

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/321

<u>Applicant</u>	: Penta Circle Construction Company Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 28 RP in D.D. 101, Mai Po, Yuen Long
<u>Site Area</u>	: About 291 m 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 with Ancillary Office for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning approval for temporary shop and services with ancillary offices for a period of 5 years at the application site (the Site) which is zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and fenced off.
- 1.2 The Site is the subject of one previous application (No. A/YL-MP/280) (**Plan A-1**) for temporary shop and services (retail store) approved by the Rural and New Town Planning Committee (the Committee) on 31.5.2019 for a period of 3 years until 31.5.2022. However, the planning permission was revoked on 31.10.2021 due to non-compliance with approval condition.
- 1.3 As shown in **Plan A-3**, the Site is accessible from its east from Castle Peak Road – Mai Po via a local track. The site layout plan is shown on **Drawing A-1** and the fire service installations (FSIs) and drainage proposals are shown in **Drawings**

A-2 and A-3. The proposal includes one 2-storey structure (about 7m high) with a canopy for staircase (about 7m high) with a total gross floor area (GFA) of about 117m² for shop and services (i.e. retail store for selling of household products and ancillary office) at the Site. Besides, one loading/unloading space for light goods vehicles (LGV) is provided. The operation hours of the Site are from 9:00 a.m. to 7:00 p.m. daily, including public holiday.

1.4 As compared to the previously approved application No. A/YL-MP/280, the current application is submitted by the same applicant and it is the same as the previous application in terms of site area, GFA and layout except operation hours (previously from 10:00 a.m. to 6:00 p.m.).

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

- (a) Application Form received on 5.11.2021 **(Appendix I)**
- (b) Further Information (FI) received on 18.11.2021 **(Appendix Ia)** clarifying the nature of the retail store with revised drainage proposal [#]
- (c) FI received on 17.12.2021 providing response to departmental comments and a revised site layout plan [#] **(Appendix Ib)**

[#] *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 FIs from **Appendix I to Appendix Ib**. They can be summarised as follows:

- (a) The temporary application will not frustrate the long term planning intention of the Site. The applicant would like to operate a retail store for selling of household products such as cleaning and cooking utensils and storage boxes, etc. at the Site serving the nearby residents.
- (b) The estimated maximum number of visitors to the Site per day are 10 and the maximum number of staff members working at the Site is 5. The retail store will generate about 20 trips per day (on average 2 trips per hour). Sufficient manoeuvring space is provided within the Site to ensure no vehicle queuing and turning back outside the Site and onto public road. No medium or heavy goods vehicle including container tractor/trailer is allowed to enter/exit the Site. Adverse traffic impact on the surrounding road network is not expected.
- (c) No manufacturing and workshop activities will be carried out at the Site. 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.

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

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)

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 Application**

The Site is the subject of a previous application (No. A/YL-MP/280) (**Plan A-1**) submitted by the same applicant as the current application for the same temporary shop and services use for retail store. The application was approved by the Committee on

31.5.2019 for a period of 3 years until 31.5.2022 mainly on the considerations that there was no implementation programme for the concerned “O” zone at that time and temporary approval would not frustrate the long term planning intention of the “O” zone; the proposed use was not incompatible with the surrounding land uses; there was no objection to or no adverse comment from concerned government departments and relevant departmental concerns could be addressed by approval conditions. However, the planning permission was revoked on 31.10.2021 due to non-compliance with the approval condition on implementation of FSIs proposal. Details of this application are summarised at **Appendix II**.

7. Similar Applications

7.1 During the past 10 years since 2011, there are 21 applications for similar shop and services uses within the same “O” zone on the OZP. All the applications were all approved by the Committee mainly on the consideration that there were no implementation programme for the concerned “O” zones at that time and temporary approval would not affect the long term planning intention of the “O” zone; the developments were not incompatible with the surrounding land uses; and the concerns of Government departments could be addressed by approval conditions. Details of these 21 similar applications are summarised at **Appendix III**.

7.2 A similar application No. A/YL-MP/319 (**Plan A-1**) for temporary shop and services with ancillary office is considered by the Committee at the same meeting.

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

8.1 The Site is:

- (a) currently fenced off and vacant; and
- (b) accessible from the east via a local track leading to Castle Peak Road – Mai Po.

8.2 The surrounding areas are a mix of residential dwellings, open storage yards, storage yard, shops and services and cycle track and roads:

- (a) to its east are pedestrian facilities and road infrastructure including a local track and a cycle track with an elevated walkway to its further southeast and Castle Peak Road – Mai Po and San Tin Highway to its further east;
- (b) to its north is open area and to its further north are village houses and a storage yard within the “Village Type Development” zone;

- (c) to its northwest is open area and to its further northwest are an open storage of containers and the residential area within the “Residential (Group C)” (“R(C)”) zone;
- (d) to its west is open area and to its further west is an open storage of vehicles; and
- (e) to its south and southwest are an open storage yard of construction material, a plant nursery and to its further southwest are a temporary metal hardware shop and household item retail store (Application No. A/YL-MP/306), an open storage yard of construction materials and the residential development of Royal Palms within the “R(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) Lot No. 28 RP in D.D. 101 is covered by a Short Term Waiver (STW) No. 5239 for the purpose of “Temporary Shop and Services (Retail Store)”.
- (c) Should planning approval be given to the application, the STW holder will need to 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.

