

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/298

- Applicant** : Mr. Man Kwok Cheung
- Site** : Lot 2873 in D.D. 104, Mai Po, Yuen Long
- Site Area** : About 466.66 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
- Zoning** : “Open Space” (“O”)
- Application** : Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (real estate agency) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ use within “O” zone is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site (in whole or in part) is the subject of 11 previously approved applications mainly for temporary office and temporary shop and services (real estate agency) (**Plan A-1**). The last Application No. A/YL-MP/258 submitted by the same applicant for the same use was approved by the Rural and New Town Planning Committee (the Committee) on 23.6.2017 for a period of 3 years up to 23.6.2020. All approval conditions had been complied with.
- 1.3 As shown on the plan at **Drawing A-1** and **Plans A-1 and A-2**, the Site is accessible at the northeast via a local track leading to Palm Springs Boulevard and Castle Peak Road – Mai Po. The drainage plans, landscape plan and fire service installations (FSIs) plan submitted by the applicant are in **Drawings A-1 to A-4**. The major parameters of the current application are the same as the last approved Application No. A/YL-MP/258. They are summarized below:

Total floor area	91.76m ²
Height of structures	- one 1-storey (2.8m high) office - one 1-storey (2.6m high) conference room - one 1-storey (2m high) toilet
No. of parking spaces	5 (private cars)
Operation Hours	9:00a.m. to 6:00p.m. daily

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

- (a) Application Form received on 30.6.2020 including drainage, landscape and FSIs plans with certificate **(Appendix I)**
- (b) Amendment page of the Application Form received on 6.7.2020 **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed on a letter attached to the Application Form at **Appendix I** and are summarised below:

- (a) The applicant states that the Site has been used for the applied use in the past few years and the last planning permission under Application No. A/YL-MP/258 lapsed on 23.6.2020.
- (b) There is no adverse drainage and traffic impacts as well as no pollution, noise nuisance and disturbance to the residents in the vicinity.
- (c) The applicant has made every effort to comply with all approval conditions and succeeded in obtaining permission several times. It is hoped that approval would be given for the applicant to continue using the Site for real estate agency use.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner”. 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 is not a subject of any active planning enforcement action.

6. **Previous Applications**

- 6.1 The Site is the subject of 11 previous applications for temporary office or shop and services (real estate agency or transportation company). All of them were approved with conditions by the Committee for 12 months or 3 years between 1997 and 2017 (**Plan A-1**).
- 6.2 Applications No. A/YL-MP/23, 50 and 68 submitted by a different applicant for temporary office (real estate agency or transportation company) were approved with conditions by the Committee between 1997 and 2000 for periods of 12 months mainly on the considerations that the developments being temporary in nature would unlikely have any significant adverse impacts on the surroundings and the developments were not incompatible with the surroundings.
- 6.3 Applications No. A/YL-MP/95, 108 and 142 submitted by a different applicant for temporary office use (real estate agency) were approved with conditions by the Committee between 2001 and 2005 for periods of 3 years mainly for similar reasons as stated in para.6.2. However, Application No. A/YL-MP/95 was subsequently revoked on 3.2.2002 due to non-compliance with approval conditions.
- 6.4 Applications No. A/YL-MP/164, 175, 201, 233 and 258 submitted by the current applicant for temporary shop and services (real estate agency) were approved with conditions by the Committee between 2008 and 2017 for periods of 3 years mainly on the considerations that the developments were not incompatible with the land uses of the surrounding areas and there were previous approvals. Applications No. A/YL-MP/164 and 201 were revoked in 2008 and 2013 respectively due to non-compliance with approval conditions. For Applications No. A/YL-MP/175, 233 and 258, all approval conditions had been complied with.
- 6.5 Details of these applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 Since 2010, there are 17 similar applications for temporary shop and services uses within the same “O” zone on the OZP. All applications were approved by the Committee mainly on the grounds that the applied uses were not incompatible with the surrounding land uses; and the concerns of Government departments could be addressed by imposing approval conditions.
- 7.2 Details of the 17 applications are summarized at **Appendix III**. 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) currently used for the applied use without valid planning permission;
- (b) accessible at the east of the Site via a local track leading to Palm Springs Boulevard and Castle Peak Road – Mai Po; and
- (c) located within the WBA of Deep Bay Area.

8.2 The surrounding area is intermixed with residential dwellings, open storage yards, plant nurseries and ponds. Some storage/open storage yards are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to the north is Palm Springs Boulevard. To the further north are a restaurant and a real estate agency with planning permissions and an open storage yard;
- (b) to the west are a site with valid planning permission for metal hardware shop and household item retail shop use, and Palm Canyon Drive. To the further west is the residential development of Royal Palms;
- (c) to the south are ponds, residential dwellings, plant nurseries, storage and open storage yards; and
- (d) to the east are Castle Peak Road – Mai Po, San Tin Highway and San Tam Road.

9. Planning Intention

The “O” zone 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.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application 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 an 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 private land of Lot No. 2873 in D.D. 104 is covered by Short Term Waiver (STW) No. 2538 to permit structures for the purpose of “Temporary Office”.
- (c) Should planning approval be given to the application, the STW holder will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. 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 applications will be approved. If such applications are approved, it will be subject to such terms and conditions, including among others the payment of premium of 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 Castle Peak Road – Mai Po via a section of a local access which is not managed by Transport Department. The land status of the local access should be clarified with the LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access 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 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) Palm Springs Boulevard is not and shall not be maintained by HyD.
- (b) The proposed access arrangement of the Site from Castle Peak Road – Mai Po should be commented and approved by Transport Department.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road – Mai Po.
- (d) The applicant may need to liaise with the management/maintenance party of Palm Springs Boulevard for management/maintenance of the access point.
- (e) 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, Highways Department (CE/RD 2-2, RDO, HyD):

As the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems, 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):

- (a) In accordance with the latest “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites”, he has no comment on the application.
- (b) There was no environmental complaint related to the Site in the past 3 years.

