

RNTPC Paper No. A/YL-NTM/360B
For Consideration by
the Rural and New Town
Planning Committee
on 21.9.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/360

- Applicant** : Honour Will Development Limited represented by Metro Planning and Development Company Limited
- Site** : Lot 624 in D.D. 105, Shek Wu Wai San Tsuen, Ngau Tam Mei , Yuen Long
- Site Area** : About 662 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12
- Zoning** : “Comprehensive Development Area” (“CDA”)
- Application** : Proposed Temporary Shop and Services (Grocery Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (grocery store) for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “CDA” on the approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12. According to the Notes of OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is hard-paved occupied by vacant structures and containers (**Plan A-4a** and **A-4b**).
- 1.2 The Site is not subject of any previous application. Another planning application (No. A/YL-NTM/362 for temporary open storage of construction materials) submitted by the same applicant within the same “CDA” zone (**Plan A-1**) will be considered in the same meeting.
- 1.3 According to the applicant, the proposed grocery shop is to serve the residential units in the surrounding. As shown on the location plan at **Plan A-1** and layout plan at

Drawing A-1, the Site is accessible at the west via a local track off Shek Wu Wai Road. A 13m-diameter vehicle manoeuvring space is proposed to be located next to the ingress/egress at the western portion of the Site. The applicant has submitted landscape and drainage proposals. The proposed major development parameters are summarized as below:

Major Development Parameters	Proposed Shop and Services Development
Site Area	About 662 m ²
No. of Structure	1 (grocery store with toilet)
Total floor area	Not exceeding 290 m ²
Height of structure	Not exceeding 4.5 m (1 storey)
No. of Parking Spaces:	1 for private cars (5 m x 2.5 m)
No. of Loading/Unloading Bays	1 for light goods vehicle (LGV) not exceeding 5.5 tonnes (7m x 3.5m)
Operation Hours	9:00 a.m. to 9:00 p.m. daily all year round including public holidays

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

- (a) Application form with drainage proposal, landscape proposal and estimated traffic generation received on 17.1.2018 **(Appendix I)**
- (b) Further information (FI) received on 8.5.2018 providing responses to departmental comments **(Appendix Ia)**
(accepted and exempted from publication and recounting requirements)
- (c) FI received on 8.5.2018 enclosing revised drainage proposal to address Drainage Services Department (DSD)'s comment **(Appendix Ib)**
(accepted and exempted from publication and recounting requirements)
- (d) FI received on 14.8.2018 and 16.8.2018 enclosing revised drainage proposal to address DSD's comment **(Appendix Ic)**
(accepted and exempted from publication and recounting requirements)
- (e) FI received on 6.9.2018 enclosing revised drainage proposal to address DSD's comment **(Appendix Id)**
(accepted and exempted from publication and recounting requirements)

1.5 The application was first received on 17.1.2018. On 16.3.2018 and 15.6.2018, the Committee decided to defer a decision on the application as requested by the applicant pending further submission from the applicant to address departmental comments. On 14.8.2018, the applicant submitted FI, and the application is scheduled for consideration by the Committee at this meeting.

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 at **Appendix I** and FIs at **Appendices Ia to Id**. They can be summarized as follows:

- (a) The proposed development is temporary in nature that would not jeopardize the long-term planning intention of the “CDA” zone.
- (b) The nature and scale of the proposed development is not incompatible with the surrounding uses including open storage yards, warehouses and residential dwellings. The proposed grocery store will serve the residents in the area.
- (c) The proposed development would not generate adverse impact to the surrounding environment and the operation hour of the proposed grocery store is 9 a.m. to 9 p.m. from Mondays to Sundays including public holidays.
- (d) Only private cars and LGV (vehicle not exceeding 5.5 tonnes) will be allowed to enter/park at the Site for the convenience of staff and customers. Sufficient space will be provided at the Site for manoeuvring of vehicles. The applicant committed to clarify the land status of the local access to the Site with LandsD and the management and maintenance responsibilities of the access with relevant authorities.
- (e) The applicant has submitted landscape and drainage proposals and significant adverse impact to the surrounding environment is not anticipated in view of the nature, scale and form of the proposed development. The proposed landscape treatment will enhance the existing degraded environment.
- (f) Similar planning applications for shop and services (real estate agency) uses within “CDA” zone on other OZP (e.g. No. A/YL-TYST/716) has been approved by the Committee.

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. 31) by sending notice to San Tin Rural Committee and posting notice on the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not the subject of any active enforcement cases and suspected unauthorized development (UD).

5. Previous Application

There is no previous application covering the Site.

