

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/280

- Applicant** : Penta Circle Construction Company Limited represented by R-riches Property Consultants Limited
- Site** : Lot 28 RP in D.D. 101, Mai Po, Yuen Long
- Site Area** : About 291 m²
- Lease** : Block Government Lease (demised for agricultural use) (no structures are allowed to be erected without the prior approval of the Government)
- Plan** : Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
- Zoning** : “Open Space” (“O”)
- Application** : Proposed Temporary Shop and Services (Retail Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail store) for a period of 3 years at the application site (the Site) (**Plan A-1**). According to the Notes for “O” 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 fenced and occupied by temporary structures and construction materials.
- 1.2 As shown on the location plan at **Plan A-1**, the Site is accessible from the east from Castle Peak Road – Mai Po via a local track. The layout is in **Drawing A-1** and major parameters of the application are summarized below:

Development/ use	Proposed Temporary Shop and Services (Retail Store)
Site area	About 291 m ²
Total floor area	About 117 m ²
No. of structures (Building	2 structures:

Height)	<ul style="list-style-type: none">• 1 retail store (2 storeys, about 7m)• 1 canopy for staircase (about 7m)
No. of loading/unloading space	1 for light goods vehicle
Operation hours	Monday to Sunday (including Public Holidays), 10 a.m. - 6 p.m.

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

- (a) Application Form received on 18.4.2019 (Appendix I)
- (b) Further Information dated 21.5.2019 with replacement pages clarifying the current use of the Site and providing justifications (Appendix Ia)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 9 of the application form attached (Appendix I). They can be summarized as follows:

- (a) The Site falls within the “O” zone on the OZP. The proposed development is a use under Column 2 of the “O” zone. The application for a period of 3 years will not frustrate the long term planning intention of the “O” zone.
- (b) The proposed development is for selling of household products such as cleaning and cooking utensils, and storage boxes etc. for nearby residents. No manufacturing or workshop activity would be involved. The Site is currently fenced and no land filling or excavation of land will be involved.
- (c) The Site is accessible from Castle Peak Road – Mai Po via a local track. To minimize any adverse traffic impact to the surrounding areas, no parking space are proposed within the Site. The loading/unloading space for light goods vehicle is for staff only. Customers and staff would have to arrive the Site on foot and could take public transport at Castle Peak Road – Mai Po.
- (d) The applicant would undertake environmental and sewerage measures to minimize any potential impacts on the surroundings. Relevant proposals on fire fighting installations (FSIs), drainage facilities and landscaping will be submitted and implemented if the application is approved.

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 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 currently not a subject of any active enforcement case. Should a material change of use be identified on site, 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 Applications

Since 2009, there are 20 applications for similar shop and services uses within the "O" zones on the OZP. These applications were all approved by the Rural and New Town Planning Committee (the Committee) mainly on the consideration that there were no implementation programme for the concerned "O" zones at that time and temporary approval would not affect the long term planning intention of the "O" zone; the developments were not incompatible with the surrounding land uses; and the concerns of Government departments could be addressed by approval conditions. Details of the similar applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) accessible at the east via a local track leading to Castle Peak Road - Mai Po;
- (b) currently fenced and occupied by temporary structures and construction materials; and
- (c) located within the WBA of Deep Bay.

8.2 The surrounding areas mainly comprise open storage yards, shops and services, storage yards, residential dwellings and cycle track under construction by Civil and Engineering Development Department (CEDD). Some unauthorized open storage and storage uses are subject to enforcement action by the Planning Authority:

- (a) to the east is a cycle track under construction by CEDD;
- (b) to the south and southwest are metal hardware shop and household item retail store approved under Application No. A/YL-MP/269, residential dwellings, and open storage yards of vehicles, and converted containers and construction materials respectively;
- (c) to the west are open storage of construction materials and machinery, and vehicles respectively; and
- (d) to the north and northwest are vacant land, storage yard, residential dwellings, and open storage of containers and construction materials respectively.

9. Planning Intention

The planning intention of the “O” zone is primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application 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 Old Schedule Agricultural Lots held under the Block Government Lease under 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 – Mai Po through Government Land (GL). His office provides no maintenance works 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 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 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 others the payment of premium or fee, as may be imposed by 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 conditions should be incorporated:
 - (i) Only light goods vehicle is allowed to access the Site.
 - (ii) No vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads/drains.
- (c) His department shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road - Mai Po. The relevant departments will provide their comments, if any.

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

The Site falls within the gazetted railway scheme boundary of the Express Rail Link (XRL). Nevertheless, he has no comment on the application from railway development viewpoint.

Environment

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

He has no comment on the application.

Nature Conservation

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

He has no comment on the application from nature conservation point of view as the Site is paved and disturbed.

Landscape

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

- (a) The Site, located to west of Castle Peak Road – Mai Po, falls within an area zoned “O” on the OZP.
- (b) According to the aerial photo taken in 2017, the surrounding area of the Site is comprised of temporary structures, vacant land, village houses and scattered tree groups. The proposed use is considered not incompatible with the existing landscape setting in proximity.

