

RNTPC Paper No. A/YL-KTN/679D
For Consideration by
the Rural and New Town
Planning Committee
on 8.1.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/679

- Applicant** : Harvest Hill (Hong Kong) Limited represented by Metro Planning & Development Company limited
- Site** : Lots 1674 (Part), 1676 (Part), 1680 (Part), 1681, 1682, 1683 and 1684 in D.D.107, Fung Kat Heung, Yuen Long
- Site Area** : About 1,300m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Agriculture” (“AGR”) (53%)
“Village Type Development” (“V”) (47%)
[maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Selling of Hardware Accessories) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (selling of hardware accessories) 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), but is neither a Column 1 nor Column 2 use under “AGR” zone. According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Board, notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently partly vacant and partly occupied by parking of vehicles without planning permission (**Plans A-2, A-4a and A-4b and A-4**).
- 1.2 The eastern part of the Site is the subject of two previous applications covering larger areas for temporary back-up warehouses (storage of new electrical

components and garments in packed boxes) and temporary open storage of brand new vehicle (private cars), which were rejected by the Rural and New Town Planning Committee (the Committee) in 2013 and 2016 respectively.

1.3 According to the applicant, two 1-storey structures with a total floor area of about 248m² and building height of 3m to 5m will be erected on the Site for shop (selling of hardware accessories) and toilet. Two parking spaces for private cars and one loading/unloading space for light goods vehicle will be provided on-site. The operation hours are between 9:00a.m. to 7:00p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. No workshop activities and open storage of metal accessories will be carried out and no medium or heavy goods vehicles exceeding 5.5 tonnes will enter the Site. The Site is accessible via a local track branching off San Tam Road. 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 supplementary planning statement and plans received on 24.9.2019. **(Appendix I)**
- (b) Further Information (FI) received on 13.1.2020, 19.3.2020, 27.4.2020, 16.6.2020, 22.7.2020, 19.11.2020 and 21.12.2020 in responses to departmental comments. **(Appendices Ia to Ig)**
[exempted from publication requirement]

2. **Justifications from the Applicant**

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

- (a) The proposed development is temporary in nature and the Site can be converted to agricultural use where necessary, therefore would not jeopardize the planning intention of the “AGR” zone.
- (b) There is no agricultural use adjacent to the Site. The Site and the adjoining land have been hard paved and would not be used for agricultural use in the near future.
- (c) The proposed development is compatible with the surrounding area which is occupied by warehouses. The proposed use can serve the industrial operators in the adjoining “Industrial (Group D)” (“I(D)”) zone and there is pressing demand for metal accessories in the area. Land in “I(D)” zone has been filled up with warehouses which out-compete retail activity because they could pay higher rent. The Site seems to be the only site available for the proposed use. Also, there is no New Territories Exempted house being applied for at the Site.

- (d) There are similar applications for shop and services use approved in the “AGR” and “V” zones.
- (e) The proposed development would not generate adverse traffic, environmental and drainage impacts to the surrounding area.

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

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

5. **Previous Applications**

- 5.1 The eastern part of the Site and the adjoining area involve two previous applications (Nos. A/YL-KTN/397 and 523) for temporary back-up warehouses (storage of new electrical components and garments in packed boxes) and temporary open storage of brand new vehicles (private cars) for a period of 3 years. They covered a larger area involving the “AGR”, “V” and “I(D)” zones. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Both applications were rejected by the Committee in 2013 and 2016 respectively mainly on the grounds that the development was not in line with the planning intention of the “AGR” and “V” zones; it did not comply with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that the development was not compatible with the surrounding land uses, there was no previous approval granted at the site and there were adverse departmental comments; the applicant failed to demonstrate that the development would not generate adverse traffic, drainage, environmental, landscape impacts on the surrounding areas; and/or approval of the application would set undesirable precedents.

6. **Similar Applications**

- 6.1 There are twelve similar applications for temporary shop and services use within the same “AGR” zone and one similar application in the same “V” zone on the

OZP. Ten of them were approved with conditions by the Committee for 3 years between 2013 and 2020 and three were rejected by the Committee or the Board on review between 2016 and 2019. Details of the applications are at **Appendix III** and their locations are shown on **Plan A-1a**.

