

RNTPC Paper No. A/YL-PH/766
For Consideration by
the Rural and New Town
Planning Committee
on 2.3.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/766

<u>Applicant</u>	: Chief Force Limited
<u>Site</u>	: Lot 303 (Part) in D.D. 110, Tsat Sing Kong, Yuen Long
<u>Site Area</u>	: About 790m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Shop and Services (Sales of Vehicle Parts) 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 (sales of vehicle parts) for a period of 3 years. The Site is paved, fenced and currently vacant (**Plans A2 and A4**).
- 1.2 The Site is the subject of one previous application (No. A/YL-PH/751) submitted by the same applicant as the current application for temporary open storage of vehicle parts for a period of three years which was rejected by the Rural and New Town Planning Committee (the Committee) on 11.8.2017.
- 1.3 According to the applicant, the Site will be occupied by a single storey container-converted structure with a total floor area of about 15m² and with building height of 2.5m for temporary office use. Some display racks and cabinets (3m high) will also be erected on Site to display various vehicle parts. No vehicles exceeding 5.5 tonnes will enter the Site. No workshop activities will be carried out at the Site. The operation hours are between 9:00 a.m. to 6:00 p.m. Mondays to Saturdays and will be close on Sundays and public holidays. The Site is

accessible via a local track, which branches off Kam Tai Road. One visitor parking space and one loading/unloading space for light goods vehicle are proposed on site. The Site layout plan, landscape and fire service installations (FSIs) proposals and vehicular access plan for the proposed development as submitted by the applicant are shown in **Drawings A-1 and A-4**.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with planning statement and plans (**Appendix I**) received on 2.1.2018
 - (b) Further Information received on 7.2.2018 providing (**Appendix Ia**) clarification to response departmental comments

2. Justifications from the Applicant

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

- (a) The proposed temporary shop and services with no permanent structures will not impede the long term planning intention of the “AGR” zone. The major use of the Site is for sales of vehicle parts. Some display racks and cabinets will be erected on site to show various vehicles parts such as wipers, steering wheels, etc. Together with the motor-vehicle showroom nearby, there can be synergy effect of attracting customers to buy cars and vehicle parts.
- (b) The applicant will make their best effort to comply with all the relevant approval conditions to the satisfaction of the concerned departments if the application is approved.
- (c) Plantings and FSIs will be provided at the Site. The existing tree at the Site will also be preserved and protected.

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

The applicant is not a “current land owners” 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 posting site notice and sending notification to Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not a subject of any active enforcement case. Notwithstanding, if there are suspected unauthorized development found at the Site, investigation will be conducted. Should there be sufficient evidence to prove that the said use is an unauthorized development under the Town Planning Ordinance (the Ordinance), appropriate enforcement action will be instigated.

5. **Previous Application**

The Site is the subject of one previous application (No. A/YL-PH/751) submitted by the same applicant as the current application for temporary open storage of vehicle parts for a period of three years which was rejected by the Committee on 11.8.2017 on the consideration that the proposed development is not in line with the planning intention of the “AGR” zone; the proposed development did not comply with the TPB PG-No. 13E in that no previous approval was granted; there were adverse departmental comments and public objections; the applicant fails to demonstrate that the proposed development would not generate adverse environmental impacts on the surrounding areas; and the approval of the application would set an undesirable precedent. Details of the application is summarized in **Appendix II** and the location of the application is shown on **Plan A-1**.

6. **Similar Application**

There is one similar application (No. A/YL-PH/754) submitted by the same applicant as the current application for proposed temporary shop and services (motor-vehicle showroom) adjoining the Site within the same “AGR” zone on the OZP. The application was approved with conditions by the Committee on 22.9.2017 for a period of three years on the consideration that the temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the development is not incompatible with the surrounding land uses; it is unlikely that the development would generate significant environmental nuisance to the nearby residential structures/dwellings; and the relevant government departments had no adverse comments on the development, except for CTP/UD&L of PlanD had some reservations on the application and approval conditions on landscape aspect were imposed. Details of the application is summarized in **Appendix III** and the location of the application is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) paved, fenced and vacant; and
- (b) accessible via a local track branching off Kam Tai Road to the south.

