

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/342

<u>Applicant</u>	: Mr. TAM Chan Fai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 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
<u>Site Area</u>	: About 1,187 m ² (including 217 m ² of GL (about 18.3% of the Site))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Mai Po & Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
<u>Zoning</u>	: “Commercial/Residential” (“C/R”) (about 82.5% of the Site) “Residential (Group D)” (“R(D)”) (about 17.5% of the Site)
<u>Application</u>	: Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary eating place for a period of three years at the application site (the Site). The Site mainly falls within an area zoned “C/R” (about 987 m² / 82.5%) with a small portion falling within an area zoned “R(D)” (about 210 m² / 17.5%) on the OZP (**Plan A-1a**). According to the Notes of the OZP, while ‘Eating Place’ is a Column 1 use within the “C/R” zone which is always permitted, it is a Column 2 use in the “R(D)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by an existing restaurant without valid planning permission.
- 1.2 The Site (in whole or in part) is the subject of three previous applications for similar eating place use submitted by the same applicant as the current application. The last Application No. A/YL-MP/314 was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 24.9.2021 until 24.9.2024 which was then revoked on 24.3.2023 due to non-compliance with approval conditions. The current application is the same as

the last approved application in terms of site area and operation mode.

- 1.3 As shown on **Plan A-2**, the Site is accessible from Fairview Park Boulevard from its south. The applied development involves two structures (i.e. Structure B1 (2-storey, about 7 m in height) and Structure B2 (1-storey, about 4 m in height)) with a total gross floor area (GFA) of about 1,610 m² for eating place and rain shelter uses. The uncovered area of the Site will be used for circulation space and landscaping area (**Drawing A-1**). No parking spaces nor loading/unloading spaces will be provided within the Site. The eating place will be operated from 8:00 a.m. to 11:00 p.m. daily including public holidays with approximately 40 visitors per day and 10 staff members. The applicant has submitted a fire service installations (FSIs) proposal and a drainage proposal in support of the application.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on (**Appendix I**) 15.5.2023
 - (b) Further Information (FI) received on 7.7.2023* (**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 at **Appendix I**. 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 applied temporary use will not jeopardise the long term planning intention of the "R(D)" zone.
- (b) The applied eating place is to serve the nearby locals. No private car parking and fixed loading/unloading space is provided at the Site. Staff and visitors are required to access the Site by walking. Goods to support the operation of the Site are transported to the Site by light goods vehicle once a day. Hence, adverse traffic impact is not anticipated.
- (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' to control oily fume and cooking odour emissions generated from the applied use. Adequate air pollution control equipment is provided at the kitchen ventilation system for treating cooking fume emissions before being discharged to the outdoor environment, in order to fulfil the requirements of the Air Pollution control Ordinance.
- (d) The applied development would not create significant environmental, landscape and drainage impacts on the surrounding areas. Adequate mitigation measures including the submission of drainage proposal, landscape proposal and fire

service installations proposal are provided with the aim of minimizing nuisance to the existing environment.

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

The applicant is not a “current land owner” 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. Detailed information would be deposited at the meeting for Members’ inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

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

5. Previous Applications

- 5.1 The Site (in whole or in part) is the subject of three previous applications (No. A/DPA/YL-MP/3, A/YL-MP/218 and 314) submitted by the same applicant as the current application for similar eating place use.
- 5.2 Application No. A/DPA/YL-MP/3 for restaurant and bar 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 adjacent roads with a minor portion covering the current application site) for temporary eating place (outside seating accommodation of a restaurant) for a period of three years was rejected by the Committee on 6.9.2013 mainly for the reasons that the Site was a piece of GL with kerbside planting and drainage facilities maintained by Drainage Services Department and the applicant failed to demonstrate that the development would not obstruct the routine maintenance work, in particular for the drainage facilities at the Site.
- 5.4 The last Application No. A/YL-MP/314 submitted by the same applicant is the same as the current application in terms of use, site area/boundary, floor area, number of structures, site layout and operation mode was approved with conditions by the Committee on 24.9.2021 mainly on the considerations that the approval of the application would not frustrate the long term planning intention of the “R(D)” zone; and the development was not incompatible with the surrounding land uses. However, the planning permission was then revoked on 24.3.2023 due to non-compliance with approval conditions on submission and implementation of drainage proposal and FSIs proposal.
- 5.5 Details of the applications are summarised at **Appendix II**. Their locations are

shown on **Plan A-1b**.