Approved applications (10)

- 6.2 Seven applications (No. A/YL-KTN/413, 446, 447, 448, 540, 541 and 699) for temporary shop and services (plant showroom) for a period of 3 years were approved with conditions by the Committee between 2013 and 2020 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; relevant departments including the Director of Agriculture, Fisheries and Conservation (DAFC) had no adverse comment; and the departmental concern could be addressed by approval conditions.
- 6.3 Two applications (No. A/YL-KTN/637 and 656) for proposed temporary shop and services (retail of tail lift) for a period of 3 years located to the north of the Site (submitted by the same applicant of the current application) were approved with conditions by the Committee in January and August 2019 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; the Sites were located at the fringe of the “AGR” zone and adjoining the “I(D)” zone; relevant departments except DAFC and/or the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) had no adverse comment; and departmental concerns could be addressed by approval conditions.
- 6.4 An application No. A/YL-KTN/738 for proposed temporary shop and services (retail of solar panel) with ancillary office for a period of 3 years in the same “V” zone was approved with conditions by the Committee in December 2020 mainly for the reasons that temporary approval would jeopardize the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding land uses; and no adverse departmental comment.

Rejected applications (3)

- 6.5 Application No. A/YL-KTN/531 for temporary shop and services (pet shop with ancillary office and guard room) for a period of 3 years was rejected by the Committee in 2016 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and DAFC did not support the application. Subsequently, an application (No. A/YL-KTN/541) at the same site for temporary shop and services (plant showroom) was approved in 2017 (paragraph 6.2 above).
- 6.6 Applications No. A/YL-KTN/624 and 629 for temporary shop and services (plant showroom) for a period of 3 years were rejected by the Board on review in 2019 and the Committee in 2018 respectively on the grounds that the proposed

development was not in line with the planning intention of the “AGR” zone; and the applicant failed to demonstrate that the proposed development would not generate environmental nuisance to the surrounding areas.

- 6.7 There are three applications (No. A/YL-KTN/678, 688 and 689) for proposed temporary shop and services for retail of forklift, construction materials, truck mounted crane and miniature excavator for a period of 3 years in the vicinity of the Site within the same “AGR” zone to be considered at the same meeting.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4b A-4)

7.1 The Site is:

- (a) paved, partly vacant and partly occupied by parking of vehicles without planning permission; and
- (b) accessible via a local track branching off San Tam Road.

7.2 The surrounding areas are rural in character intermixed with residential dwellings/structures, open storage yards, warehouse, workshops, parking of vehicles and vacant/unused land:

- (a) to its immediate south are two village houses. To its further south across Sha Po Tsuen Road are residential dwellings/structures at Sha Po Tsuen;
- (b) To its north, east and west are open storage yards, parking of vehicles, workshop and shop and services (retail of tail lift) with planning permission; and
- (c) to its further north are warehouse and open storage yards in the “I(D)” zone.

8. Planning Intentions

8.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

8.2 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 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) The Site is accessible to San Tam Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area (SKAHRA).
- (d) Should the application be approved, the lot(s) owner(s) will need to apply to his offices to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. 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.
- (e) There is no Small House application approved and 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 included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department is/shall not be responsible for the maintenance of any access connecting the Site and San Tam Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road 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) There was no environmental complaint concerning the Site received in the past three years.

Landscape

9.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) He has no objection to the application from the landscape planning point of view.
- (b) With reference to the aerial photo taken in 2018, the Site situated in an area of rural landscape character. The surrounding area of the Site comprises temporary structures, storage of vehicles and tail lift, vacant lands and scattered tree groups. Considering that sites to the north of the Site within the same “AGR” zone have been approved for shop and services (Application Nos. A/YL-KTN/656 and A/YL-KTN/637) and similar use could be found in the proximity, the proposed development is considered not incompatible with existing landscape setting in the proximity.
- (c) According to the site visit conducted on 11.10.2019, the Site was hard paved. No vegetation was found within the Site. Further significant adverse landscape impact arising from the development is not anticipated.

Agriculture

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

- (a) The Site is a paved vacant land. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water sources are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. He does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- (b) According to his record, unauthorized land use had been involved at the Site. The site history should be taken into account when considering the application.

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 proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions on the implementation and maintenance of the accepted drainage proposal for the development 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 (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, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the BO. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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.
- (c) 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.
- (d) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined

under Regulation 19(3) of the B(P)R at the building plan submission stage.