- 7.2 The surrounding areas are rural in character mixed with residential dwellings/structures, agricultural land and open storage/storage yards and vacant/unused land:
- (a) to its immediate east and southeast are unused land and a nullah. Further east are fallow/active agricultural land and unused land;
 - (b) to its immediate west is a site subject to application No. A/YL-PH/754 for shop and services (motor-vehicle showroom) approved on 22.9.2017. To the further south and southwest are vacant land and open storage yards. Further south across the nullah are some open storage yards of vehicles and construction materials and residential dwellings/structures; and
 - (c) to its north are residential dwellings/structures (the nearest one is about 5m away), unused land and open storage yards.

8. Planning Intention

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

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 Kam Tai Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.

- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Such application(s) will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) 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 the LandsD.

Traffic

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

- (a) He has no comment on the application from the traffic engineering perspective. The following approval condition and advisory clause should be imposed respectively:
 - (i) No vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.
 - (ii) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the Lands Department. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

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

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

He has no adverse comment on the application since the Site is outside Express Rail Link scheme boundary.

Nature Conservation and Agriculture

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

- (a) Noting that the Site has been paved, he has no in-principle objection to the application from nature conservation point of view. Also, as the Site does not have high potential for agricultural rehabilitation, he has no strong view against the application from agriculture point of view.
- (b) Nevertheless, there is a natural watercourse and a drainage channel in the vicinity of the Site. Should the application be approved, the applicant shall be advised to adopt good site practices and take appropriate measures to avoid discharge of site runoff into these waterbodies.

Environment

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

- (a) There was a substantiated environmental complaint in 2015 at Lot 303 (Part) in D.D. 110 on noise nuisance received in the past 3 years.
- (b) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Temporary Uses” issued by the EPD.

Landscape

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

- (a) He has some reservations to the application from the landscape planning point of view.

- (b) The Site is the subject of one previous rejected planning application (No. A/YL-PH/751) for temporary open storage use, to which his offices had some reservations from the landscape planning perspective.
- (c) Referring to the aerial photo dated 26.1.2017, the Site is situated in an area of rural landscape character comprising of active and abandoned farmland, open storage and scattered tree groups in its vicinity. Open storage is mainly concentrated to its far south within the “Open Storage” (“OS”) zone and also in its immediate vicinity. Although the proposed use is not in line with the planning intention of “AGR” zone, it is not incompatible to the surrounding environment.
- (d) With reference to the site visit dated 5.7.2017 and the site photos dated 9.1.2018 and 16.1.2018, the Site was vacant and hard paved. One *Archontophoenix alexandrae* (假檳榔) with DBH 200mm is found at its northern boundary. Although adverse impact on significant landscape resources from the proposed development is not anticipated, approval of the application would set an undesirable precedent to similar developments within the zone. The cumulative effect of approving such applications would result in degradation of the environment.
- (e) Should the application be approved, approval condition on submission and implementation of a tree preservation and landscape proposal should be included in the permission.
- (f) His detailed comments on the submitted landscape plan are at **Appendix IV**.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions on the submission and implementation of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

9.1.9 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 his satisfaction.
- (b) The submitted FSIs proposal is considered acceptable. The applicant should be advised that the installation/ maintenance/ modification/ repair work of FSIs shall be undertaken by an Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/ maintenance/ modification/ repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to him.
- (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.

Building Matters

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

- (a) If the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any use under application.
- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (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) 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.
- (e) 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.

Water Supply

9.1.11 Comments of the Chief Engineer/ Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Electricity

9.1.12 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests 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 or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also 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.

District Officer’s Comments

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

He has not received any comment from locals upon close of consultation and he has no particular comments on the application.

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

- (a) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD); and
- (b) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 9.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.1.2018, three public comments were received from Kadoorie Farm & Botanic Garden Corporation, a Yuen Long District Council member and an individual (**Appendices V-1 to V-3**). The commenters object the application mainly on the grounds that the application is the same as the rejected application No. A/YL-PH/751 and the rejection reasons applied; the proposed use is not in line with the planning intention of the “AGR” zone; and farming should be protected.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (sales of vehicle parts) for a period of three years within “AGR” zone. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Although the proposed development is not in line with the planning intention of the “AGR” zone, DAFC has no strong view against the application from agricultural point of view as the Site does not have high potential for agricultural rehabilitation. It is considered that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone on the OZP.