Nature Conservation

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

As the Site is developed and disturbed, he has no comment on the application from nature conservation point of view.

Fire Safety

10.1.7 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 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. In addition, 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) Regarding the submitted FSI proposal attached to the application, he has the following comments:

A fire extinguisher of suitable type shall be provided for any enclosed structures not exceeding 230m² with access for emergency vehicles being provided to reach 30m travel distance from the structure (i.e. the intended container for conference use) as indicated on plan.
- (d) 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.

Buildings Matters

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

- (a) As there is no record of approval by the Building Authority (BA) for the structures existing at the Site, BD is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being New Territories Exempted Houses) are erected on leased land without approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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.
- (d) Before any new building works (including containers/ open sheds as temporary buildings, demolition and land filling) are to be carried

out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with 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) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Drainage

10.1.9 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) He noted that the applicant implemented the drainage facilities on site under previous approved planning Application No. A/YL-MP/258. The relevant drainage proposal and implementation works were considered satisfactory at that time. The applicant should provide DSD a set of latest record photographs showing the completed drainage works (including the internal condition of the drains) with the corresponding photograph locations marked clearly on the approved drainage plan.
- (c) His detailed comments are at **Appendix V**.

Landscape

10.1.10 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 the landscape planning perspective.
- (b) The Site, located to the west of Castle Peak Road – Mai Po, south of Palm Springs Boulevard and east of Palm Canyon Drive, falls within an area zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. The Site is the subject of 11 previous applications and the latest application (No. A/YL-MP/258) for the same use as the current application was approved with conditions by the Committee of the Board on 23.6.2017.
- (c) With reference to the submission, it is observed that the layout of the

use on the current application is the same as the previous approved application (No. A/YL-MP/258) and therefore impact on the existing vegetation within the Site is not anticipated.

Others

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

- (a) 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.
- (b) His detailed comments are at **Appendix V**.

10.1.12 Comments of Director of Leisure and Cultural Services (DLCS):

- (a) Since the application involves private lot only and the applicant is the sole “current land owner”, he has no in-principle objection to the application.
- (b) The Site is zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. It is not on the priority list for development agreed by the Yuen Long District Council. His office has no plan to develop the Site into public open space at present.

District Officer’s Comments

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 directly, if any.

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

- (a) Commissioner of Police (C of P); and
- (b) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Project Manager (West) (PM(W)), CEDD;
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comments Received During Statutory Publication Period

On 7.7.2020, the application was published for public inspection. During the three-week statutory publication period, three public comments were received from San Tin Rural Committee and two individuals objecting to the application, mainly on the grounds that

the applied use was not in line with the planning intention of the “O” zone and the WBA, would cause adverse traffic impact and create road safety problem, and the applied use was not compatible with the low-density residential development in the surrounding (**Appendix IV**).

12. Planning Considerations and Assessments

- 12.1 The application is for temporary shop and services (real estate agency) for a period of 3 years. The Site falls within “O” zone which is intended 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 applied use is not entirely in line with the planning intention of the “O” zone, there is no development programme for implementing the proposed open space at present, as advised by DLCS. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the “O” zone.
- 12.2 The applied use is considered not incompatible with the surrounding land uses which comprise real estate agency, restaurant, shop, residential dwellings, storage/ open storage yards and ponds.
- 12.3 Although the Site falls within the WBA of the TPB PG-No. 12C, the guidelines also 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 noting that the Site is developed and disturbed.
- 12.4 Other concerned Government departments, including DEP, C for T, D of FS, CE/MN of DSD and CTP/UD&L of PlanD have no objection to or no adverse comment on environmental, traffic, fire safety, drainage and landscape aspects respectively. To mitigate any potential environmental impacts on the surrounding area and to address concerned departments’ comments, approval conditions governing the operation of the applied use and requiring maintenance of boundary fencing and other technical requirements of departments are recommended in paragraphs 13.2 (a) to (h) below. 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 The Site is the subject of 11 previous applications approved for similar/same uses. The last Application No. A/YL-MP/258 for the same use submitted by the same applicant was approved by the Committee on 23.6.2017 and lapsed on 23.6.2020. All approval conditions had been complied with. Since 2010, the Committee has approved a total of 17 applications for temporary shop and services uses relating to real estate agency, sale office, furniture showroom, florist and gardening shop, and metal hardware shop and household item retail store within the same “O” zone. Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There are three public comments objecting to the application as stated in paragraph 11. The planning assessment and departmental comments 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 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 21.8.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing fencing on site should be maintained at all times during the planning approval period;
- (c) the existing trees and vegetation on site should be maintained at all times during the approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period;
- (e) the implemented drainage facilities on site shall be maintained at all times during the planning approval period;
- (f) the submission of an as-built drainage plan and photographic records of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.11.2020;
- (g) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 21.2.2021;
- (h) in relation to (g) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 21.5.2021;
- (i) if any of the above planning condition (a), (b), (c), (d) or (e) 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
- (j) if any of the above planning condition (f), (g) or (h) 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 V**.

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

The temporary shop and services (real estate agency) for a period of 3 years is not in line with 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. No strong planning justification has been given in the submission for a departure 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 30.6.2020
Appendix Ia	Amendment Page received on 6.7.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar Applications within "O" Zone on the Approved Mai Po and Fairview Park OZP No. S/YL-MP/6
Appendix IV	Public comments received during statutory publication period
Appendix V	Recommended Advisory Clauses
Drawings A-1 to A-2	Drainage Plans
Drawing A-3	Landscape Plan
Drawing A-4	FSIs 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
AUGUST 2020**