RNTPC Paper No. A/TM/535C For Consideration by the Rural and New Town Planning Committee on 26.5.2020

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM/535

<u>Applicant</u>	:	Hong Kong Feng Shan Si Limited represented by Land Supreme Surveyors Limited
<u>Site</u>	:	Lots 1102 S.C, 1102 S.D, 1102 RP and 1103 RP in D.D. 132 and Adjoining Government Land, Siu Hang Tsuen, Tuen Mun, New Territories
<u>Site Area</u>	:	About 1,449 m ² (including about 655.72m ² (45%) government land)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Tuen Mun Outline Zoning Plan No. S/TM/35
Zoning	:	"Village Type Development" ("V") [Restricted to a maximum building height of 3 storeys (8.23 m)]
<u>Application</u>	:	Religious Institution (Temple)

1. <u>The Proposal</u>

- 1.1 The applicant seeks planning permission for religious institution (temple) at the application site (the Site) (**Plan A-1**). According to the Notes for the "V" zone on the OZP, 'Religious Institution (not elsewhere specified)' within "V" zone requires planning permission from the Town Planning Board (the Board); but is not subject to the above building height restriction. The Site is not subject to any previous application. The Site is currently used for religious institution (temple) namely Hong Kong Feng Shan Si (鳳山寺) without valid planning permission.
- 1.2 The major development parameters of the development are as follows:

Site Area (about)	About 1,449 m ²
Total Non-domestic Floor Area (about)	310.6 m ²
Plot Ratio (about)	0.21
Site Coverage (about)	53.5%
No. of Blocks	5
Building Height (No. of Storeys)	
- Temple	4.6m (1 storey)
- Container Office	5.4m (2 storeys)

 Toilet Building A (for storage) Security Office Open Shelters 	3.95m (1-storey) 2.75m to 3.16m (1-storey) 2.3m (1-storey) 4.11m to 6.87m
 Open Sheners (covering Temple, Toilet, Building A and Container Office) 	4.1111110 0.07111

- 1.3 According to the applicant, there are 5 structures, including 1-storey structure for temple (聖公殿、太歲殿、觀音殿), toilet, Building A (for storage use), security office and a 2-storey container office. Except the security office, other structures are covered by open shelters of heights ranging from 4.11m to 6.87m (**Drawing A-2**). The Site is accessible from Tong Hang Road (**Plan A-2**).
- 1.4 According to the applicant, there are a total of 5 staff for daily operation and about 30 to 50 visitors daily. During the Chinese New Year, there are about 100 to 200 visitors daily; and during religious/festive events in the 8th Chinese calendar month (神誕), there will be about 1,000 to 1,400 visitors for worship/banquet and around 100 volunteers for operation. There is no parking space/loading and unloading space provided at the Site. Visitors arrive on foot (the Site is about 650m from Po Tin Estate Bus Terminus). During festive/banquet events, the applicant will provide shuttle bus service between the Site and Siu Hong MTR Station (**Plan A-1**). No joss paper and stick burning will be allowed in the temple. Besides, the applicant indicates that the Site does not involve columbarium, storage of human remains or ancestral tablets.
- 1.5 The location and site access plan, layout plan, floor plans and elevations are in **Drawings A-1 to A-10** respectively.
- 1.6 In support of the application, the applicant has submitted the following documents:

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(a)	Application Form received on 15.1.2019	(Appendix I)
(b)	Supplementary Planning Statement attached to Appendix I	(Appendix Ia)
(c)	Further Information (FI) received on 8.2.2019 clarifying the updated OZP information	(Appendix Ib)
(d)	FI received on 8.5.2019 providing responses to departmental comments	(Appendix Ic)
(e)	FI received on 4.9.2019 providing responses to departmental comments	(Appendix Id)
(f)	FI received on 10.10.2019 providing responses to comments of Hong Kong Police Force (HKPF)	(Appendix Ie)

- (g) FI received on 31.12.2019 providing responses to (Appendix If) HKPF's comments
- (h) FI received on 10.3.2020 providing responses to (Appendix Ig) HKPF's comments (the FI in (c) to (h) above exempted from publication and recounting requirement)
- 1.7 On 8.3.2019, 5.7.2019 and 1.11.2019, the Rural and New Town Planning Committee (the Committee) agreed to defer a decision on the application each for two months as requested by the applicant. On 8.2.2019, 8.5.2019, 4.9.2019, 10.10.2019, 31.12.2019 and 10.3.2020, FI were received. In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 21.2.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. Again, the meeting on 30.3.2020 has been rescheduled and the application is now scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement and further information at **Appendices Ia to If**. They can be summarized as follows:

