RNTPC Paper No. A/YL-MP/270 For Consideration by the Rural and New Town Planning Committee on 18.5.2018

APPLICATION FOR RENEWAL OF PLANNING APPROVAL FOR TEMPORARY USE UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/270

Applicant : Mr. Hui Yuk Hung represented by Goldrich Planners and

Surveyors Limited

Site : Lot 3250 S.B ss.10 S.C RP (Part) in D.D. 104 and Adjoining

Government Land (GL), Mai Po, Yuen Long

Site Area : About 370m² (including about 23.6m² of GL)

<u>Lease</u> : Block Government Lease (demised for agricultural use)

Plan : Approved Mai Po and Fairview Park Outline Zoning Plan

(OZP) No. S/YL-MP/6

Zoning : "Residential (Group C)" ("R(C)")

Application : Renewal of Planning Approval for Temporary Shop and

Services (Hardware Grocery Shop and Real Estate Agency) for

a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary shop and services (hardware grocery shop and real estate agency) for a period of 3 years at the application site (the Site) (**Plan A-1**). The Site is currently used for the applied use with valid planning permission under Application No. A/YL-MP/243. The planning permission is valid until 5.6.2018.
- 1.2 The Site is subject of 3 previously approved Applications No. A/YL-MP/174, 199 and 243 submitted by different applicants for the same applied use (**Plan A-1**). The last Application No. A/YL-MP/243 was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 5.6.2015 for a period of 3 years up to 5.6.2018. All approval conditions, including those in relation to the submission of as-built drainage plans and photographic records of the existing drainage facilities, submission and implementation of fire service installations (FSIs), and implementation of

accepted tree preservation proposal, have been complied with.

- 1.3 As shown on the layout plan at **Drawing A-1** and **Plan A-2**, the northern part of the Site is being used for a real estate agency, whereas the southern part is for a hardware grocery shop. The Site is accessible at the north via a local track off Fairview Park Boulevard and via Yau Pok Road. The applicant has submitted a landscape and tree preservation proposal (**Drawing A-2**) and a drainage proposal in support of the application.
- 1.4 The major parameters of the current application are the same as the last approved Application No. A/YL-MP/243. They are summarized below:

Major Development	Current Application (A/YL-MP/270)
Parameters	
Applied Use	Renewal of planning approval for temporary shop and
	services
	(hardware grocery shop and real estate agency)
	for a period of 3 years
Site Area	About 370m ²
	(including about 23.6m ² of GL)
Structures	2 structures
	1 real estate agency of 1-storey (4m high) with floor
	area of 32.5m ²
	1 hardware grocery shop of 1-storey (6.5m high) with
	floor area of 218m ²
No. of Parking Spaces,	
Loading/Unloading	Nil
Spaces	
Operation Hours	9:00a.m. to 8:00p.m. daily

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

(a) Application Form received on 26.3.2018 (Appendix I)

(b) Further information (FI) received on 27.4.2018 submitting a revised landscape plan in response to CTP/UD&L, PlanD's comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Appendix I of Application Form at **Appendix I**. They can be summarized as follows:

- (a) All the development parameters will be the same as the previous approval. The applicant has complied with all the approval conditions relating to tree preservation, drainage facilities and FSIs.
- (b) The proposed real estate agency and hardware grocery shop are retail and commercial uses that provide local services to the surrounding neighbourhoods. As it is small in scale, it is compatible with the character of the surrounding low-density development.
- (c) There will be no cutting, dismantling cleansing, repairing, compaction and workshop activity on site.
- (d) The Site is zoned "R(C)" on the approved Mai Po and Fairview Park Outline Zoning Plan for low-rise, low-density residential developments, where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Both real estate agency and hardware grocery shop are 'Shop and Services' uses under Column 2 of the Notes and may be approved by the Board upon application.

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 San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the "Owner's Consent/Notification" Requirements as set out in TPB PG-No. 31A are not applicable.

4. Town Planning Board Guidelines

Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B)

- 4.1 According to the Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B), the criteria for assessing applications for renewal of planning approval are as follows:
 - (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/ land-use zoning for the area) or a change in the land uses of the surrounding areas;
 - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planning permanent development);

- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable;
- (e) any other relevant considerations; and
- (f) the approval period for renewal should not be longer than the original validity period of the temporary approval.

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

- 4.2 According to the Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:
 - (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
 - (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

5. Background

The Site is not subject to any enforcement action.

