

Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the Site;
- (b) to note the comments of District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD) that:
 - (i) the Site falls within Lot Nos. 1102 S.C, 1102 S.D, 1102 RP and 1103 RP in D.D. 132 (“the Lots”) and the adjoining government land (GL). The Lots are Old Schedule Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval from the Government. For the GL which is included in the Site, no permission has been given to use and occupy the GL.
 - (ii) The Site is accessible via a strip of GL leading from Tong Hang Road. His office does not carry out maintenance works for the said road nor guarantee that right-of-way will be given to the applicant.
 - (iii) His site inspection revealed that unauthorized structures including those covered by the subject planning application and an additional massive metal framework which is not covered by the applications have been erected on the Site without prior approval from his office. The said structures constitute a breach of Block Government Lease and unlawful occupation of GL.
 - (iv) The applicant has submitted an application to regularize the unlawful occupation of GL by way of Short Term Tenancy (STT). The regularization application is still under consideration by his office and there is no guarantee that the application will be approved. Land control action against the unlawful occupation of GL is being withheld for the time being, pending the result of the regularization application.
 - (v) In the event that planning permission is given by the Board, the owner of the private lots within the Site may consider submitting formal application to his office for a Short Term Waiver (STW) to permit erection of the proposed structures on the private lots concerned. However, there is no guarantee that the applications (both STT and STW) will be approved and he reserve the right to take any action including resuming the land control action on the unlawful occupation of the GL as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the applications are approved, they would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, rent, deposit and administration fee, etc.
 - (vi) Notwithstanding whether any planning permission to the application will be given or not, his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of the structures concerned. Enforcement action will also be taken should any structures are found erected without any prior approval given by his office or any unauthorized occupation of GL.
 - (vii) The letter dated 24.7.2019 from the applicant’s consultant only indicated the

applicant's intention to apply for STW for the structures on the private lots concerned. The said letter is not considered as a formal application of STW. The formal application form for STW can be downloaded at <http://www.landsd.gov.hk/en/forms/index.htm>. Form title is Standard Application Form for Waivers Cases;

- (c) to note the comments of Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD) that the access road to the Site is a village road and not managed by TD;
- (d) to note the comments of Chief Highways Engineer/New Territories West, Highways Department (CHE/NTW, HyD) that his department does not and will not maintain Tong Hang Road and any access connecting the Site and Hing Fu Street or Hing Kwai Street. Presumably, the relevant departments will provide their comments, if any. Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains;
- (e) to note the comments of Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) that the applicant is advised that the approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications, if any, should be submitted direct to DLO for approval;
- (f) to note the comments of Director of Fire Services (D of FS) that detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans. Furthermore, the EVA provision in the Site shall comply with the standard as stipulated in Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 under the Building (Planning) Regulations (B(P)R) 41D which is administered by the Buildings Department;
- (g) to note the comments of Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that:
 - (i) there is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their stability for the use related to the application.
 - (ii) If the existing structures are NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121 or the previous Cap. 322), DLO/TM should be in a better position to offer comment on the application.
 - (iii) If the existing structures are erected on leased land without approval of the BD (not being a NTEH), they are unauthorised under the BO and should not be designated for any approved use under the application.
 - (iv) Before any new building works are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO.
 - (v) 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 constructed as an acceptance of any existing building works or UBW on the Site under the BO.

- (vi) If the proposed use under application is subject to the issue of a licence, the applicant is reminded that any existing structures on the Site intended to be used for such purpose are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
 - (vii) The Site shall be provided with means of access thereto from a street and emergency vehicular access accordance with the Regulations 5 and 41D of the B(P)R respectively. 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; and
- (h) to note the comments of Secretary for Home Affairs (S for HA) that if the applicant later seeks land grant at concessionary premium, he will consider the case again along prevailing and established procedures.