

RNTPC Paper No. A/YL-MP/300
For Consideration by
the Rural and New Town
Planning Committee
on 18.12.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/300

- Applicant** : Hang Shun Real Estate Strategy Limited represented by R-riches Property Consultants Limited
- Site** : Lot 2905 S.C RP (Part) in D.D. 104 and Adjoining Government Land (GL), Mai Po, Yuen Long, New Territories
- Site Area** : About 531.3 m² (including about 163.5 m² of GL)
- 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 and Retail Store) with Ancillary Staff Canteen and Site Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (real estate agency and retail store) with ancillary staff canteen and site office for a period of 3 years at the application site (the Site) (**Plan A-1**) which is zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. According to the Notes of OZP, ‘Shop and Services’ is a Column 2 within the “O” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently used as a real estate agency without valid planning permission.
- 1.2 The Site is the subject of 5 previous applications approved since 2000 (**Plan A-1**). The last 4 applications for similar real estate agency/retail store with ancillary site office use were submitted by the current applicant. Approval conditions of the first 3 applications had all been fulfilled, but planning permission for the last Application No. A/YL-MP/267 was revoked on 6.9.2020 due to non-compliance with the condition on implementation of fire service installations (FSIs) proposal.
- 1.3 According to the applicant, the real estate agency and retail store, which is mainly for the sale of pet supplies, are to serve the locals. The ancillary staff canteen is to serve the staff working at the Site and will not be opened to visitors and the public

(Appendix Ia). The Site is accessible from its southeast via a local track leading from Castle Peak Road – Mai Po. The layout of the development is at **Drawing A-1**. The current application is the same as the last approved application in terms of site area, applied use (ancillary staff canteen is added in the current application), number of structures (5 container-converted structures with a height of 7.5m), parking spaces (3 for private cars) and operating hours (9:30a.m. to 7:30p.m. daily). The structures (with a total floor area of 356.5 m²) are for real estate agency, retail store, with ancillary staff canteen (30 m²) and office, storage of documents and rain shelters. According to the applicant, there will be a maximum of 15 visitors per day and about 8 staff on the Site.

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

- (a) Application Form received on 28.10.2020 with replacement pages received on 4.11.2020 **(Appendix I)**
- (b) Further Information (FI) received on 9.12.2020 [#] **(Appendix Ia)**

[#] *exempted from publication requirement*

2. **Justifications from the Applicant**

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

- (a) The temporary application will not jeopardize the long term planning intention of the Site.
- (b) The Site is the subject of several previously approved applications with the latest Application No. A/YL-MP/267 approved on 6.4.2018. Approval of the application will not set an undesirable precedent for similar use within the same “O” zone.
- (c) Following the planning approval for the last application, the applicant submitted a Short Term Waiver (STW) application for erection of structure at the Site and the approval of the STW application by Lands Department (LandsD) is still pending. Since the FSIs are proposed at the relevant structure, the applicant could not commence the construction works of the FSIs without LandsD’s approval of the STW application. The planning permission under Application No. A/YL-MP/267 was consequently revoked on 6.9.2020.
- (d) Car parking spaces and adequate manoeuvring space are provided within the Site to ensure no queuing and turning back outside the Site. Only private car is allowed to enter/park at the Site.
- (e) All existing paving, boundary fencing, landscape planting and drainage facilities will be maintained by the applicant during the planning approval period. The

applicant will follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Use and Open Storage Sites’ issued by the Environmental Protection Department (EPD).

- (f) The proposed development will not create significant adverse traffic, environmental, landscape and drainage impacts on the surrounding areas.

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

The applicant is not the “current land owner” of the private lot within the Site 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 the San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the GL, the “owner’s consent/notification” requirements are not applicable.

4. Town Planning Board Guidelines

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

According to 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 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. However, some local and minor uses (including temporary uses) are exempted from the requirement of EcoIA.

5. Background

The Site is not subject to any active planning enforcement action.

6. Previous Applications

- 6.1 The Site is the subject of 5 previous temporary applications approved by the Committee between 2000 and 2018.
- 6.2 Application No. A/YL-MP/77 for proposed temporary public car park (private cars) for a period of 12 months was approved by the Committee in 2000 mainly on the consideration that the proposed development could cater for the parking

demand of the local residents.