Open Space Provision

10.1.2 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. There is no plan to develop the Site into public open space at present.
- (b) No in-principle objection to the application since the Site involves private lot only.

Traffic

10.1.3 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 applicant's FI (**Appendix Ib**), he has no adverse comment on the access arrangement to the Site. The applicant should seek approval from the relevant authority and relevant land owner(s) on the right of using the vehicular access as necessary.
- (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.

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

- (a) The 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.

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

He has no comment on the application. The applicant is reminded that obstruction to road access in the vicinity would not be tolerated.

Environment

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

- (a) He has no adverse comment on the application provided that it is used as the applied use for a temporary shop and services as a retail store and that no medium and heavy vehicles as well as no manufacturing and no workshop activities, as proposed by the applicant, will be involved.
- (b) No environmental complaint relating to the Site was recorded in the past 3 years.
- (c) 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” (the COP) to minimise potential environmental impacts on the surrounding areas.

Landscape

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

- (a) With reference to the aerial photo of 2021, there is no significant change in the landscape character for adjacent area since the last approved application (No. A/YL-MP/280). The applied use is not incompatible with the landscape character of the surrounding environment.
- (b) With reference to the site photos in November 2021, no existing vegetation was found within the Site. Further significant adverse landscape impact within the Site arising from the development is not anticipated. As such, she has no objection to the application from the landscape planning perspective.

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) The submitted FSIs proposal (**Drawing A-2**) is considered acceptable to his Department. The installation/maintenance/modification/repair work of FSIs shall be undertaken by a 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 D of FS.
- (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 and 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 (BA) should be obtained, otherwise they are unauthorised building works (UBW). An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with BO.
- (b) 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.
- (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 application from drainage operation and maintenance point of view.
- (b) The applicant implemented the drainage facilities on the Site under the last Application No. A/YL-MP/280. The current application is with the same site boundary. Should the application be approved by the Board, the applicant shall provide DSD for reference a set of the

latest record photographs showing the completed drainage works (including the internal condition of the drains) with corresponding photograph locations marked clearly on the approved drainage plan. DSD will inspect the completed drainage works jointly with the applicant with reference to the set of photographs.

- (c) The applicant should ensure and keep all drainage facilities on the Site under proper maintenance at all times.
- (d) His detailed comments are at **Appendix V**.

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

- (a) Director of Agricultural, Fisheries and Conservation;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Chief Engineer/Railway Development 2-2, Railway Development Office, HyD;
- (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 12.11.2021, the application was published for public comments. During the first 3 weeks of the statutory publication period which ended on 3.12.2021, a total of 7 public comments were received from local residents and individuals raising objection to/concerns about the application on the grounds that the development will result in adverse traffic impact, environmental pollution and increase in fire risk, thereby affecting the living quality and safety of the community; and there are concern about granting repeated renewal and non-compliance with the approval conditions by the applicant (**Appendix IV**).

12. Planning Considerations and Assessments

12.1 The application is for temporary shop and services use for a retail store for a period of 5 years at the Site which falls within an “O” zone 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. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Board. Although the applied use is not entirely in line with the planning intention of the “O” zone, DLCS has no objection to the application as there is no implementation programme for the planned open space at present. Approval of the application on a temporary basis would not frustrate the long term planning intention of the “O” zone.

- 12.2 According to the applicant, the proposed use under application is a retail store selling household products to serve the nearby residents. It is considered not incompatible with the surrounding land uses which comprise residential developments, temporary shop and service, plant nursery and open storage yards.
- 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. In this regard, DAFC has no comment on the application from nature conservation perspective.
- 12.4 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 paragraph 13.2 below. Concerning the traffic concern raised in the public comments, C for T has no adverse comment on the application. Regarding the concerns on the potential environmental nuisance generating from the temporary use being applied for, DEP advises that no environmental complaint relating to the Site was recorded in the past 3 years. DEP has no adverse comment on the application as long as it is used as the applied use for a temporary shop and services as a retail store and no medium and heavy vehicles, no manufacturing and no workshop activities. Non-compliance with any of the approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to mitigate any potential environmental impacts on the surrounding areas. Shorter compliance periods are recommended to closely monitor the progress of compliance with the approval conditions. Moreover, the applicant will be advised that should the applicant fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 12.5 There has been one previously approved application for the same temporary shop and service use for retail store at the Site as detailed in paragraph 6 above. During the past 10 years, the Committee approved a total of 21 applications for similar shop 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 were 7 public comments raising objection/concerns on the application as detailed in paragraph 11. The planning considerations and departmental comments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, 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 24.12.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle other than light goods vehicle is allowed to access the Site at all time during the planning approval period;
- (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 existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of as-built drainage plans and 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 24.3.2022;
- (f) the implementation of fire service installations 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 24.6.2022;
- (g) if any of the above planning conditions (a), (b), (c) or (d) 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;
- (h) if any of the above planning conditions (e) or (f) 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
- (i) 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 renewal of the planning 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 5.11.2021
Appendix Ia	FI received on 18.11.2021
Appendix Ib	FI received on 17.12.2021
Appendix II	Previous Application
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Fire Service Installations Proposal
Drawing A-3	Drainage Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos