary of the existing Lok Ma Chau Spur Line.

#### 10.1.6 Comments of the Chief Estate Surveyor/Railway Development, Lands Department (CES/RD, LandsD)

- (a) he has no strong view against the application provided that RDO, HyD has no objection against the application and the proposed development would not pose obstacles to the acquisition of land for the implementation of the NOL project;
- (b) the Site partly falls within the Underground Strata Resumption of KCRC East Rail Extension Sheung Shui to Lok Ma Chau Spur Line, thus the concerned underground strata of the Site (i.e. Lot 632 RP (part) in D.D. 96) had been resumed to the Government. Besides, the Site partly falls within Spur Line Protection Boundary; and
- (c) the Site also partly falls within "Railway Development Strategy (RDS)

2014 NOL and Kwu Tung Station Limit of Area of Influence” and “RDS 2014 NOL and Kwu Tung Station Administrative Route Protection Boundary”.

### **Environment**

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

- (a) he does not support the application since the proposed development is expected to generate traffic of heavy vehicles and there are domestic uses within 100m of the site boundary (the nearest domestic structures are to the immediate east and west of the Site). Environmental nuisance to nearby residents is anticipated;
- (b) should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’; and
- (c) there is one noise complaint related to the Site in 2018. The complaint was non-substantiated and no further action could be taken by Environmental Protection Department (EPD).

### **Landscape**

10.1.8 Comments of the Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD):

- (a) he has no objection to the application from the landscape planning perspective;
- (b) according to the latest aerial photo of 2018, the Site is located in an area of rural landscape character, predominantly comprising of temporary structures, patches of hard-paved areas (some for car parking) and surrounded by woodland patches at a further distance. The proposed development, with one to two-storey temporary structures and hard-paved area, is not entirely incompatible with the surrounding environment;
- (c) his site record dated 31.7.2018 shows that the proposed structures and hard-paved area are in place. In general, the Site is surrounded by trees and vegetation. There is an existing local concrete track connecting the Site to Castle Peak Road. Within the Site, there are some young to medium size common species and fruit trees of good tree conditions. According to the applicant’s submission, all existing trees within the Site will be retained. As such, no adverse landscape impact arising from the proposed development is expected;
- (d) should the application be approved, an approval condition requiring maintenance of all existing trees in good condition throughout the approval period is recommended; and

- (e) his detailed advice to the applicant on tree maintenance are at **Appendix III**.

### **Drainage**

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

- (a) he has no objection in principle to the application from the public drainage point of view;
- (b) the Site is in an area where no public sewer connection is available; and
- (c) should the application be approved, a condition requiring the submission and implementation of drainage proposal for the Site should be included to ensure that it will not cause adverse drainage impact to the adjacent areas. The general requirements in the drainage submission are at **Appendix III**.

### **Building Matters**

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

- (a) if the existing structures are erected on leased land without approval of Buildings Department (BD) (not being a New Territories Exempted House), they are unauthorized under the Building Ordinance (BO) and should not be designated for any approved use under the application;
- (b) 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 (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (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) in connection with (b) above, the Site shall be provided with means of obtaining access thereto from a street and EVA in accordance with Regulations 5 and 41D of the Building(Planning) Regulations respectively; and
- (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 Building (Planning) Regulation at the building plan submission stage.

### **Geotechnical Engineering**

10.1.11 Comments of the Head of the Geotechnical Engineering Office, Civil Engineering and Development Office (H(GEO), CEDD):

having reviewed the revised layout plan (**Drawing A-1**) submitted by the applicant, he has no comment on the application from the geotechnical engineering point of view. The applicant has proposed to revise the uses of structure nos. 1, 4, 5 and 7 as shown on the revised layout plan to ensure that no critical facilities are located within the 'no-build' zone at the southwestern part of the Site.

### **Fire Safety**

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

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of Fire Services Department; and
- (b) Emergency Vehicular Access (EVA) arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD.

### **District Officer's Comments**

10.1.13 Comment of the District Officer/North, Home Affairs Department (DO/N, HAD):

he has consulted the locals from 1.8.2018 to 17.8.2018. The Chairman of Sheung Shui District Rural Committee and the incumbent North District Council (NDC) member of the subject constituency had no comment on the application. The Resident Representatives (RRs) of Kwu Tung (North) and Kwu Tung (South) objected the application mainly on the grounds of noise nuisance and adverse environmental hygiene impact.