6. Similar Application

During the past five years, there was no similar application within the same “R(D)” zone.

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

7.1 The Site is:

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

7.2 The surrounding areas are a mix of residential developments, commercial/retail uses, vehicle parks and workshops:

- (a) to its north across a nullah and Ha San Wai Road are a vehicle park under Application No. A/YL-MP/318, residential structures and the site of an approved residential development under Application No. A/YL-MP/287;
- (b) to its west are Kam Pok Road and a nullah;
- (c) to its south across Fairview Park Boulevard are retail shops, vehicle parks, a car beauty and repair workshop, an animal welfare centre and residential structures;
- (d) to its immediate east are a car repair workshop, a pet clinic, a shop and a residential development of Helene Terrace.

8. Planning Intentions

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

All government departments consulted have no objection to or no adverse comment on

the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III and IV** respectively.

10. Public Comment Received During Statutory Publication Period

On 23.5.2023, the application was published for public comments. During the statutory publication period, one public comment was received from an individual raising concerns on environmental hygiene and non-compliance with approval condition by the applicant on previous planning approval (**Appendix V**).

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary eating place for a period of three years at the Site which mainly falls within the “C/R” zone intended for commercial and/or residential developments and a selected range of commercial uses are always permitted to serve the local community. A minor portion of the Site falls within the “R(D)” zone which is intended for low-rise, low-density development subject to planning permission from the Board. According to the Notes of the OZP, ‘Eating Place’ is a Column 1 use within the “C/R” zone which is always permitted but it is a Column 2 use within the “R(D)” zone which requires planning permission from the Board. A major part (about 82.5%) of the eating place is within the “C/R” zone while a minor portion of the eating place at the northern portion within the “R(D)” zone (about 17.5%) is not entirely in line with the planning intention of “R(D)” zone. Nevertheless, the concerned “R(D)” portion is the road side area and there is no committed residential development at the Site. Approval of the application on a temporary basis for a period of three 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 and is considered not incompatible with the surrounding uses which mainly comprise residential developments and retail shops along Fairview Park Boulevard.
- 11.3 Concerned government departments, including C for T, DEP, CTP/UD&L of PlanD, CE/MN of DSD and D of FS have no objection to or no adverse comment on traffic, environmental, landscape, drainage and fire safety aspects respectively. Should the application be approved, technical requirements of D of FS and CE/MN of DSD are imposed through approval conditions in paragraphs 12.2 below. Besides, the applicant should be advised to follow “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 two previous approved applications for restaurant and bar or eating place and one previous rejected application for outside seating accommodation of the restaurant. The last application for the

same use as the current application was revoked due to non-compliance with approval conditions on submission and implementation of drainage proposal and FSIs proposal. The applicant has submitted a drainage proposal and a FSIs proposal to support the current application. D of FS and CE/MN, DSD has no adverse comments on the current application. Sympathetic consideration could be given to the application. The applicant will also be advised that should he fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.

- 11.5 There is one public comment raising objection to the application as stated in paragraph 10. The departmental comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taking into account the public comment mentioned in paragraph 10, 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 three years until 14.7.2026. 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 a revised 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 14.1.2024;
- (c) in relation to (b) above, the implementation of the revised 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 14.4.2024;
- (d) the submission of a revised 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 14.1.2024;
- (e) the implementation of the revised 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 14.4.2024;
- (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 condition (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 condition (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

Appendix I	Application Form with attachments received on 15.5.2023
Appendix Ia	FI received on 7.7.2023
Appendix II	Previous applications
Appendix III	Government departments' general comments

Appendix IV	Recommended advisory clauses
Appendix V	Public Comment
Drawing A-1	Layout plan
Plan A-1a	Location plan
Plan A-1b	Previous application plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
JULY 2023**