

RNTPC Paper No. A/YL-MP/314  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 24.9.2021

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**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-MP/314**

<b><u>Applicant</u></b>	: Mr. TAM Chan Fai represented by R-riches Property Consultants Limited
<b><u>Site</u></b>	: Lot 3250 S.B ss.24 S.A RP and 3250 S.B ss.34 RP in D.D. 104 and Adjoining Government Land (GL), Mai Po, Yuen Long
<b><u>Site Area</u></b>	: About 1,187m <sup>2</sup> (including GL of about 217m <sup>2</sup> )
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
<b><u>Zoning</u></b>	: “Commercial/Residential” (“C/R”) (about 82.5% of the Site) “Residential (Group D)” (“R(D)”) (about 17.5% of the Site)
<b><u>Application</u></b>	: Proposed Temporary Eating Place 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 eating place for a period of 3 years (**Plan A-1a**). The Site falls within an area zoned “C/R” (about 987 m<sup>2</sup>, 82.5% of the Site) with a small portion zoned “R(D)” (about 210 m<sup>2</sup>, 17.5% of the Site) on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. According to the Notes of the OZP, ‘Eating Place’ is a Column 1 use within “C/R” zone which is always permitted, but is a Column 2 use within “R(D)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by an existing restaurant.
- 1.2 The Site (in whole or in part) is the subject of two previous applications (No. A/DPA/YL-MP/3 and A/YL-MP/218) (**Plan A-1b**) submitted by the current applicant. The first application for restaurant and bar was approved by the Rural and New Town Planning Committee (the Committee) on 18.10.1991. The last application for temporary eating place (outside seating accommodation of a

restaurant) for a period of 3 years was rejected by the Committee on 9.6.2013. The last rejected application had a smaller site area of about 455m<sup>2</sup> which only covered the pavement area up to the kerbside of Kam Pok Road and Ha San Wai Road for provision of outside seating accommodation of the existing restaurant, whilst the current application involves a larger area (about 1,187m<sup>2</sup>) which covers the site occupied by the existing restaurant and part of the pavement area of Kam Pok Road and Ha San Wai Road for temporary eating place use.

- 1.3 As shown in the site layout plan at **Drawing A-1** and **Plan A-2**, the Site is accessible from Fairview Park Boulevard from its south and Kam Pok Road from its west. Two structures (i.e. Structure B1 (2-storeys) and B2 (1-storey)) are proposed at the Site for temporary eating place purpose with a gross floor area (GFA) of about 1,610m<sup>2</sup>. The uncovered area of the Site are used for circulation space and landscaping. No car parking spaces are proposed within the Site. There will be a maximum of about 40 visitors per day and about 10 staff members on the Site. The operation hours will be from 8:00 a.m. to 11:00 p.m. Monday to Sunday, including public holidays.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 26.7.2021 (Appendix I)
  - (b) Further Information (FI) received on 30.8.2021 (Appendix Ia) providing responses to comments from Lands Department (LandsD) and a revised layout plan #
  - (c) FI received on 6.9.2021 providing responses to (Appendix Ib) comments from Transport Department (TD) #

*# 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** to **Appendix Ib**. They can be summarised as follows:

- (a) The 'eating place' use is a Column 1 use within the "C/R" zone but is a Column 2 use within the "R(D)" zone. The temporary application will not frustrate the long term planning intention of the "R(D)" zone.
- (b) The proposed eating place is to serve the nearby locals, i.e. residents of Villa Camellia, Royal Camellia, Greenery Garden, Helene Terrace and Fairview Park. No private car parking space is provided at the Site. Staff and visitors are required to access the Site by walking. Goods to support daily operation of the shop will be transported by one 5.5 tonnes lorry once a day between 10:00 a.m. to 11:00 a.m. for approximately 10 minutes. No vehicle will enter the Site and loading/unloading activities will be carried out at Ha San Wai Road which is to the north of the Site. Therefore, adverse traffic impact is not expected.

- (c) The applicant will follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' and 'Control of Oil Fume and Cooking Odour from Restaurant and Food Business' issued by the Environmental Protection Department (EPD) to minimise adverse environmental impacts and nuisance to the surrounding area by controlling oily fume and cooking odour emissions generated from the eating place. Adequate air pollution control equipment will be provided at the kitchen ventilation system for treating cooking fume emissions before being discharged to the outdoor environment in order to fulfill the requirements of the Air Pollution Control Ordinance.
- (d) The development will not create significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas. Drainage, fire service installations and landscape proposals will be provided after the planning approval is obtained 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 private lots 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 San Tin Rural Committee. For the GL portion of the Site, the "Owner's Consent/Notification" requirements are not applicable. Detailed information would be deposited at the meeting for Members' inspection.