- (a) According to the applicant, the Hong Kong Feng Shan Si Limited (香港鳳山寺 有限公司) is a religious body of Buddhism first operated in Mainland China many years ago. The temple is dedicated for the worship of Guang Ze Zun Wang (廣澤尊王). Some of the followers set up their activities in Hong Kong in 2000 and carried out their activities at the Site since around 2008. The applicant wants to continue to provide services to their followers. The followers are mainly local residents in the area as well as people living in other parts of the territories.
- (b) The applied use for religious institution (temple) is considered a compatible land use in the vicinity. Since only a few small structures stand on the Site, the density and scale of development is considered reasonable and is compatible with the surrounding New Territories Exempted House (NTEH) development. The Site forms an integral parcel of land in the area (**Plan A-2**).
- Accessibility of the Site is considered good as there is an existing local access serving the area. This local access branches off from Tong Hang Road (Plans A-2 and A-3).
- (d) There are no trees felling within the Site. No trees will be felled to make way for the applied use.
- (e) The Site consists of structures of 2.3m to 4.6m (temple) and one to two storeys in height. The height of the open shelters ranges from 4.11m (mainly) to 6.87m (above temple) (**Drawing A-2**). The building bulk is small and is in line with the surrounding houses. The existing structures do not have any adverse visual impact to the passers-by.

- (g) There is existing drainage facility for the Site. They will employ professional to inspect the existing facility to check whether it is necessary to upgrade it to satisfy the current standard. If the answer is in the affirmative, they will arrange to carry out the upgrading works.
- (h) The incinerator and incense burner were removed from the Site. The air quality of the Site would not be affected by the religious activity of the temple.
- (i) There are existing small houses at Siu Hang Tsuen, Tuen Mun. Public utilities such as water, electricity and telephone are being used in the daily operation of the temple.
- (j) It is estimated that 1,000 to 1,400 visitors attend the festival in the 8th Chinese calendar month. According to the past experience, around 20 private cars per day shall pick up the passengers. About half of the visitors will be arriving on foot from Po Tin Estate Bus Terminus and the other half will be arriving by shuttle bus from Siu Hong MTR Station to the Site (**Plan A-1**). In addition, it is noted that a new carriageway with 4m wide footpath, linking Po Tin Estate and the new public housing estate under construction to the north of the Site, will be completed in about 3 months' time (i.e. Q1 2020). The Site can access to the new footpath via a 3.5m wide staircase. Visitors are encouraged to make use of the existing public transport to visit the Site. There is no adverse traffic impact. Illegal on-street parking is not envisaged.
- (k) There is a footpath along the western side of Tong Hang Road. The width of this footpath ranges between 1m to 2m. The footpath shall be sufficient for the peak pedestrian flow even at the narrowest part of the footpath. They will monitor and control the number of visitors through enrolment so that there will not be any adverse traffic problem. In addition, they will deploy sufficient staff members on the particular day to assist the visitors, and they will liaise with concerned departments in advance so as to eliminate possible traffic problem.

3. <u>Compliance with the "Owner's Consent/Notification" Requirements</u>

For the private land portion of the Site, the applicant is the sole "current land owner." Detailed information will be deposited at the meeting for Members' inspection. For the government land (GL) portion, 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) are not applicable.

4. <u>Previous Application</u>

There is no previous application covering the Site.

5. <u>Similar Application</u>

There is no similar application within the same "V" zone.

6. <u>The Site and Its Surrounding Areas</u> (Plans A-1 to A-4b)

- 6.1 The Site is:
 - (a) currently occupied by 5 structures of 1 to 2 storeys for temple use without valid planning permission; and
 - (b) accessible from Tong Hang Road (**Plans A-2** and **A-3**).
- 6.2 The surrounding areas have the following characteristics (**Plans A-2** and **A-3**):
 - (a) to the immediate south is parking of vehicles, intermixed with residential dwellings, vehicle repairing workshop and storage;
 - (b) to the northwest are works area for public housing development in Tuen Mun Area 54 and associated works;
 - (c) to the northeast and east are residential dwellings intermixed with parking of vehicles within the "V" zone of Siu Hang Tsuen, Po Tong Ha and Tsz Tin Tsuen (**Plans A-1** to **A-3**);

7. <u>Planning Intention</u>

The planning intention of the "V" zone is to reflect existing recognised 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 the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

8. <u>Comments from Relevant Government Departments</u>

8.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department

(DLO/TM, LandsD):

- (a) 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.
- (b) 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.
- (c) 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.
- (d) The applicant has submitted an application to regularise 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 regularisation application.
- (e) 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 as the Government shall deem fit to do so, including charging of waiver fee, rent, deposit and administration fee, etc.
- (f) 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.