6. Previous Applications

- 6.1 The Site was subject of 3 previously approved applications (Nos. A/YL-MP/174, 199 and 243) submitted by different applicants for the same applied use, which were approved by the Committee on 22.5.2009, 18.5.2012 and 5.6.2015 respectively for period of 3 years mainly on the consideration that the development provided supporting retail and estate services to residential areas in the vicinity and the development was not incompatible with the surrounding lands uses. All approval conditions, including those in relation to the submission of as-built drainage plans and photographic records of the existing drainage facilities, submission and implementation of FSIs, and implementation of accepted tree preservation proposal, have been complied with. (Plan A-1)
- 6.2 Details of these applications are summarized at **Appendix II.**

7. Similar Application

There is no similar planning application for shop and services use within the same "R(C)" zone.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4)

8.1 The Site is:

- (a) accessible from Fairview Park Boulevard and Yau Pok Road via a local track;
- (b) currently used for the applied use with valid planning permission; and
- (c) located within the WBA of Deep Bay.
- 8.2 The surrounding areas have the following characteristics:
 - (a) to the east is Yau Pok Road. To the further east across Yau Pok Road are a nullah, Kam Pok Road, and shop and services use within the "Commercial/Residential" zone;
 - (b) to the north is Fairview Park Boulevard. To the further north across Fairview Park Boulevard are vacant land and cycle track area currently under construction:
 - (c) to the west is a local track, a plant nursery, vehicle park, vacant land, storage area for containers with site office, nullah, a school and its playground. To the further west across Bauhinia Road East is a residential development, Fairview Park; and
 - (d) to the south are vacant land, vehicle park, restaurant and residential dwellings.

9. Planning Intention

The planning intention of the "R(C)" zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application and public comment 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 an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval of the Government.
 - (b) The private land of Lot No. 3250 S.B ss.10 S.C RP in D.D. 104 is covered by a Short Term Waiver (STW) No. 3533 for the purpose of "Hardware Grocery Shop and Real Estate Agency Shop".
 - (c) No permission is given for occupation of GL of about 23.6m² in area (subject to verification) included in the Site. Occupation of GL without Government's prior approval is not allowed.
 - (d) The Site is accessible to Yau Pok Road through GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
 - (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
 - (f) Should planning approval be given to the subject planning application, the STW holder will need to apply to his office for modification of the STW conditions if there is any irregularity on site. Furthermore, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application will be considered by the LandsD 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 other the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

He has no objection to the application from traffic engineering point of view since there is no provision for parking space

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

He has no comment on the application from highways maintenance point of view.

His department does not and will not maintain the public U-channels mentioned by the applicant connecting the Site. Presumably, the relevant departments will provide their comments to you, if any.

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

As the Site falls outside the gazetted railway protection boundary, he has no comment on the application from railway development point of view.

Environment

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

In accordance with the latest "Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites", he has no objection to the application.

Nature Conservation

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

As the application involves the continuation of an existing use which was previously approved by the Board, he has no comment on the application from nature conservation point of view.

Landscape

- 10.1.7 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 landscape planning perspective.
 - (b) The Site falls within an area zoned "R(C)" on the OZP. The Site was involved in 3 previous applications to which he had no objection for the same use from landscape planning perspective.
 - (c) Compared with the aerial photo taken in 2015 and 2017, there is no significant change to the surrounding landscape since the application last approved. Further significant impact on existing landscape arising from the proposed use is not anticipated.
 - (d) However, according to site inspection on 25.8.2015, 3 existing trees in mature size (DBH: 0.4m to 0.5m species *Bombax ceiba* 木棉, *Ficus microcarpa* 細葉榕, *Ficus benjamina* 垂葉榕) with good to very good health condition were found within the Site. While according to the recent site inspection taken on 13.4.2018, the existing tree (*Bombax ceiba* 木棉) located at the northwest corner of

the Site was topped with the whole tree crown removed and only the tree trunk left. It is apparent that malpractice horticultural works were happened during the approval period and the applicant failed to maintain the existing landscape planting in satisfactory condition during the approval period. Nevertheless, it is noted that new shoots are coming out from the topped tree. In view of this, he has no objection to the renewal application from landscape planning perspective.

(e) Should the application be approved by the Board, the following approval condition is proposed, in particular to monitor the growth of the topped tree:

The submission and implementation of tree preservation proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

(f) His detailed comments are at **Appendix III**.

Fire Safety

- 10.1.8 Comments of the Director of Fire Services (D of FS):
 - (a) He has no objection in principle to the proposal subject to FSIs being provided to the satisfaction of the D of FS.
 - (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 applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs 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

- 10.1.9 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 (BA) for the structures existing at the Site and Buildings Department (BD) is

- not in a position to offer comments on their suitability for the use related to the application.
- (b) If the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application.
- (c) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on leased land of the Site, 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 co-ordinator for the proposed building works in accordance with the BO.
- (d) 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.
- (e) 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.
- (f) 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.

Drainage

- 10.1.10 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) As the applicant would maintain the same drainage facilities as those implemented under previous Application No. A/YL-MP/243, he has no objection in principle to the proposed development. The applicant should inform PlanD if the drainage arrangement is changed.
 - (b) Should the Board consider that the application is acceptable from the planning point of view, it is suggested that a condition be stipulated in the approval letter requiring the applicant (i) to maintain the drainage facilities implemented under Application No. A/YL-MP/243 and (ii) to submit records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board.

