

RNTPC Paper No. A/YL-MP/306
For Consideration by
the Rural and New Town
Planning Committee
on 9.7.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/306

<u>Applicant</u>	: Mr. FUNG Hok Lan represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 20 RP in D.D. 101, Mai Po, Yuen Long
<u>Site Area</u>	: About 726.1m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
<u>Zoning</u>	: “Open Space” (“O”)
<u>Application</u>	: Temporary Shop and Services (Metal Hardware Shop and Household Item Retail Store) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (metal hardware shop and household item retail store) for a period of 5 years (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use within “O” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use.
- 1.2 The Site is the subject of two previous applications (No. A/YL-MP/244 and 269) submitted by the current applicant for temporary shop and services (metal hardware shop and household item retail store) for a period of 3 years (**Plan A-1**) which were approved by the Rural and New Town Planning Committee (the Committee) on 5.6.2015 and 4.5.2018. All approval conditions for both applications had been complied with. The planning permission of the last application No. A/YL-MP/269 lapsed on 6.6.2021. The current application is for the same applied use but for a longer period of 5 years.

- 1.3 As shown in the site layout plan at **Drawing A-2** and **Plan A-2**, the Site is accessible from the northeast via a local track off Castle Peak Road – Mai Po. There is one 2-storey structure (about 6.5m high) with a total floor area of about 303.92m² (for shop and services and ancillary office), 3 private car parking spaces and 1 loading/unloading space for light goods vehicle (LGV) within the Site. There will be a maximum of about 10 visitors per day and about 6 members of staff on the Site. The operation hours of the shop are 9:00 a.m. to 6:00 p.m. from Monday to Saturday and no operation on Sunday and public holiday.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 13.5.2021 **(Appendix I)**
 - (b) Further Information (FI) received on 10.6.2021 **(Appendix Ia)**
providing response to departmental comments with local access route plan, site trip generation, site photos, existing tree plan and fire services installations (FSIs) proposal #

#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 **Appendix I and Appendix Ia**. They can be summarised as follows:

- (a) The temporary application will not frustrate the long term planning intention of the Site. The Site is the subject of several previously approved applications for the same use, the latest one being Application No. A/YL-ST/569. The applicant would like to continue the shop and services use at the Site. Approval of the current application will not set an undesirable precedent for similar use within the same “O” zone.
- (b) The shop and services business has been operated by the applicant at the Site since 2015. Although the business was temporarily stopped in 2021 due to CoVid-19 and a minor portion of the Site had been used for storage of metal hardware goods for sale, the applicant has stopped the open storage activities and will strictly follow the scheme under application and ensure no open storage activities on the Site.
- (c) Sufficient manoeuvring space is provided within the Site to ensure no vehicle queuing and turning back outside the Site and onto public road. Advance booking is required for visitors to access the Site. Goods to support the operation of the development are transported by LGV and one loading/unloading space for LGV is provided. No medium and heavy goods vehicle including container tractor/trailer is allowed to enter/exit the Site.

- (d) The applicant will follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' issued by the Environmental Protection Department (EPD) to minimise adverse environmental impacts and nuisance to the surrounding area.
- (e) The metal hardware shop and household item retail store is to serve the nearby residents. The development will not create significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas. Drainage and fire service installations proposals will be provided after the planning approval is granted to mitigate any adverse impact arising from the development.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" of 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. Detailed information would be deposited at the meeting for Members' inspection.

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) is relevant to the application. According to 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 subject to any active planning enforcement action.