- 6.3 The other 4 applications were submitted by the current applicant. Applications No. A/YL-MP/188, 225 and 254 were for temporary shop and services (real estate agency) (all without ancillary staff canteen) and they were approved by the Committee between 2010 and 2016 for a period of 3 years each mainly on considerations that approval of the application would not frustrate the long term planning intention of the “O” zone; the proposed development was considered not incompatible with the surrounding land uses; adverse environmental, traffic, fire safety, drainage and landscape impacts were not envisaged. Approval conditions under these applications had all been complied with.
- 6.4 The last Application No. A/YL-MP/267 was for temporary shop and services (real estate agency and retail store) and ancillary site office (without ancillary staff canteen). It was approved by the Committee on 6.4.2018 for a period of 3 years mainly on considerations that approval of the application would not frustrate the long term planning intention of the “O” zone; the proposed development was considered not incompatible with the surrounding land uses; previous applications for shop and services and similar applications within the same “O” zone were approved; and technical comments of departments could be addressed by imposing approval conditions. Except for the planning condition on implementation of FSIs proposal, the other planning conditions including submission of records of existing drainage facilities and submission of FSIs proposal have been complied with. The planning permission was revoked on 6.9.2020.
- 6.5 Details of these applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 During the past 10 years since 2010, there were 17 similar applications for temporary shop and services uses within the “O” zones on the OZP. They were all approved by the Committee mainly on considerations that the developments 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 these 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) accessible from its southeast via a local track leading from Castle Peak Road – Mai Po;
 - (b) located within the WBA of Deep Bay; and

- (c) paved and fenced off and currently used as a real estate agency without valid planning permission.

8.2 The surrounding land uses are a mix of residential developments, domestic dwellings, temporary eating place, storage/workshop, plant nurseries and vacant land:

- (a) to its north are a shop, a car repair workshop and some plant nurseries;
- (b) to its immediate west is unused land; and further west across Palm Canyon Drive is a residential development (Royal Palms);
- (c) to its south are vacant land, an approved temporary eating place with private vehicle park, some plant nurseries and pond; and
- (d) to its immediate east are Castle Peak Road - Mai Po, San Tin Highway and San Tam Road. Further east is a residential development (Casa Paradizo).

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 and public comments 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 GL and 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 GL of the Site is covered by Short Term Tenancy (STT) No. 2563 for the purpose of “Ancillary Car-parking to Shop and Services (Real Estate Agency)”.
- (c) The private land of Lot No. 2905 S.C RP in D.D. 104 is covered by STW No. 3471 to permit structures for the purpose of “Shop and Services (Real Estate Agency)”.

- (d) Should planning approval be given to the subject application, the STT/STW holders will need to apply to LandsD for modification of the STT/STW conditions where appropriate. Besides, given the applied 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 rent or fee, as may be imposed by LandsD.

Environment

10.1.2 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' (COP), he has no objection to the application.
- (b) No environmental complaint relating to the Site was recorded in the past 3 years.
- (c) The applied use is located within WBA under TPB PG-No. 12C and it is noted that a staff canteen is proposed in the subject case. The applicant is advised to follow these requirements:
 - (i) the requirements as stipulated in the COP; and
 - (ii) effluent discharges from the Site are subject to control under the Water Pollution Control Ordinance. If connection to public sewer is not available and septic tank and soakaway system is used, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 'Drainage Plans subject to Comment by the Environmental Protection Department' including the percolation test.

Nature Conservation

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

Noting that the application involves continuation of the similar use which was approved previously, he has no comment on the application from the nature conservation point of view.

Traffic

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

- (a) The Site is connected to Castle Peak Road – Mai Po via section of a local access which is not managed by the Transport Department. The land status of the local access should be clarified with 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 conditions should be incorporated:
 - (i) only private car is allowed to enter/park at the Site at all times during the planning approval period; and
 - (ii) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road – Mai Po.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

10.1.6 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, 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 the railway development viewpoint.

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 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 of 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.

Building 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 existing structures at the Site, he 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 a New Territories Exempted House) are erected on leased land without approval of BA, they are unauthorized building works (UBW) under 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 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 BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling, etc.) are to be carried out on the Site, prior approval and consent of 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 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 B(P)R at the building plan submission stage.

- (g) Any temporary shelters or converted containers for office, storage, washroom or other uses are considered as temporary buildings which are subject to the control of Part VII of B(P)R.
- (h) If the use under application is subject to issue of a licence, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.
- (i) Detailed checking under BO will be carried out at the building plan submission stage.

Drainage

10.1.9 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) Presumably, the applicant would maintain the same drainage facilities as those implemented under the previous Application No. A/YL-MP/267. The applicant should inform if the drainage arrangement has been changed.
- (b) He has no objection in principle to the proposed development. Should the Board consider that the application is acceptable from the planning point of view, he would suggest that the following conditions should be stipulated in the approval letter:
 - (i) to maintain the drainage facilities implemented under Application No. A/YL-MP/267; and
 - (ii) to submit records of the existing drainage facilities on the Site to the satisfaction of the Director of Drainage Services or of the Board.

Open Space Provision

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

- (a) The Site 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 notes the application period is only 3 years and has no in-principle objection to the application.

Landscape

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

- (a) She has no objection to the application.
- (b) The Site was the subject of 5 previous approved applications for similar use in which she had no objection from the landscape planning perspective. With reference to the aerial photos of 2019 and 2020, there is no significant change to the surrounding landscape setting compared with the previous approved planning application (No. A/YL-MP/267). According to the survey photos dated 6.11.2020, temporary structures and existing trees are found within the Site. Referring to the applicant's submission (**Appendix I**), there is no proposed treatment on the existing trees within the Site. With reference to the site record on 5.7.2017, it is anticipated that there will be no adverse landscape impact on the existing landscape resource within the Site given the proposed layout is almost the same as the previous approved application.
- (c) In view that all the existing landscape trees within the Site will not be affected by the applied use and some existing trees which act as landscape buffer are along the boundary outside the Site, it is considered not necessary to impose a landscape condition. Should the Board approve the application, all existing trees within the Site should be maintained satisfactorily at all times during the planning approval period.