Others

10.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

He has no particular comment on the application from electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the "Code of Practice on Working near Electricity Supply Lines" established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

- 10.1.12 Comments of the Director of Food and Environmental Hygiene (DFEH):
 - (a) If any Food and Environmental Hygiene Department (FEHD)'s facility is affected by the development, FEHD's prior consent must be obtained. Reprovisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the reprovisioned facilities to FEHD;
 - (b) Proper licence / permit issued by FEHD is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.
 - (c) Unless approval has been given by the DLO or other authorities, the applicant shall not affix any banners, bills and posters of commercial nature to retaining walls, flyover pillars, lamp posts, Government parking meters or roadside trees or fastened to railings etc.
 - (d) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer's Comment

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

He has no comment on the application and the local comments shall be submitted to the Board direct, if any.

- 10.2 The following Government departments have no comment on the application:
 - (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
 - (b) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
 - (c) Commissioner of Police (C of P);
 - (d) Director of Leisure and Cultural Services (DLCS); and
 - (e) Chief Engineer/Construction, Water Supplies Department (CE/C), WSD).

11. Public Comments Received During Statutory Publication Period

On 3.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 24.4.2018, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The Site falls within the "R(C)" zone which is intended for low-rise, low-density residential developments where commercial uses such as shops and services serving the residential neighbourhood may be permitted by the Board on application. The applied use is not in line with the planning intention of the "R(C)" zone. However, the applied use could provide temporary retail and real estate agency services to the nearby residents. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the "R(C)" zone as there is no immediate permanent development proposal at the Site. The temporary shop and services uses are not incompatible with the surrounding land uses, comprising mainly a school, residential areas, plant nursery and vehicle parks (**Plan A-2**).
- 12.2 The current application is for the renewal of the planning permission under Application No. A/YL-MP/243 for the same use for a further period of 3 years. The renewal is in line with TPB PG-No. 34B in that since the last approval, there has been no major change in planning circumstances; concerned Government departments have no objection to or no adverse comment on the application, adverse planning implications arising from the renewal of the planning approval are not expected; and all the approval conditions under the previous application have been complied with.
- 12.3 The Site falls within the WBA of the TPB Guidelines PG-No. 12C and the

- guidelines also specify that planning applications for temporary uses are exempted from the requirement of EcoIA. The DAFC has no comment on the application from nature conservation point of view noting that the application is for continuation of the current use which was previously approved by the Board.
- Other concerned Government departments, including DEP, CE/MN of DSD, C 12.4 for T and D of FS, have no objection to or no adverse comment on environmental, drainage, traffic and fire safety aspects. To address CTP/UD&L, PlanD's concern, approval conditions requiring the submission and implementation of tree preservation proposal to monitor the topped tree is imposed in paragraph 13.2 (h) and (i). Other departments' technical concerns could be addressed by approval conditions as recommended in paragraph 13.2 (e) to (g) below. To mitigate potential environmental impacts on the surrounding area, approval conditions restricting the operation hours, activity on-site and requiring maintenance of paving, boundary fencing and drainage facilities are recommended in paragraph 13.2 (a) to (d) below. Non-compliance with any of the approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. Besides, the applicant should be advised to follow the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" to minimize the possible environmental impacts.
- 12.5 The Site is the subject of 3 previously approved Applications No. A/YL-MP/174, 199 and 243 mainly for the same applied use (**Plan A-1**). The last Application No. A/YL-MP/243 for the same applied use was approved by the Committee on 5.6.2015 for a period of 3 years. Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There is no public comment on the application received during the statutory publication period.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12, the Planning Department considers that the temporary shop and services (hardware grocery shop and real estate agency) could be tolerated for a further 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 from 6.6.2018 to 5.6.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) no cutting, dismantling, cleansing, repairing, compaction and workshop activity is allowed on the site during the planning approval period;

- (c) the paving and boundary fencing on the site shall be maintained at all times during the planning approval period;
- (d) the existing drainage facilities on the site shall be maintained at all times during the planning approval period;
- (e) the submission of as-built drainage plans and photographic records of the existing drainage facilities within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.9.2018;
- (f) the submission of fire service installations proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by <u>6.12.2018</u>;
- (g) in relation to (f) above, the implementation of fire service installations within **9** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.3.2019;
- (h) the submission of tree preservation proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by <u>6.12.2018</u>;
- (i) the implementation of tree preservation proposal within **9** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by <u>6.3.2019</u>;
- (j) if any of the above planning conditions (a), (b), (c) or (d) 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 (e), (f), (g), (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 application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

[Except for conditions (h) and (i) which are amended to accord with the latest circumstances/comments of the relevant department, all the other conditions are same as those imposed under the previous Application No. A/YL-MP/243]

Advisory clauses

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

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

the temporary development is not in line with the planning intention of the "R(C)" zone. There is no strong justification in the submission for a departure from the planning intention, even on a temporary basis.

14. <u>Decision Sought</u>

- 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 26.3.2018

Appendix Ia Further information (FI) received on 27.4.2018

Appendix II Previous s.16 applications covering the application site

Appendix III Detailed departmental comments

Appendix IV Recommended advisory clauses

Drawing A-1 Layout Plan

Drawing A-2 Landscape Plan

Plan A-1 Location Plan

Plan A-2 Site Plan

Plan A-3 Aerial Photo

Plan A-4 Site Photos

PLANNING DEPARTMENT MAY 2018