District Officers Comments

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

His office 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/no objection to the application:

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

10. Public Comments Received During Statutory Publication Period

On 4.10.2019, the application was published for public inspection. During the three-week statutory publication period, six public comments from the Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited, the Hong Kong Bird Watching Society and two individuals were received (**Appendices IV-1 to IV-6**). All comments object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the "AGR" zone; the "AGR" zone in Kam Tin is still highly arable and should be retained for cultivation purposes; the Site is too closed to residential dwellings; no other assessments is provided except for simple environmental report; approval of this application would set precedence for other similar application; the Site is subject to previous enforcement case and approval of the application will encourage "destroy first, develop later"; the proposed use will pose flooding risks; and previous applications at the Site were rejected by the Board.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (selling of hardware accessories) for a period of 3 years at the Site zoned "AGR" (53%) and "V" (47%). The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not in line with the planning intention of the "AGR" zone and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation. 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 and community uses serving the needs of the villagers and in support of the village development are always permitted on ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed use is not entirely in line with the planning intention of the “V” zone. According to DLO/YL of LandsD, there is no Small House application approved or under processing at the Site. While a temporary approval may not jeopardize the long-term implementation of Small House at the Site, consideration should also be given to whether the proposed use will serve the need of villagers or in support of the village development. In this case, the proposed development involves selling of hardware accessories and the applicant advised that it is intended to serve the operators in the adjoining “I(D)” zone. In view of the above, there is no strong planning justification in the submission for a departure from the planning intentions of the “AGR” and “V” zones, even on a temporary basis.

- 11.2 The “V” zone to the south of the Site is mainly occupied by the village houses of Sha Po Tsuen, including two village houses to the immediate south of the Site (**Plan A-2**). The “AGR” zone to the north of the Site is mainly occupied by open storage yards and parking of vehicles, shop and services use (retail of tail lift) and vacant land. The warehouses and open storage yards in the “I(D)” zone are located to the further north of the Site. It is considered that the proposed use of selling of hardware accessories mainly serving the users in the “I(D)” zone is not compatible with the village setting in the “V” zone.
- 11.3 Relevant departments consulted including C for T, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD (except DAFC) have no adverse comment on the application.
- 11.4 The Site and its adjoining areas involve two previous applications No. A/YL-KTN/397 and 523 for temporary warehouse and open storage uses which were rejected by the Committee in 2013 and 2016 respectively. There are twelve similar applications for various temporary shop and services uses within the same “AGR” and “V” zones. Ten of them were approved with conditions by the Committee between 2013 and 2020, including two applications (No. A/YL-KTN/637 and 656) for retail of tail lift located to the north of the Site. However, Applications No. A/YL-KTN/637 and 656 are subject to circumstances different from the current application, including that they are adjoining/straddling the “I(D)” zone, and of a smaller scale (site area of 640m² and 1,050m²). For the similar one within the same “V” zone (No. A/YL-KTN/738), it is for selling of solar panel and is intended to serve the nearby residents.
- 11.5 Six public comments objecting to the application were received during the statutory publication period. In this regard, the departmental comments as well as the planning considerations and assessments above are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intentions of the “AGR” and “V” zones. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. 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 the 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 for a departure from the planning intentions, even on a temporary basis; and
- (b) the proposed development is not compatible with the surrounding areas which are rural in character, in particular the two village houses to its immediate south.

12.2 Alternatively, should the Committee decide to approve the application, the permission shall be valid on a temporary basis for a period of 3 years until 8.1.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00p.m. to 9:00a.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) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (d) 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;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;

- (f) the implementation of the accepted 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 8.7.2021;
- (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 8.7.2021;
- (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 8.10.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) 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;
- (k) if any of the above planning conditions (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; and
- (l) upon the expiry of the planning permission, the reinstatement of the “AGR” portion of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application Form with planning statement and plans received on 24.9.2019
Appendices Ia to Ig	FIs received on 13.1.2020, 19.3.2020, 27.4.2020, 16.6.2020, 22.7.2020, 19.11.2020 and 21.12.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar applications within the same “AGR” and “V” zones on the Kam Tin North OZP
Appendices IV-1 and IV-6	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with similar applications
Plan A-1b	Location Plan with previous applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**