6. Previous Applications

- 6.1 The Site is the subject of two previous applications submitted by the current applicant. Application No. A/YL-MP/244 for temporary shop and services (metal hardware shop and household item retail store) for a period of 3 years was approved by the Committee on 5.6.2015 mainly on the considerations that the proposed development was not incompatible with the surrounding land uses and concerned government departments had no objection to or no adverse comment on the application. All the approval conditions including those in relation to the submission and implementation of FSIs proposal, drainage proposal and landscape and tree preservation proposal, and the provision of boundary fencing on the Site, had been complied with.
- 6.2 Application No. A/YL-MP/269 for renewal of planning approval for the same use for a period of 3 years was approved by the Committee on 4.5.2018 mainly on considerations that the application was in line with TPB PG-No. 34B for renewal of previous planning approval, the development was not incompatible with the surrounding land uses and concerned government departments had no objection to or no adverse comment on the application. All approval conditions, including those in relation to the maintenance of the paving, boundary fencing and existing drainage facilities, and submission and implementation of FSIs proposal and landscape and tree preservation proposal, had been complied with. The planning permission lapsed on 6.6.2021.
- 6.3 Details and locations of the two applications are summarised at **Appendix II** and shown on **Plan A-1** respectively.

7. Similar Applications

- 7.1 Since 2011, there are 18 applications for similar shop and services uses within the “O” zones on the OZP. All the applications were 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 18 similar applications are summarised at **Appendix III**. Their locations are shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) paved and fenced off and currently used for the applied use;
 - (b) accessible from the northeast via a local track off Castle Peak Road – Mai Po; and

- (c) located within the WBA of Deep Bay.

8.2 The surrounding areas are a mix of residential development, domestic dwellings, shop and services use, restaurant, open storage yards and vacant land:

- (a) to its north and northwest are vacant land and open storages of construction materials. A site further north has been approved for temporary shop and services (retail store) under Application No. A/YL-MP/280. To its further northeast are some residential dwellings;
- (b) to its immediate east is a local track connecting to the Castle Peak Road – Mai Po. To its further east are Castle Peak Road – Mai Po and San Tin Highways and a residential development (Maple Gardens) (**Plan A-3**);
- (c) to its immediate south is an open storage of construction materials. To its further south are some temporary uses with planning approvals including a real estate agency (Application No. A/YL-MP/278) and a restaurant (Application No. A/YL-MP/299); and
- (d) to its immediate west is an open storage of vehicles and to its further west are some residential dwellings and the residential development of Royal Palms within the “Residential (Group C)” zone.

9. Planning Intention

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

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are 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 Lot No. 20 RP in D.D. 101 is covered by Short Term Waiver (STW) No. 4259 to permit structures for the purpose

of “Temporary Shop and Services (Metal Hardware Shop and Household Item Retail Store)”.

- (c) Should planning approval be given to the application, the STW holder will need to immediately apply to his office for modification of the STW conditions where appropriate. Besides, given the applied use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Application for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fees, 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 the Transport Department (TD). 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) Having considered the local access route plan and the site trip generation in the FI, he has no adverse comment on the application from traffic engineering perspective.
- (c) Should the application be approved, a condition should be incorporated that no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

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

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

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

He has no comment on the application from railway development point of view as the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems.

Environment

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

- (a) The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP.
- (b) No environmental complaint relating to the Site was recorded in the past 3 years.

Landscape

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

- (a) Compared with the aerial photos taken in 2017 and 2020, there is no significant change to the surrounding landscape setting since the last application was approved. With reference to the site inspection by his office on 31.5.2021, the Site is fenced off, mainly hard paved and in operation as the applied use. According to the submitted information, there is no substantial change to the layout of the development. Further significant impact on the existing landscape arising from the applied use is not anticipated. As such, he has no objection to the application from the landscape planning perspective.
- (b) It is noted that a landscape proposal approved under the previous application No. A/YL-MP/269 covering the same site and applied use is provided in the FI. He has no adverse comment on the FI from the landscape planning point of view.
- (c) In view that significant adverse landscape impact arising from the applied use is not anticipated and there are existing trees along the site boundary within the Site, it is considered not necessary to impose a landscape condition should the application is approved.
- (d) His detailed comments are at **Appendix V**.

Open Space Provision

10.1.7 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) Since the Site involves private lot only, he has no in-principle objection to the application.

Fire Safety

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

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

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works (UBW) under BO. The granting of planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under BO.

- (b) For UBW erected on leased land, enforcement action may be taken by 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 BO.
- (c) His detailed comments are at **Appendix V**.