### **4. Background**

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

### **5. Previous Applications**

- 5.1 The Site in whole or in part is the subject of two previous applications (No. A/DPA/YL-MP/3 and No. A/YL-MP/218 (**Plan A-1b**)) for similar eating place use, which were submitted by the current applicant.
- 5.2 Application No. A/DPA/YL-MP/3 (mainly covering the premises of the existing restaurant) for restaurant and bar on the "C/R" portion of the Site which was zoned "Residential (Group C)" ("R(C)") on the then draft Mai Po and Fairview Park Development Permission Area Plan No. DPA/YL-MP/1. The application was approved by the Committee on 18.10.1991 mainly on the considerations that the development was not incompatible with the surrounding land uses.
- 5.3 Application No. A/YL-MP/218 (on a smaller site mainly covering the pavement area of Kam Pok Road and Ha San Wai Road outside the premises of the existing restaurant) for temporary eating place (outside seating accommodation of a restaurant) mainly zoned "C/R" and with a minor portion zoned "R(D)" on the current OZP was rejected by the Committee on 9.6.2013 mainly on the

considerations that the Site was a piece of government land with kerbside planting and drainage facilities maintained by the Drainage Services Department (DSD) which the applicant failed to demonstrate that the development will not obstruct the routine maintenance work, in particular for the drainage facilities at the Site. The then application site was different from the current application.

5.4 Details of these 2 applications are summarised at **Appendix II**.

## **6. Similar Applications**

There is no similar planning application for eating place within the same “R(D)” zone on the OZP.

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

7.1 The Site is:

- (a) connected to Fairview Park Boulevard from its south;
- (b) currently occupied by an existing restaurant with the building structures located within the “C/R” zone whereas one canopy structure protruded to the “R(D)” zone; and

7.2 The surrounding areas are a mix of residential developments, with a number of commercial/retail uses and workshops on both sides of Fairview Boulevard:

- (a) to its immediate north are a nullah and Ha San Wai Road. Further north are a site office, vehicle parks, vacant land and the site of an approved residential development under Application No. A/YL-MP/287 within the “R(D)” zone;
- (b) to its east are vehicle repair workshop, pet clinic, shops and the residential development of Helene Terrace. To its further east are the site for an approved temporary car trading use under Application No. A/YL-MP/288, vehicle repairing workshop and retail shop;
- (c) to its immediate south is Fairview Park Boulevard. To its further south are some retail shops, animal welfare centre, vehicle parks, vehicle repair workshop and vacant land; and
- (d) to its west are Kam Pok Road, a nullah and vacant land within the “Residential (Group C)” zone.

## **8. Planning Intention**

8.1 The planning intention of the “C/R” zone is primarily for commercial and/or residential development. A selected range of commercial uses are always permitted

to serve the local community.

- 8.2 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

## **9. Comments from Relevant Government Departments**

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

### **Land Administration**

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contain the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of GL of about 217m<sup>2</sup> in area (subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (c) Should planning approval be given to the application, the registered lot owner will need to immediately apply to his office to permit the structures to be erected or regularise any irregularity on site, if any. The applicant has to either exclude the GL from the Site or apply a formal approval prior to the actual occupation of the GL. Besides, given the proposed use is temporary in nature, only application for regularisation 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 application are 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**

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

- (a) Having regarded the FI submitted by the applicant, he has no adverse comment to the application from traffic engineering perspective.
- (b) 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.

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 Fairview Park Boulevard should be approved by TD.
- (b) Adequate drainage measures should be provided at the Site to prevent surface water running from the Site to nearby public roads and drains.

**Environment**

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

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” and “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” issued by DEP to minimise potential environmental impacts on the surrounding areas and to control the oily fume and cooking odour emission from the proposed development.

**Landscape**

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

- (a) Based on the aerial photo taken in 2020, the Site is situated in an area of comprehensive residential development landscape character comprising low-rise houses, vacant lands and scattered tree groups. The proposed development involving two 1 to 2-storey structure with building height of about 4-7m is considered not entirely incompatible with the surrounding landscape setting.
- (b) With reference to site photos taken on 3.8.2021, the Site is mainly hard paved and occupied by temporary structures in operation by the existing restaurant on site. Existing trees and ornamental planting are found within the southern portion of the Site. According to the applicant’s submission, the proposed development is not in conflict with the existing trees within the Site, no significant adverse impact

on existing landscape resources and landscape character is anticipated. As such, he has no objection to the application from landscape planning perspective.