- 11.2 The proposed use is considered not incompatible with the surrounding land uses which are predominated by open storage yards, residential structures/dwellings, fallow/cultivated agricultural land and vacant/unused land.
- 11.3 The applicant has submitted landscape and FSIs proposals to support the application. The relevant government departments consulted including DEP, C for T, CE/MN of DSD and D of FS have no adverse comment on the application. CTP/UD&L of PlanD has some reservation on the application as approval of the application would set an undesirable precedent to similar developments within the zone and the cumulative effect of approving such applications would result in degradation of the environment. In this regards, approval conditions on submission and implementation of tree preservation and landscape proposal as requested by CTP/UD&L of PlanD are suggested in paragraph 12.2 (g) and (h) below. Also, to minimize the possible environmental nuisance generated by the proposed development, approval conditions restricting operation hours, types of vehicles used and prohibiting workshop activities are recommended in paragraphs 12.2 (a) to (e) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to alleviate any potential environmental impact. The technical requirements of C for T, CE/MN of DSD and D of FS are recommended in approval conditions (f) and (i) to (k) in paragraph 12.2 below.
- 11.4 The Site is subject of one previous application (No. A/YL-PH/751) submitted by the same applicant for temporary open storage of vehicle parts for a period of three years which was rejected by the Committee on 11.8.2017, mainly on the consideration that the proposed development is not in line with the planning intention of the “AGR” zone; the proposed development did not comply with the TPB PG-No. 13E in that no previous approval was granted; there were adverse departmental comments and local objections; the applicant fails to demonstrate that the proposed development would not generate adverse environmental impacts on the surrounding areas; and the approval of the application would set an undesirable precedent. Compared with the last application for temporary open storage of vehicle parts (No. A/YL-PH/751), the current application submitted by the same applicant is for a different use for shop and services (sales of vehicle parts) with different layout. There is also a similar application (No. A/YL-PH/754) for proposed temporary shop and services (motor-vehicle showroom) adjacent to the Site approved by the Committee on 22.9.2017 as stated in paragraph 6 above.
- 11.5 Three public comments objecting to the application were received during the statutory publication period mainly on the grounds as mentioned in paragraph 10 above. In the regards, temporary approval would not frustrate long-term planning intention and the above planning considerations and assessments are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department considers that the proposed temporary shop and services (sales of vehicle parts) could be tolerated for a period of 3 years.
- 12.2 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 three years until 2.3.2021. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes including container tractors/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (e) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (f) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (g) the submission of tree preservation and 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 2.9.2018;
- (h) in relation to (g) above, the implementation of tree preservation and 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 2.12.2018;
- (i) 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 2.9.2018;

- (j) in relation to (i) above, the implementation of drainage proposal for the development 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 2.12.2018;
- (k) the implementation of the accepted fire service installations proposal 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 2.9.2018;
- (l) 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;
- (m) if any of the above planning conditions (g), (h), (i), (j) or (k) 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
- (n) upon 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 at **Appendix VI**

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

- (a) the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good agricultural land farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intentions, even on a temporary basis; and
- (b) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications with the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

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 reason(s) for rejection should be given to the applicant.

14. Attachments

- Appendix I** Application form with plans received on 2.1.2018
- Appendix Ia** Further Information received on 7.2.2018
- Appendix II** Previous application within the same “AGR” zone on the approved Pat Heung OZP
- Appendix III** Similar application within the same “AGR” zone on the approved Pat Heung OZP
- Appendix IV** Detailed comments from CTP/UD&L, PlanD
- Appendices V-1 to V-3** Public comments received during the statutory publication period
- Appendix VI** Advisory Clauses
- Drawing A-1** Layout Plan
- Drawing A-2** Landscape Plan
- Drawing A-3** Fire Service Installations Plan
- Drawing A-4** Vehicular Access Plan

Plan A-1	Location plan with previous and similar applications
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2018**