6. Similar Application

There is no similar application for proposed shop and services use within the same “CDA” zone on the Ngau Tam Mei OZP.

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

7.1 The Site is:

- (a) accessible at the west of the Site via a local track off Shek Wu Wai Road;
- (b) hard-paved and fenced; and
- (c) vacant and currently occupied by containers, structures and a shelter.

7.2 The surrounding areas are intermixed with open storage yards, warehouses, domestic dwellings, farm land, ponds, vacant land and unused land; some of the open storage and parking of vehicles uses are suspected UD subject to planning enforcement action; (**Plan A-2**):

- (a) to its east are residential dwellings, open storage yards/storage area, watercourse, ponds, unused and vacant land;
- (b) to its south across the local track are open storage yards, vehicle park, residential dwellings, vacant land and farm;
- (c) to its west across the local track are residential dwellings, warehouses, and logistic centre which is suspected UD subject to enforcement action; and
- (d) to its north are open storage yards/storage area, residential dwellings, farm land, ponds, unused and vacant land.

8. Planning Intention

The planning intention of the “CDA” zone is primarily for comprehensive development/redevelopment of the area for residential use with commercial, open space and other supporting facilities. The zoning is to facilitate appropriate planning control

over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 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 Site is accessible to Shek Wu Wai Road 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, the lot owner will need to apply to his office to permit the structures to be erected or regularize any irregularity on site. Such application will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) The Site is connected to the public road network via a section of local access road which is not managed by Transport Department (TD). The land status of the local access road should be clarified with the 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 private car and light goods vehicle not exceeding 5.5 tonnes should be allowed to enter/park at the Site; and
 - (ii) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

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

- (a) The proposed access arrangement of the Site from Shek Wu Wai Road should be commented by TD.
- (b) HyD is not and shall not be responsible for the maintenance of vehicular access connecting the Site and Shek Wu Wai Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public road and drains.

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

He has no in-principle objection to the application from railway development point of view. However, the Site falls within the administrative route protection boundary for the proposed Northern Link (NOL). The applicant shall be reminded that the Site may be required to be vacated at the time for the construction of the NOL.

Environment

9.1.5 Comment of the Director of Environmental Protection (DEP):

- (a) According to the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” (COP), he has no comment on the application.

Nature Conservation

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

- (a) He has no comment on the application from the nature conservation point of view as the Site is located within “CDA” zone and surrounded by temporary structures.

- (b) As there is a watercourse to the east of the Site (**Plan A-2**), should the application be approved, the applicant is advised to adopt appropriate measures to avoid polluting the watercourse during operation.

Building Matters

9.1.7 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 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 New Territories Exempted Houses) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any approved 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 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.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD 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) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Drainage

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

He does not support the application as flooding/drainage complaints have been recorded based on their record and the area adjoining the Site is subject to overland flows and possible flooding, unless the applicant can submit a drainage proposal to mitigate the flooding risk of the area to DSD's satisfaction. However, the revised drainage proposal (**Appendix Id**) submitted by the applicant is considered unacceptable from drainage operation and maintenance point of view.

Landscape

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

- (a) He has reservation on the application from the landscape planning perspective. The landscape proposal (**Appendix I**) submitted by the applicant is considered unacceptable from a landscape perspective.
- (b) The area is of rural landscape character with fallow and active agriculture land, temporary structures and village houses.
- (c) According to their site inspection photos taken on 2.2.2018, the Site is already hard paved and fenced off with temporary structure in place. According to the aerial photo taken on 24.9.2015, the Site was covered with vegetation. It is apparent that all the then existing vegetation cover has all been removed creating adverse landscape impacts. The Site was formed after 24.9.2015. The proposed development, if approved, would encourage similar site modification prior to application, thus resulting in piecemeal developments destroying the tranquil nature of the rural area.
- (d) His comments on the landscape plan (**Drawing A-2**) submitted by applicant are as follows:
 - (i) the applicant should clarify whether the proposed trees will be planted at-grade. Tree pit of 1m x 1m x 1.2m soil depth should be provided for at-grade planting;
 - (ii) for trees to be planted along vehicular access within the Site, a fence/kerb/bollard at a minimum distance of 1m from the tree trunk should be provided between the tree and vehicle to guard against potential physical damages to the trees arising from vehicular movement; and
 - (iii) all hard-paved area, planting area and drainage design should be indicated on plan.

- (e) Should the application be approved by the Board, the following approval condition is recommended to be included in the planning permission:

Submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Fire Safety

9.1.10 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in-principle to the proposal subject to fire service installations (FSIs) being provided to the satisfaction of the D of FS.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Electricity Supply Safety

9.1.11 Comments of the Director of Electricity and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interest of public safety and ensuring the continuity of electricity supply, the parties concerned with planning designing, organizing and supervising any activity near the underground cable under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site.

