

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/279

- Applicant** : Mr. LAM Tung Man represented by R-riches Property Consultants Limited
- Site** : Lot 2972 (Part) in D.D. 104, Mai Po, Yuen Long
- Site Area** : About 144m²
- Lease** : Block Government Lease (demised for agricultural use) (no structures are allowed to be erected without prior approval of the Government)
- Plan** : Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
- Zoning** : “Recreation” (“REC”)
- Application** : Proposed Temporary Shop and Services (Electronic Goods Showroom) for a Period of 3 years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (electronic goods showroom) for a period of 3 years at the application site (the Site) (**Plan A-1**). According to the Notes for the “REC” zone of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and covered by wild grass, and is not the subject of any previous application.
- 1.2 According to the applicant, the proposed showroom is for display of small household appliances for customers’ information before purchasing them online. As shown on the site plan at **Plan A-2** and **Drawings A-1**, the Site is accessible from the northeast of the Site via a local track leading from Castle Peak Road – Tam Mi. A summary of the major development parameters are as follows:

Development/Use	Proposed temporary shop and services (electronic goods showroom) for a period of 3 years
Site Area	About 144m ²
Total Floor Area	Not exceeding 144m ²
Structure	1 single-storey structure covering the whole Site (not exceeding 3.5m in height)
Operation Hours	9:00 a.m. to 9:00 p.m. from Monday to Sunday (including public holidays)
No. of Staff	3

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

- (a) Application Form received on 8.4.2019 **(Appendix I)**
- (b) Further Information dated 23.5.2019 providing responses to public comments **(Appendix Ia)**

2. **Justifications from the Applicant**

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

- (a) The Site falls within the “REC” zone on the approved Mai Po & Fairview Park OZP No. S/YL-MP/6. The proposed development is a Column 2 use under the “REC” zone and is in line with the planning intention of the “REC” zone.
- (b) The Site is currently vacant and vegetated. The proposed use will not involve any land filling, excavation of land, site formation or tree-felling.
- (c) The electronic goods on display will be small household appliances like electric toothbrushes and air purifiers. The showroom allows customers to get a feel of the products before purchasing them online. Commodities for display at the Site will be hand-carried to the Site by staff. Orders can be placed but there will be no physical products for direct purchase on site. Customers will have to collect their purchases at other locations or opt for delivery service.
- (d) The Site is accessible from Castle Peak Road - Tam Mi via a local track. To minimize any adverse traffic impact to the surrounding areas, no parking space or loading/unloading spaces are proposed within the Site. Customers and staff will have to arrive the Site on foot and take public transport at Castle Peak Road – Tam Mi.
- (e) The applicant would take environmental and sewerage measures to minimize the relevant potential impacts on the surroundings. Septic tank will be placed within the structure. Relevant proposals and provision of fire service installations (FSIs) will be submitted and implemented if the application is approved.
- (f) With regard to the concerns raised by the public, reasonable steps have been taken to comply with the owner’s consent requirement; fill materials at the Site has been

removed and the Site is reinstated to its original condition; electronic goods displayed are small in size and will be hand carried to the Site, adverse traffic impact will not be caused; no workshop activity will be undertaken at the Site; all waste generated will be handled properly and carried away by staff; and measures would be taken to ensure no adverse drainage, environmental and sewage impacts on the surroundings.

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.

4. Town Planning Board Guidelines

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 summarised 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 was the subject of a previous complaint about filling of land. The Chief Town Planner/Central Enforcement and Prosecution, Planning Department’s latest site inspection on 13.2.2019 revealed that the fill materials had largely been removed. Therefore, no further planning enforcement action against this complaint is taken at this moment. Should a material change of use be identified on site again, which constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be instigated subject to sufficient evidence collected.

6. Previous Application

The Site is not the subject of any previous application.

7. Similar Application

There is no similar application within the “REC” zone.

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

8.1 The Site is:

- (a) accessible at its northeast via a local track leading from Castle Peak Road – Tam Mi;
- (b) currently vacant and covered with grass; and
- (c) located within the WBA of Deep Bay.

8.2 The surrounding land uses mainly comprise residential dwellings, storage yard, agricultural land, car park, rehabilitation centre and vacant land. Some storage and car parking uses are unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its immediate west and north are unused land with vacant land in its immediate south;
- (b) to its east is a car park and a cycling track under construction by Civil Engineering and Development Department (CEDD); and further east across Castle Peak Road - Tam Mi are open storage of construction materials, unused and vacant land, a restaurant and San Tin Highway;
- (c) to its further south across Yau Pok Road and a nullah is CEDD’s cycling track under construction, amenity area and unused land;
- (d) to its further west and northwest are residential dwellings, agricultural land, ponds, vacant and unused land; and
- (e) to its further north are residential dwellings of Yau Mei San Tsuen, a rehabilitation centre and plant nursery.

9. Planning Intention

The “REC” zone is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreation developments may be permitted subject to planning permission.

10. Comments from Relevant Government Departments

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

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lot 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 from Castle Peak Road - Tam Mi through both Government land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the planning application, the lot owner will need to apply to his office to permit the structures to be erected or regularize any irregularity 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 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 not 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):

- (a) The Site is connected to the public road network via a section of a local access which is not managed by Transport Department (TD). The land status of the local access road should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) Should the application be approved, the following condition should be incorporated:

No vehicle is allowed to access the Site.

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

- (a) He notes from the application that no run-in/out and direct vehicular access to the Site are proposed.
- (b) The proposed pedestrian access arrangement of the Site from Castle Peak Road – Tam Mi should be commented by TD.
- (c) HyD does not and will not maintain any access connecting the Site and Castle Peak Road – Tam Mi. The relevant departments will provide their comments, if any.
- (d) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

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

The Site neither falls within any administrative route protection boundary, gazetted railway schemes, nor railway protection boundary of heavy rail systems. As such, he has no comment on the application from railway development viewpoint.

Environment

10.1.5 Comments of Director of Environmental Protection (DEP):

- (a) 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.
- (b) The applicant is reminded to comply with the relevant pollution control ordinances during operation of the proposed development.

Nature Conservation

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

- (a) He notes that the Site is disturbed. According to the application, the proposed development would only involve one 1-storey temporary structure while no land filling, excavation, site formation or tree felling would be involved. As such, he has no adverse comment on the application from nature conservation point of view.
- (b) Should the application be approved, the applicant is advised to ensure that the existing trees on adjacent GL would not be affected.

Landscaping

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

- (a) The Site, located at Yau Mei San Tsuen and to the west of Castle Peak Road – Tam Mi, falls within “REC” zone on the OZP.
- (b) According to the aerial photo taken in 2017, the surrounding area of the Site is comprised of temporary structures, farmlands, ponds and scattered tree groups. The proposed use is considered not incompatible with the existing landscape setting in the proximity.
- (c) According to his site visit conducted on 3.5.2019, the Site was covered with grass and groundcover. No existing tree was found within the Site. As further adverse significant landscape impact arising from the proposed development is not anticipated, he has no objection to the application from the landscape planning perspective.
- (d) In view that there is inadequate space for meaningful landscape, he does not recommend any landscape condition, should the application be approved by the Board.

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 D of FS 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 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 (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Buildings Matters

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

- (a) Before any new building works (including open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the BO. An Authorized Person should be appointed as the coordinator 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 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.
- (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 respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5 m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Drainage

10.1.10 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 Board consider that the application is acceptable, conditions should be stipulated in the approval letter requiring the applicant: (i) to submit a drainage proposal; and (ii) to implement and maintain the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Others

10.1.11 Comments of the Commissioner of Police (C of P):

- (a) He has no comment on the application.

- (b) The applicant is reminded to adopt sufficient security measures at the Site and no obstruction caused to the adjacent road would be tolerated.

10.1.12 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

- (a) He has no objection in-principle to the application.
- (b) The applicant is advised that the access to the Site from Castle Peak Road – Tam Mi indicated in Drawing No. PLAN01 of the application (**Appendix I**) falls within the works limit of CEDD Contract No. YL/2015/01 – Cycle Tracks from Tuen Mun to Sheung Shui – Remaining Works. The applicant should seek CEDD’s agreement if any interface issues arise.

10.1.13 Comments of the Director of Food and Environmental Hygiene (DFEH):

If the proposal involves any commercial/trading activities, its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer’s Comments

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

His office has no comment on the application and the local comments should be submitted to the Board directly, if any.

10.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Head of the Geotechnical Engineering Office (H(GEO)), CEDD;
- (c) Director of Leisure and Cultural Services (DLCS); and
- (d) Director of Electrical and Mechanical Services (DEMS).

11. Public Comments Received During Statutory Publication Period

On 16.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 7.5.2019, six objecting public comments were received (**Appendix II**) respectively from a Legislative Council member, two villagers of Yau Mei San Tsuen, two nearby residents and a member of the public. They objected to the application mainly on the grounds that the applicant is not the owner of the site; there would be adverse traffic, drainage, environmental, air

ventilation and visual impacts on the surrounding areas, generating air and noise pollution, attracting heavy traffic, increasing flooding risk, and affecting health, environmental hygiene and road safety; the proposed development will destroy the natural vegetation covering the existing site; and there has been unauthorized land filling activity carried out at the Site.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary shop and services (electronic goods showroom) for a period of 3 years at the Site. The Site falls within “REC” zone on the OZP which is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission from the Board. Although the proposed use is not in line with the planning intention of the Site, approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the “REC” zone as there is no immediate development programme for the Site.
- 12.2 According to the applicant, the proposed showroom can serve the residents nearby. The applied use is not incompatible with the rural character of the surrounding area which mainly comprise residential dwellings, storage yard, agricultural land, car park, rehabilitation centre and vacant land.
- 12.3 The Site falls within the WBA of the TPB PG-No. 12C, which is intended to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds. The guidelines specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC has no comment on the application from nature conservation point of view as the proposed development will only involve one storey temporary structure, and no land filling, excavation, site formation or tree felling would be involved.
- 12.4 Concerned Government departments, including DEP, C for T, D of FS, CTP/UD&L of PlanD and CE/MN of DSD have no objection to or no adverse comment on environmental, traffic, fire safety, landscape and drainage aspects respectively. To mitigate potential impacts on the surrounding areas and address technical concerns, approval conditions restricting the operation hours, prohibiting vehicular access, and requiring the submission and implementation of drainage proposal and FSIs, and the maintenance of the implemented drainage facilities are recommended in paragraphs 13.2 (a) to (g) 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 Environmental Aspects of Temporary Uses and Open Storage Sites” and to comply with relevant pollution control ordinances during operation of the proposed development.
- 12.5 Six public comments were received during the statutory publication period

objecting to the application on the grounds that the proposed development would have adverse traffic, drainage, environmental, air ventilation and visual impact on the surrounding areas; and unauthorized filling of land had been carried out at the Site. The applicant clarified that the fill materials previously on site have been removed, reasonable steps have been taken to notify the land owner and impacts for the proposed showroom would be handled properly. The departmental comments and planning assessment above are of relevance.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department has no objection to the application.
- 13.2 Should the Rural and New Town Planning Committee (the Committee) decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 31.5.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to access the Site at all times during the planning approval period;
- (c) the submission of fire service installations proposal within **6** months to the satisfaction of Director of Fire Services or of the Town Planning Board by 30.11.2019;
- (d) in relation to (c) above, the implementation of fire service installations proposal within **9** months to the satisfaction of Director of Fire Services or of the Town Planning Board by 29.2.2020;
- (e) the submission of a drainage proposal within **6** months to the satisfaction of Director of Drainage Services or of the Town Planning Board by 30.11.2019;
- (f) in relation to (e) above, the implementation of the drainage proposal within **9** months to the satisfaction of Director of Drainage Services or of the Town Planning Board by 29.2.2020;
- (g) in relation to (f) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (h) if any of the above planning conditions (a), (b) 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; and

- (i) if any of the above planning conditions (c), (d), (e) or (f) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

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

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

- (a) The proposed development is not in line with the planning intention of the "REC" zone which is intended primarily for recreational developments for the use of the general public. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- (b) Approval of the application would set an undesirable precedent for similar applications within the "REC" zone. The cumulative effect of approving such application would reduce the land available for recreational development and result in a general degradation of the surrounding environment.

14. Decision Sought

14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 8.4.2019
Appendix Ia	Further Information received on 23.5.2019
Appendix II	Public comments received during statutory publication period
Appendix III	Recommended advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Location Plan

Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**