- (c) According to his site visit conducted on 3.5.2019, some construction materials were placed at the Site. No existing vegetation 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 application subject to FSIs being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. The 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 (BO) (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 in-principle objection under the BO to the use on the Site.
- (b) There is no record of approval by the Building Authority (BA) for the structures existing at the Site and the Buildings Department (BD) is not in a position to offer comments on their suitability for the use related to the application.
- (c) If the existing structures are erected on leased land without approval of the BD (not being New Territories Exempted

Houses), they are unauthorized under the BO and should not be designated for any approved use under the application.

- (d) 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 BA should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person 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 BA 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.
- (f) 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.
- (g) 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) Regulations 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 application from drainage operation and maintenance point of view.
- (b) The applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to the Site. A clear drainage plan showing full details of the existing drains and the proposed drains (e.g. cover and invert levels of pipes/catchpits/outfalls and ground levels justifying waterflow etc.) with supporting design calculations and charts should be included. (For preparation of the drainage proposal, the Guideline on preparation of the drainage proposal is available in DSD homepage at http://www.dsd.gov.hk/EN/Files/Technical_Manual/dsd_guideline/Drainage_Submission.pdf). The applicant is reminded that approval of the drainage proposal must be

sought prior to the implementation of drainage works on site.

- (c) After completion of the required drainage works, the applicant shall provide DSD a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan for reference. DSD will inspect the completed drainage works jointly with the applicant with reference to the set of photographs.
- (d) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (e) No public sewerage maintained by CE/MN, DSD is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (f) The applicant is reminded that the proposed drainage proposal/works as well as the Site boundary should not cause encroachment upon areas outside his jurisdiction.
- (g) The applicant should consult DLO/YL, LandsD regarding all the proposed drainage works outside the lot boundary in order to ensure the unobstructed discharge from the Site in future.
- (h) All the proposed drainage facilities should be constructed and maintained by the applicant at his own cost. The applicant should ensure and keep all drainage facilities on site under proper maintenance during occupancy of the Site.

Others

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

He has no comment on the application. The applicant is reminded that obstruction to road access in the vicinity would not 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 vehicular access to the Site from Castle Peak Road – Mai Po indicated in Drawing No. P01 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.

10.1.14 Comments of the Director of Leisure and Cultural Services (DLCS):

- (a) The Site is zoned “O” on the OZP. It is not on the priority list for development agreed by the Yuen Long District Council. He has no plan to develop the Site into public open space at present.
- (b) He has no in-principle objection to the application since the application involves private lots only.

District Officer’s Comments

10.1.15 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 direct, if any.

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

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

11. Public Comments Received During Statutory Publication Period

On 26.4.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period, which ended on 17.5.2019, one objecting public comment from a member of the public was received raising concerns that the “O” zones had not been implemented and the use of the land within WBA for commercial use (**Appendix III**).

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary shop and services (retail store) for a period of 3 years in the “O” zone. The planning intention of the “O” zone is primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. Although the proposed retail store is not in line with the planning intention of the “O” zone, approval of the application for a period of 3 years would not frustrate the long-term planning intention of the “O” zone as there is no programme for implementation of the proposed open space, as advised by DLCS.
- 12.2 According to the applicant, the proposed retail store is to serve the nearby residents and community. It is considered not incompatible with the surrounding land uses which mainly comprise open storage yards, shops and services, storage yard and residential dwellings.
- 12.3 The Site falls within the WBA of the TPB PG-No. 12C and 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 Site has been paved and disturbed.
- 12.4 Other concerned Government departments, including C for T, DEP, CE/MN of DSD, D of FS, and CTP/UD&L of PlanD, have no objection to or no adverse comment on traffic, environmental, drainage, fire safety and landscape aspects respectively. To mitigate potential environmental impacts on the surrounding area and address technical concerns, approval conditions restricting operation hours and types of vehicle, requiring the submission and implementation of drainage and FSIs proposals, and the maintenance of boundary fencing and implemented drainage facilities are recommended in paragraphs 13.2 (a) to (i) 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”.
- 12.5 Since 2009, 20 applications for similar shop and services uses within “O” zones on the OZP were approved by the Committee based on similar considerations (**Appendix II**). Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There is one objecting public comment raising concerns on the use and implementation programme of the “O” zone and the location within “WBA” (**Appendix III**). 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 above, the Planning Department has no objection to the application.
- 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 until 31.5.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle other than light goods vehicle is allowed to access the Site at all times during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from the Site at all times during the planning approval period;
- (d) the maintenance of boundary fencing at all times during the planning approval period;
- (e) the submission of 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) 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;
- (i) in relation to (h) 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;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;

- (k) if any of the above planning conditions (e), (f), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

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

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

the Site is zoned "O" and the occupation of the Site for the proposed use will jeopardize the fulfilment of the planning intention of the "O" zone, which is intended primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. The applicant fails to provide strong planning justification for departing from the planning intention, even on a temporary basis.

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 18.4.2019
- Appendix Ia** Further Information received on 21.5.2019
- Appendix II** Similar s.16 applications within "O" zones on the Mai Po and Fairview Park Outline Zoning Plan No. S/YL-MP/6
- Appendix III** Public comments received during statutory publication

	period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**