Drainage

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

- (a) He has no objection in principle to the applied use from drainage operation and maintenance point of view.
- (b) He notes that the applicant implemented the drainage facilities on the Site under the previous approved planning application No. A/YL-MP/269. The current application is with the same use at the same site as the previous application. In this respect, the applicant is required to 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. DSD will inspect the completed drainage works jointly with the applicant with reference to a comprehensive set of photographs.
- (c) His detailed comments are at **Appendix V**.

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

- (a) Director of Agriculture, Fisheries and Conservation;
- (b) Commissioner of Police;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Project Manager (West), Civil Engineering and Development Department; and
- (e) District Officer (Yuen Long), Home Affairs Department.

11. **Public Comments Received During Statutory Publication Period**

On 21.5.2021, the application was published for public inspection. During the first 3 weeks of the statutory publication period, one public comment was received from an individual raising objection to the application on the grounds that the development is in a crowded area which would lead to environmental pollution and fire hazards, thereby affecting the safety and living environment of the villagers (**Appendix IV**).

12. Planning Considerations and Assessments

- 12.1 The application is for temporary shop and services (metal hardware shop and household item retail store) for a period of 5 years. The Site falls within an “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 in line with the planning intention of the “O” zone, there is no implementation programme for the planned open space at present as the Site is not on the priority list for development agreed by Yuen Long District Council. DLCS has no objection to the application. Approval of the application on a temporary basis for a period of 5 years would not frustrate the long term planning intention of the “O” zone.
- 12.2 According to the applicant, the metal hardware shop and household item retail store under application is to serve nearby locals. It is considered not incompatible with the surrounding land uses which comprise residential dwellings and temporary real estate agency and restaurant.
- 12.3 Although the Site falls within 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 nature conservation point of view.
- 12.4 Temporary planning permission was granted to the current applicant for the same use at the Site since 2015. No environmental complaints relating to the Site was received in the past 3 years. Relevant government departments including C for T, DEP, D of FS, CE/MN of DSD and CTP/UD&L of PlanD have no objection to or no adverse comment on the current application. Adverse impacts on traffic, environment, fire safety, drainage and landscape aspects are not envisaged. If the application is approved, traffic, drainage and fire safety requirements of concerned departments could be imposed through approval conditions recommended in paragraphs 13.2 (d), (g) to (j) below. To minimise any potential environmental nuisance on the surrounding area, approval conditions restricting the operation hours, on-site activities and requiring maintenance of paving and boundary fencing are recommended in paragraphs 13.2 (a), (b), (c), (e) and (f) 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 During the past 10 years, the Committee approved a total of 18 applications for similar shops and services uses within the “O” zones on the OZP as detailed in paragraph 7 above. Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There is one opposing public comment 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 comment mentioned in paragraph 11 above, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 5 years until 9.7.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation on the Site is allowed between 6:00 p.m. and 9:00 a.m. from Monday to Saturday, as proposed by the applicant, during the planning approval period;
- (b) no operation on the Site is allowed on Sunday and public holiday, as proposed by the applicant, during the planning approval period;
- (c) no medium and heavy goods vehicle including container tractor/trailer is allowed to enter/parked on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) no cutting, dismantling, cleansing, repairing, compaction, workshop and open storage activity is allowed on the Site at any time during the planning approval period;
- (f) the maintenance of paving and boundary fencing on the Site at all times during the planning approval period;
- (g) the maintenance of existing drainage facilities on the Site at all times during the planning approval period;
- (h) the submission of 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 9.10.2021;
- (i) the submission of 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 9.1.2022;
- (j) in relation to (i) above, the implementation of fire service installations proposal 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 9.4.2022;

- (k) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (l) if any of the above planning conditions (h), (i) or (j) 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
- (m) 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 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. 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 13.5.2021
Appendix Ia	FI received on 10.6.2021
Appendix II	Previous Applications
Appendix III	Similar Applications

Appendix IV	Public comment
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2021**