- (g) 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.
- (h) There is no Small House application received or approved at the Site. In its vicinity (within 20m), 3 Small House applications have been approved. There are 63 Small House applications under processing within the subject "V" zone. The 10-Year Small House demand forecast in the subject "V" zone is 180.

<u>Traffic</u>

- 8.1.2 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):
 - (a) He has no comment on the application from traffic engineering point of view.
 - (b) The access road to the Site is a village road and not managed by TD.
- 8.1.3 Comments of the Chief Highways Engineer/New Territories West, Highways Department (CHE/NTW, HyD):
 - (a) 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.
 - (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.
- 8.1.4 Comments of the Commissioner of Police (C of P):

He has no comment from traffic and pedestrian arrangement point of view.

Environment

- 8.1.5 Comments of the Director of Environmental Protection (DEP):
 - (a) According to the FI submitted by the applicant on 4.9.2019, joss paper and joss stick burning is prohibited in the temple and the incense burner was removed from the Site. The septic tank system will be maintained regularly in accordance with "Guidance Notes on Discharge from Village House" issued by the Environmental Protection Department. The applicant also confirmed that the wastewater will be discharged to the public sewer once the public sewerage system in the vicinity of the Site is constructed and

available for connection in the future. In view of the above, he has no comment on the application.

(b) There was no environmental complaint pertaining to the Site received in the past 3 years.

Urban Design and Landscape

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

Urban Design and Visual

(a) To the northeast and east of the Site, the height of village type developments ranges around 22.7m to 28.2m. As the height of the structures at the Site ranges from 2.3m to 6.87m which is lower than the surrounding village type developments. Hence, adverse visual impacts on the surroundings are not anticipated.

Landscape

- (b) With reference to the information submitted and his site visit, the Site is occupied by some single storey and temporary structures. Most of the Site is hard-paved with some existing trees located along/in the proximity of the east boundary. Since the proposed religious institution (temple) has been operating and further impact on existing landscape resource is not anticipated, he has no objection to the application from the landscape planning perspective.
- (c) Apart from the religious institution, in view of the very limited external area, it is impractical to implement a meaningful landscape treatment along the scattered leftover space within the application boundary. Landscape condition is not recommended to be included in the planning approval should the Board approve this application.
- (d) 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.

<u>Drainage</u>

- 8.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) He has no in-principle objection to the application.
 - (b) The Site is located in an area where no public drainage facility is

available for connection. Should the application be approved, a condition should be stipulated requiring the applicant to submit a drainage proposal for the development and to implement and maintain the drainage facilities proposed in the drainage proposal to the satisfaction of his department.

Fire Safety

- 8.1.8 Comments of the Director of Fire Services (D of FS):
 - (a) He has no objection in principle to the proposal subject to water supplies for firefighting and fire service installations being provided to the satisfaction of D of FS.
 - (b) Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.
 - (c) Furthermore, the EVA provision in the Site shall comply with the standard as stipulated un 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.

Building Matters

- 8.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
 - (a) 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.
 - (b) If the existing structures are NTEH under the Buildings Ordinance (BO) (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.
 - (c) 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.
 - (d) 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.
 - (e) 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.

- (f) 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.
- (g) In connection with (d) above, 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.
- (h) If the Site does not abut on a specified street of not less that 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.

Policy Aspect

- 8.1.10 Comments of the Secretary for Home Affairs (S for HA):
 - (a) The applicant is a charitable organisation under section 88 of the Inland Revenue Ordinance. Having regard to this and the fact that it is also a bona fide religious organisation, and the proposed facilities are for places of worship and ancillary use, he has no objection to the planning application.
 - (b) If the applicant later seeks land grant at concessionary premium, he will consider the case again along prevailing and established procedures.

Others

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

According to his site inspection, the Site is mainly paved. A group of trees/vegetation was found within/adjacent to the Site. Noting that no tree felling would be required for the proposed development as stated in the Planning Statement, he has no strong views on the application from nature conservation perspective.

District Officer's Comments

8.1.12 Comments of the DO(TM), HAD:

He has distributed consultation letters to the locals concerned and understands that they would provide their comments (if any) to the Board direct. His office has not received any comment from locals upon the end of consultation period.

- 8.2 The following Government departments have no comment on the application:
 - (a) Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD);
 - (b) Director of Food and Environmental Hygiene (DFEH);
 - (c) Director of Leisure and Cultural Services (DLCS);
 - (d) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H of GEO, CEDD);
 - (e) Director of Electrical and Mechanical Services (DEMS);
 - (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
 - (g) Project Manager (West) (PM(W)), CEDD.

9. <u>Public Comments Received During Statutory Publication Period</u>

On 25.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 15.2.2019, 9 public comments objecting to the application were received (**Appendices II-1 to II-9**). Among them, 6 objections were submitted by residents nearby and an individual on grounds of proximity to residential dwellings, illegal parking, noise nuisance and fire safety concerns from fireworks during festivals and weekends, air pollution from burning rituals, security, hygiene and safety concerns. The remaining two objections were submitted by individuals on grounds that the Site should be retained for village house development. Another individual questioned on the legitimacy of fireworks during Lunar New Year on the Site.

10. Planning Considerations and Assessments

- 10.1 The application is for religious institution (temple) in an area falling within the "V" zone. The planning intention of the "V" zone is to reflect existing recognised 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed religious institution development is not in line with the religious institution is directly serving the needs of the local community or in support of the village development. In this regard, there is no strong justification in the submission for a departure from such planning intention.
- 10.2 Although the temple at the Site is considered not incompatible with the general village/rural character of the neighbourhood which mainly comprises residential dwellings and parking of vehicles, about 45% of the Site including the temple

structures falls within unleased GL (**Plan A-2**) and the current temple use within the Site has no prior planning approval. According to DLO/TM, LandsD, no structure shall be erected on GL without Government's approval. Enforcement action would be undertaken. Approving the application would send a wrong message for illegal occupation of GL.

- 10.3 According to DLO/TM, LandsD, in its vicinity (within 20m), 3 Small House applications have been approved. Besides, there are 63 outstanding Small House applications and the latest 10-year Small House demand forecast is 180. Based on the latest estimation by PlanD, land available within the "V" zone for Siu Hang Tsuen, Po Tong Ha and Tsz Tin Tsuen (equivalent to 990 Small House sites) is sufficient to meet the Small House demand of the villages. Nevertheless, approving the application would set an undesirable precedent and encourage other applications for developments not serving the needs of villagers or in support of the village development within the subject "V" zone. The cumulative effect of approving such applications would reduce the land available for Small House development.
- 10.4 Concerned departments, including AC for T/NT of TD, CHE/NTW of HyD, C of P, CE/MN of DSD, DEP and Head(GEO) of CEDD have no adverse comments in terms of traffic, environmental, sewerage, drainage and geotechnical aspects.
- 10.5 There are 9 public comments received as summarised in paragraph 9 above. The planning considerations and assessments above are also relevant.

11. <u>Planning Department's Views</u>

- 11.1 Based on the assessment made in paragraph 10 above and having taken into account the public comments mentioned in paragraph 9, the Planning Department does not support the application for the following reasons:
 - (a) the Site falls within "V" zone which is primarily for development of Small Houses by indigenous villagers. There is no strong justification in the submission to demonstrate that the applied development is required to serve the needs of the villagers or to support village development. The applied use is considered not in line with the planning intention of the "V" zone; and
 - (b) the approval of the application would set an undesirable precedent for other applications for developments not serving the needs of villagers or in support of the village development within the "V" zone. The cumulative effect of approving such similar applications would reduce the land available for Small House development.
- 11.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until <u>26.5.2024</u>, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

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

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 12.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the date when the validity of the permission should expire.

13. Attachments

Appendix I Appendix Ia Appendix Ib	Application Form received on 15.1.2019 Supplementary Planning Statement attached to Appendix I FI received on 8.2.2019 providing clarification on the OZP information		
Appendix Ic	FI received on 8.5.2019 providing responses to departmental comments		
Appendix Id	FI received on 4.9.2019 providing responses to departmental comments		
Appendix Ie	FI received on 10.10.2019 providing responses to departmental comments		
Appendix If	FI received on 31.12.2019 providing responses to Hong Kong Police Force's comments		
Appendix Ig	FI received on 10.3.2020 providing responses to Hong Kong Police Force's comments		
Appendices II-1 to II-9	Public Comments Received During Statutory Publication Period		
Appendix III	Advisory Clauses		

Drawing A-1 Drawing A-2 Drawings A-3 to A-10	Site Location and Access Plan Layout Plan Floor Plans and Sections
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

PLANNING DEPARTMENT MAY 2020