- (c) In view that no significant adverse landscape impact arising from the proposed development is not anticipated and there are existing trees and ornamental planting within the Site, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

### **Fire Safety**

#### **9.1.6 Comments of the Director of Fire Services (D of FS):**

- (a) He has no objection in principle to the application subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) FSIs are anticipated to be required in consideration of the design/nature of the proposal. The applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and the location of the proposed FSIs 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. Licensing requirements, if any, will be formulated upon receipt of formal application via the Licensing Authority.

### **Building Matters**

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

There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site. If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BA, they are unauthorised building works (UBW) under BO and should not be designated for any proposed use under the application. 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. His detailed comments 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 application from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, the following conditions should be stipulated in the approval letter requiring the applicant (i) to submit a drainage proposal; (ii) to implement the drainage proposal; and (iii) to maintain the drainage facilities for the development to the satisfaction of the Director of Drainage Services or of the Board.
- (c) His detailed comments are at **Appendix IV**.

### **Environmental Hygiene**

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

No Food and Environmental Hygiene Department's (FEHD) facilities should be affected. His detailed comments at **Appendix IV**.

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

- (a) Commissioner of Police;
- (b) Chief Engineer/Railway Development 2-2, Railway Development Office, HyD;
- (c) Director of Agricultural, Fisheries and Conservation;
- (d) Project Manager (West), Civil Engineering and Development Department;
- (e) Director of Electrical and Mechanical Services;
- (f) Chief Engineer/Construction, Water Supplies Department; and
- (g) District Officer (Yuen Long), Home Affairs Department.

## **10. Public Comments Received During Statutory Publication Period**

On 3.8.2021, the application was published for public comment. During the first 3 weeks of the statutory publication period which ended on 24.8.2021, one public comment was received which from the Residential Representative of San Wai Tsuen raising objection to the application for the reasons that the proposed development would cause traffic congestion and illegal parking in Kam Pok Road and Ha San Wai Road (**Appendix III**).



## **11. Planning Considerations and Assessments**

- 11.1 The application is for proposed temporary eating place for a period of 3 years at the Site which mainly falls within a “C/R” zone intended for commercial and/or residential development, and a selected range of commercial uses are always permitted to serve the local community. A minor portion falls within a “R(D)” zone which is intended for low-rise, low-density residential developments subject to planning permission from the Board. A major part (82.5%) of the eating place within the “C/R” zone is always permitted, whereas the use at the northern portion (17.5%) is not in line with the planning intention of “R(D)” zone. Nevertheless, the section of this “R(D)” zone is the road side area and there is no committed residential development at the Site. It is mainly occupied by a canopy structure. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the “R(D)” zone.
- 11.2 According to the applicant, the applied use would serve the nearby locals and workers, which is considered not incompatible with the surrounding land uses including residential developments and retail shops along Fairview Park Boulevard.
- 11.3 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 application. Adverse impacts on traffic, environment, fire safety, drainage and landscape aspects are not envisaged. Should the application be approved, technical requirements of C for T, D of FS and CE/MN of DSD are suggested as approval conditions in paragraphs 12.2 (a) to (h) 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” and “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” to mitigate any potential environmental impacts on the surrounding areas.
- 11.4 The Site (in whole or in part) is involved in one previous approved application for restaurant and bar and one previous rejected application for outside seating accommodation of the restaurant. The last application for outside seating accommodation was rejected on the consideration that it would obstruct DSD’s maintenance of the drainage facilities at the kerbside of Kam Pok Road and Ha San Wai Road. The current application, which covers the existing restaurant including the building and canopy structures only occupy part of the pavement area, will not affect any government facilities in the vicinity. Eating place use is not considered incompatible with the surrounding land uses.
- 11.5 There is one public comment raising objection to the application as stated in paragraph 10. The planning considerations and departmental comments above are relevant.

## **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 above, the Planning Department has no objection to the application.
- 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 3 years until 24.9.2024.

The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (b) 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 24.3.2022;
- (c) in relation to (b) above, the implementation 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 24.6.2022;
- (d) the submission of a 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 24.3.2022;
- (e) in relation to (d) above, the implementation of the 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 24.6.2022;
- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) if any of the above planning conditions (a) 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; and
- (h) if any of the above planning conditions (b), (c), (d) or (e) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Appendix IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the

following reason for rejection is suggested for Members' reference:

the "Residential (Group D)" zone is intended primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is intended for low-rise, low-density residential developments subject to planning permission from the Board. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

### **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**

<b>Appendix I</b>	Application Form received on 26.7.2021
<b>Appendix Ia</b>	FI received on 30.8.2021
<b>Appendix Ib</b>	FI received on 6.9.2021
<b>Appendix II</b>	Previous Applications
<b>Appendix III</b>	Public comment
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1a</b>	Location Plan
<b>Plan A-1b</b>	Previous Application Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos