

RNTPC Paper No. A/YL-MP/322
For Consideration by
the Rural and New Town
Planning Committee
on 14.1.2022

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-MP/322

<u>Applicant</u>	: New Market Development Limited
<u>Site</u>	: Lot 47 RP (Part) in D.D. 101, Mai Po, Yuen Long
<u>Site Area</u>	: About 11,530 m ²
<u>Lease</u>	: Block Government Lease (demised agricultural use)
<u>Plan</u>	: Approved Mai Po & Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
<u>Zoning</u>	: “Conservation Area” (“CA”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Agricultural Use (Farming) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary agricultural use (farming) for a period of 3 years. The Site is zoned “CA” on the OZP. According to the Notes of the OZP, there is no provision for ‘Agricultural Use (Farming)’ within “CA” zone. Nevertheless, temporary use or development of any land or building not exceeding a period of three years require planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied agricultural use (farming).
- 1.2 The Site is the subject of four previous applications (No. A/DPA/YL-MP/12 and 31 and A/YL-MP/252 and 277). The last application (No. A/YL-MP/277) for the same use and layout was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 1.2.2019. All the approval conditions

under the previous application have been complied with and the planning permission is valid until 1.2.2022.

- 1.3 According to the master layout plan (**Drawing A-1**) submitted by the applicant, there are four single-storey structures (not exceeding 2.6m in height with a gross floor area of 46.56m²). The four structures are used for caretaker's room, germination, storage and portable toilet respectively. The required 5m setback between the irrigation channel and the farming area as well as the u-channel will be kept and maintained.
- 1.4 The Site is accessible at its south-east via Mai Po Road (**Drawing A-1 and Plan A-2**). According to the submission, the farm is not open to the public and is used by the company's staff only. Shuttle bus (28-seater) service is provided for picking up/dropping off staff as well as their families from the Kam Sheung Road MTR station.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with planning justifications and plans received on 17.11.2021 (**Appendix I**)
 - (b) Further Information (FI) received on 29.12.2021 in response to departmental comments.* (**Appendix Ia**)

Remarks: * accepted and exempted from publication and recounting requirements.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form, planning justification and plans at **Appendix I**. They can be summarized as follows:

- (a) The applied use is temporary in nature and would not frustrate the long-term planning intention of the "CA" zone. The application is for renewal of the planning approval granted by the Committee and the applicant has complied with all the approval conditions.
- (b) Native species are to be maintained. Appropriate replacements of species will be included to improve biodiversity.
- (c) The farming is a constructive land management by keeping the Site productive and educational for all age groups.
- (d) The agriculture use is well-blended in with its vicinity.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ Inspection.

4. **Town Planning Board Guidelines**

4.1 According to the Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (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.

4.2 The Town Planning Board Guidelines for ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB PG-No. 34D) are relevant to this application. The relevant assessment criteria are extracted below:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

5. **Background**

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

6. **Previous Application**

- 6.1 The Site in part is the subject of four previous applications (Nos. A/DPA/YL-MP/12 and 31 and A/YL-MP/252 and 277) with two approved and two rejected (**Plan A-1**). Only a minor portion of the Site is covered by Application No. A/DPA/YL-MP/12.
- 6.2 The site forms part of two previous Applications No. A/DPA/YL-MP/12 and 31 for proposed residential developments which are not relevant to the current application.
- 6.3 Application Nos. A/YL-MP/252 (with a smaller scale) and 277 submitted by the same applicant for the same temporary agriculture use (farming) were approved with conditions by the Committee on 13.1.2017 and 1.2.2019 respectively for three years for the reasons that the proposed use was not entirely in conflict with the planning intention; the proposed use was not incompatible with surrounding areas; relevant departments consulted had no objection to or no adverse comment on the application. Details of the previous application are summarized in **Appendix II** and the location is shown on **Plan A-1**.
- 6.4 Compared with the last Application No. A/YL-MP/277, the current application is the same in terms of site area / boundary, applied use, site layout and major development parameters. All the approval conditions under Application No. A/YL-MP/277 have been complied with. The planning permission is valid until 1.2.2022.

7. **Similar Applications**

There is no similar application within “CA” zone on the OZP.

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

- 8.1 The Site is:
 - (a) partly used for agricultural use and partly covered with grass/trees;
 - (b) accessible from Mai Po Road; and
 - (c) within the WBA of Deep Bay Area.

8.2 The surrounding areas are mainly residential dwellings, ponds, parking of vehicles and pumping station:

- (a) to the west and north are active contiguous fish ponds within the WCA;
- (b) to the east is Mai Po Floodwater Pumping Station and further east are village areas of Mai Po Lo Wai and Mai Po San Tsuen, parking of vehicles, open storage yard and vacant land;
- (c) to the south and southwest are vacant land; and
- (d) to the southeast are residential dwellings, open storage yard and vacant land.

9. Planning Intention

The planning intention of the “CA” zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The “no-net-loss in wetland” principle is adopted for any change in use within this zone. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest.

10. Comments from Relevant Government Departments

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

Land Administration

10.1.1. Comments of the District Lands Officer / Yuen Long, Lands Department (DLO/YL, LandsD)

- (a) The Site comprises Old Scheduled Agricultural Lots 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.47 RP in D.D. 101 is covered by Short Term Waiver (STW) No. 4819 for the purpose of “Temporary Agricultural Use (Farming)”.

- (c) Should planning approval be given to the application, the STW holder(s) will need to apply to this office for modification of the STW conditions when appropriate. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Application(s) for any of the above 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 rent or fee, as may be imposed by LandsD.

Traffic

10.1.2. Comments of the Commissioner for Transport (C for T):

- (a) He has no adverse comment from traffic point of view.
- (b) No vehicle is allowed to access the Site during the planning approval period

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

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

Environment

10.1.4. Comments of the Director of Environmental Protection (DEP):

- (a) DEP has no objection.
- (b) The applicant is advised to note that should there be any change to the existing use, in particular that would lead to any recreational or residential uses, or involve any construction of new access roads, sewers, sewage treatment facilities, earthworks and building works, the applicant should confirm with EPD if the change(s) would involve any designated project under Schedule 2 of Environmental Impact Assessment Ordinance, in particular under Items P.1 and Q.1

and if affirmative, environmental permit is required before its construction and operation.

Landscape

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

- (a) No objection to the application from the landscape planning perspective.
- (b) With reference to the aerial photo, the Site is situated in an area of fish ponds, village houses, scattered tree groups and vacant lands. The proposed agricultural use is not incompatible with the surrounding environment.
- (c) With reference to the site photos, the proposed temporary farming was already in place and under operation. Existing trees of common species located at the periphery of the Site were generally in fair condition.
- (d) Since the Site is surrounded by existing trees, it is considered not necessary to impose a landscape condition should the Board approve the subject application. Advisory comments to the applicant are at **Appendix IV**.

Nature Conservation

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

- (a) She has no comment on the application. The Site falls within the “Conservation Area” zone and is being used for open-field cultivation of crops.
- (b) Should the application be approved, as the applicant claimed that the northern part is not for farming, the following approval conditions should be imposed:
 - (i) No farming activity shall be undertaken outside the proposed farming area at the northern part of the Site covering the existing watercourse at all times during the approval period; and
 - (ii) No paving of land on the Site shall be undertaken at all times during the approval period.

Drainage

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

- (a) He has no objection in principle to the proposed development.
- (b) The applicant implemented the drainage facilities on the Site under the last previous approved planning application No. A/YL-MP/277. The current application is in the same site boundary and same agricultural use as the previous application. In this respect, the applicant shall 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) All the proposed drainage facilities should be maintained by the applicant at his own cost. The applicant should ensure and keep all drainage works on the Site under proper maintenance at all times.
- (d) His detailed comments are at **Appendix IV**.

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 fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.

- (c) The applicant is reminded that if any 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.

10.2 The following government departments have no comment on / no objection to the application:

- (a) Chief Building Surveyor/New Territories West, Buildings Department
- (b) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Commissioner of Police;
- (e) Project Manager (West), West Development Office, CEDD; and
- (f) District Officer (Yuen Long), Home Affairs Department.

11. Public Comment Received During Statutory Publication Period

On 30.11.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.12.2021, one comment from an individual was received (Appendix III) raising concerns on the application's contribution to the enhancement of the value of "CA" zone.

12. Planning Considerations and Assessments

12.1 The application is for renewal of the planning permission for temporary agricultural use (farming) for a period of 3 years within an area zoned "CA". The planning intention of the "CA" zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The "no-net-loss in wetland" principle is adopted for any change in use within this zone. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest. The Site is currently partly used for the applied agricultural (farming) use and partly vegetated. According to the applicant, the applied use involves mainly open field cultivation. No filling or excavation of land, paving and building work would be involved. The applied use is considered not entirely in conflict with the planning intention for conservation purpose.

12.2 The Site is located in a rural environment surrounded by utility use and village cluster to its east and south (namely, the Mai Po Floodwater Pumping Station, Mai Po San Tsuen and Mai Po Lo Wai, and some vacant land) (**Plans A-2 and A-3**). To its north and west are the fish ponds falling within WCA. The applied use in form of open field cultivation will not encroach upon the existing

watercourse at the northern portion of the Site. Four low-rise structures were developed in accordance with previous planning permission (**Drawing A-1**). The applied use is considered not incompatible with the surrounding developments.

- 12.3 According to the TPB PG-No.12C, the Site falls within the WBA which is intended to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds. The applied use does not involve any land/pond filling, excavation, site formation, paving of land, stream diversion or tree felling works. Majority of the Site is used as farming area for open field cultivation, while the northern portion covering the existing watercourse will not be disturbed. DAFC has no adverse comment on the application from nature conservation perspective. Other concerned Government departments including C for T, DEP, CTP/UD&L, PlanD, CE/MN, DSD and D of FS have no adverse comments on traffic, environmental, landscape, drainage and fire safety aspects respectively, and their technical concerns/requirements could be addressed by approval conditions as recommended in paragraph 13.2 below.
- 12.4 The application is generally in line with the TPB PG-No. 34D in that there has been no material change in planning circumstances since the granting of the previous approval (Application No. A/YL-MP/277) for the same applied use, the applicant has complied with all the approval conditions, and the renewal of planning approval period sought is of the same time frame as the previous approval.
- 12.5 One public comment was received during the statutory application period objecting to the application as stated in paragraph 11 above. In this regard, relevant departments' comments as well as the planning assessments and considerations stated above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taking into account the public comment in paragraph 11, the Planning Department considers that the applied use could be tolerated for a further period of 3 years.
- 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 3 years and be renewed from 1.2.2022 until 1.2.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no vehicle is allowed to access the Site during the planning approval period;

- (b) no farming activity shall be undertaken outside the proposed farming area at the northern part of the Site covering the existing watercourse at all times during the approval period;
- (c) no paving of land on the Site shall be undertaken at all times during the approval period;
- (d) 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 1.8.2022;
- (e) in relation to (e) 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 1.11.2022;
- (f) the existing drainage facilities shall be maintained at all times during the planning approval period;
- (g) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or the Town Planning Board by 1.5.2022.
- (h) if the above planning condition (a), (b), (c) 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
- (i) if the above planning condition (d), (e) or (g) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

[The above approval conditions are similar to those under the last approved Application No. A/YL-MP/277, except those on deletion of the conditions on tree maintenance and the submission and implementation of drainage proposal, and the addition of maintenance of the existing drainage facilities implemented on-site based on the latest comments of CTP/UD&L, PlanD & CE/MN of DSD]

Advisory Clauses

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

13.3 There is no strong reason to reject the renewal application.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for the 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 applicants.

15. Attachments

Appendix I	Application Form with Planning Justifications and Plans Received on 17.11.2021
Appendix Ia	FI Received on 29.12.2021
Appendix II	Previous Application Covering the Site
Appendix III	Public Comment Received During the Statutory Publication Period
Appendix IV	Advisory Clauses
Drawing A-1	Master Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2022**