Environmental Hygiene

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

He has no adverse comment on the application. His detailed comments are at **Appendix V**.

District Officer's Comments

10.1.13 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/no adverse comment on or no objection to the application:

- (a) Commissioner of Police (C of P);
- (b) Project Manager (West), Civil Engineering and Development Department

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

11. Public Comments Received During Statutory Publication Period

On 6.11.2020, the application was published for public comments. During the first 3 weeks of the statutory publication period, 4 public comments (**Appendix IV**) were received from a Yuen Long District Councillor, the San Tin Rural Committee and 2 individuals objecting to/raising concern on the application on the grounds that the 3 private car parking spaces will not be sufficient to serve the applied use which will result in street parking and affect local residents; there is no information on the type of retail use and the floor space of the retail use and ancillary staff canteen; the staff canteen may be opened for public use without licence and it would lead to noise, air and environmental hygienic problems, an office pantry would suffice for the staff; the development would increase the traffic flow thereby affecting the safety and living environment of the villagers; there were repeated approvals and revocation but the applicant can lodge another application to continue the use is a concern; and in view of the post-Covid situation, global warming and climatic change, there is an urgent need for recreational space and implementing the WBA and “O” zone.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary shop and services (real estate agency and retail store) with ancillary staff canteen and site office for a period of 3 years within “O” zone. The “O” zone 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 in line with the planning intention of the “O” zone, 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. There is no development programme for implementing the planned open space at present, and DLCS has no objection to the application.
- 12.2 According to the applicant, the applied shop and services use is to serve the local community. It is considered not incompatible with the surrounding land uses which comprise a mix of residential developments, temporary eating place, plant nurseries and vacant land.
- 12.3 Although the Site falls within the WBA of 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 the nature conservation point of view.
- 12.4 Other concerned Government departments including DEP, C for T, D of FS, CE/MN, DSD and CTP/UD&L, PlanD have no objection to or adverse comment on environmental, traffic, fire safety, drainage and landscape aspects

respectively. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by imposing the approval conditions recommended in paragraphs 13.2 (b), (c), (f) to (i) below. To mitigate any potential environmental impacts on the surrounding area, approval conditions restricting the operation hours and requiring maintenance of paving, boundary fencing and existing trees are recommended in paragraphs 13.2 (a), (d) and (e) below. Besides, the applicant will be advised to follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.

- 12.5 As detailed in paragraphs 6.1 to 6.4 above, the Site is the subject of 5 previous applications approved since 2000. The last 4 applications for similar real estate agency/retail use (without ancillary staff canteen) were submitted by the current applicant. Planning conditions of the first 3 applications had all been fulfilled. The planning permission for the last Application No. A/YL-MP/267 was revoked on 6.9.2020 due to non-compliance with the condition on FSIs implementation. The applicant has explained that works of the FSIs could not commence as LandsD’s approval of the STW application for erection of structure at the Site is pending. The applicant has submitted a FSIs proposal to support the current application. Sympathetic consideration could be given to the application. Should the Committee decide to approve the application, shorter compliance periods are recommended to closely monitor the progress of compliance with the approval conditions. Moreover, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 12.6 During the past 10 years, the Committee has approved a total of 17 similar applications for temporary shop and services uses within the “O” zones in the area. Approval of the current application is in line with the previous decisions of the Committee.
- 12.7 There are 4 public comments objecting to/ raising concern on the application as stated in paragraph 11. The planning assessment and departmental comments above are relevant.

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 temporary shop and services (real estate agency and retail store) with ancillary staff canteen and site office.
- 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 18.12.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:30p.m. and 9:30a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) only private car is allowed to enter/park at 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 any time during the planning approval period;
- (d) the maintenance of paving and boundary fencing on the Site at all times during the planning approval period;
- (e) the maintenance of all existing trees on the Site at all times during the planning approval period;
- (f) the maintenance of existing drainage facilities on the Site at all times during the planning approval period;
- (g) in relation to (f) above, the submission of records of the existing drainage facilities on the Site within **3** months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 18.3.2021;
- (h) the submission of fire service installations proposal within **3** months to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.3.2021;
- (i) in relation to (h) above, the implementation of fire service installations proposal within **6** months to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.6.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) 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 (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 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 V**.

13.3 Alternatively, should the Committee decide to reject the application, the

following reason for rejection is suggested for Members' reference:

the "Open Space" 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. There is no strong planning justification 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 and replacement page received on 28.10.2020 and 4.11.2020 respectively
Appendix Ia	FI received on 9.12.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar applications within "Open Space" 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
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