10.2 The following Government departments have no objection/adverse comment on the application. Their comments, if any, are at **Appendix III**:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Service (DEMS); and
- (d) Commissioner of Police (C of P).

## **11. Public Comments Received During Statutory Publication Period**

On 27.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 17.8.2018, a total of 2 comments from members of general public were received (**Appendices IIa and IIb**). One indicates no comment on the application. Another commenter queries if the location of the Site is suitable for shop use, and considers that the proposed commercial use is not in line with the planning intention of “G/IC” zone and it might legitimize the ongoing brownfield operation.

## **12. Planning Considerations and Assessments**

12.1 The application is for proposed temporary shop and services (pet supplies and food retail shop), office, warehouse and guard room for a period of 3 years. The proposed development will utilize the existing structures at the Site. The Site falls within an area zoned “G/IC” on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). The proposed use is not in line with the planning intention of the above zoning which is primarily for the provision of GIC facilities serving the needs of the local residents and/or a wider district, region or the territory. However, there is currently no GIC use designated on the Site and it is reserved for future use. The Site mostly falls within the Remaining Works Packages of KTN NDA project. Although a small portion of the Site falls within the land resumption limits for the Advanced Works of KTN NDA project which is planned to be implemented in 2019, PM/N, CEDD and CES/A, LandsD have no objection/no comments to the application in relation to the implementation of the KTN NDA. In view of the above, approval of the application for 3 years would not jeopardize the long term development of the Site.

12.2 The proposed use is not incompatible with the existing surrounding land uses which comprise mainly open storage, vehicle repair workshop, warehouse and storage yard intermixed with some domestic structures. According to the applicant, the major operation mode of the proposed shop is online shopping. No visitor parking space will be provided on site. C for T considers that the application can be tolerated from traffic engineering viewpoint. CE/MN, DSD, CTP/UD&L, PlanD and H(GEO), CEDD have no objection to/no comment on the application from drainage, landscape and geotechnical engineering aspects. Existing trees within the Site will not be affected. It is anticipated that the proposed development would not have significant adverse traffic, drainage and landscape impact. Although the Site falls within the administrative route protection for the proposed NOL, CE/RD2-2, RDO, HyD has no in-principle objection to the application for 3 years. Although DEP does not support the application as the proposed use is expected to generate environmental nuisance to residents in the vicinity of the Site, there is no substantiated environmental complaint received in the past three years. The concern of DEP on possible environmental nuisance to surrounding areas could be addressed through the incorporation of approval conditions restricting the operating hours and days of the Site in paragraph 13.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission. Besides, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and

Open Storage Sites” issued by the DEP in order to minimize any possible environmental nuisances. In view of the above, the proposed development is considered generally complied with the TPB PG-No. 16.

- 12.3 There are 2 local objections conveyed by DO(N) on grounds of noise nuisance and adverse environmental hygiene impact. Of the 2 public comments received, one commented that the proposed development is not in line with the planning intention of “G/IC” zone; it might legitimize the ongoing brownfield operation; and queries on the suitability of the Site for shop use. Relevant Government departments’ comments and planning considerations set out in paragraphs 12.1 and 12.2 above are relevant.

### 13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local views and public comments in paragraphs 10.1.13 and 11, the Planning Department considers that the proposed temporary shop and services (pet supplies and food retail shop), office, warehouse and guard room could be tolerated for a period of 3 years.
- 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 7.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

#### Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing trees on the Site shall be maintained in good condition at all times during the planning approval period;
- (d) the submission of proposal for fire service installations and water supplies for fire-fighting 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 7.3.2019;
- (e) in relation to (d) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 7.6.2019;
- (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 7.3.2019;

- (g) in relation to (f) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **7.6.2019**;
- (h) if any of the above planning conditions (a), (b) or (c) is not complied with during the planning approval period, the approved hereby given shall cease to have effect and shall be revoked without further notice; and
- (i) if any of the above planning conditions (d), (e), (f) or (g) 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 III**.

- 13.3 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 "G/IC" zone which is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. No strong planning justification has been given in the submission to justify 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**

Appendix I	Application form received on 19.7.2018
Appendix Ia	Supplementary information received on 19.7.2018
Appendix Ib	Further Information dated 20.8.2018
Appendix Ic	Further Information dated 24.8.2018
Appendix Id	Further Information dated 27.8.2018
Appendices IIa and IIb	Public Comments
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2018**