- (c) The applicant should be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

Environmental Hygiene

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

- (a) If any FEHD's facility is affected by the development, FEHD's prior consent must be obtained. Reprovisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the reprovisioned facilities to FEHD.
- (b) 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.
- (c) Proper licence / permit issued by this Department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.

Others

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

He does not support the application as the Site is not in a main residential area. The applicant did not provide sufficient information / justification for setting up grocery store in a non-residential area.

District Officer's Comments

9.1.14 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 shall be submitted to the Board direct, if any.

9.2 The following Government departments have no comments on/no objection to the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD)

- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Leisure and Cultural Services (DLCS); and
- (d) Head of the Geotechnical Engineering Office, CEDD (H(GEO), CEDD).

10. Public Comments Received During Statutory Publication Period

On 26.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 20.2.2018, 4 objecting public comments were received from private individuals (**Appendix II**) which pointed out that the development of the Site has already caused flooding problem to nearby areas, especially to Lot 633 in D.D.105 (**Plan A-2**).

11. Planning Considerations and Assessments

11.1 The Site falls within “CDA” zone, which is for comprehensive development/redevelopment of the area for residential use with commercial, open space and other supporting facilities. The zoning is to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints. The proposed temporary shop and services (grocery store) is not entirely in line with the planning intention of the “CDA” zone. Despite there is no approved development/programme in the “CDA” zone, no strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

11.2 The surrounding areas are intermixed with farm land, ponds, domestic dwellings, open storage yards, warehouses of which some are suspected UD's (**Plan A-2**). The proposed use is considered not entirely compatible with the surrounding land use. The Site accessible via a local track has been hard-paved and occupied by containers, structures and a shelter. DSD does not support the application as the Site is subject to overland flows and possible flooding. However, the revised drainage proposal submitted by the applicant is considered unacceptable from drainage operation and maintenance point of view. CTP/UD&L has reservation on the application as the Site was a vacant land covered with vegetation according to aerial photo taken on 24.9.2015, but is now formed with all vegetation removed with adverse landscape impact. The landscape proposal by the applicant is considered not acceptable. Approval of the application will encourage similar site modification prior to application and set an undesirable precedent for similar applications for temporary uses in the “CDA” zone, resulting in piecemeal development destroying the tranquil nature of the rural area and the general deterioration of rural landscape resources. C of P does not support the application as the Site is not in a main residential area and the applicant did not provide sufficient justification for setting up grocery store in a non-residential area nor support from nearby residents on the proposed development.

- 11.3 No approval has been given to any application for temporary shop and services use within the “CDA” zone in the Ngau Tam Mei OZP. Approval of the application without addressing the adverse drainage and landscape impacts would set an undesirable precedent and encourage other applications for similar development in the area. The cumulative effect of approving the similar application would result in piecemeal development and general degradation of the environment of the area.
- 11.4 There are 4 objecting comments which pointed out that the development of the Site had already caused flooding problem to nearby areas. The planning assessment in paragraph 11.2 above is of relevance.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department does not support the application for following reasons:
- (a) the proposed development is not in line with the planning intention of the “CDA” zone, which is primarily for comprehensive development/redevelopment of the area for residential use with commercial, open space and other supporting facilities. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate that the proposed development would not have any adverse drainage and landscape impacts on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the “CDA” zone. The cumulative effect of approving such application would result in general degradation of the environment of the area.
- 12.2 Alternatively, 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 year up to 21.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 9:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) only private car and light goods vehicle not exceeding 5.5 tonnes should be allowed to enter/park at the Site;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;

- (d) the submission of drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.3.2019;
- (e) in relation to (d) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.6.2019;
- (f) the submission of landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town planning Board by 21.3.2019;
- (g) in relation to (f) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town planning Board by 21.6.2019;
- (h) the submission of fire service installations proposals within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.3.2019;
- (i) in relation to (h) above, the provision of fire service installations within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.6.2019;
- (j) if any of the above planning conditions (a), (b) and (c) 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 (d), (e), (f), (g), (h) and (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 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.

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 17.1.2018
Appendices Ia -Id	FIs received on 8.5.2018, 14.8.2018, 16.8.2018 and 6.9.2018
Appendix II	Public comments received during publication period
Appendix III	Recommended advisory clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Landscape Plan
Drawing A-3	Proposed Drainage Plan
Drawing A-4	Vehicular Access Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a and b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**