

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

APPLICATION NO. A/YL-MP/353

<u>Applicant</u>	: Fu Hop Yick Company Limited represented by Lanbase Surveyors Limited
<u>Site</u>	: Lots 5, 6, 7 S.A, 7 RP, 8 RP, 9 RP and 10 in D.D. 101, Mai Po, Yuen Long
<u>Site Area</u>	: About 2,177m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Mai Po & Fairview Park Outline Zoning Plan No. S/YL-MP/6
<u>Zoning</u>	: “Open Space” (“O”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Eating Place (Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary eating place (restaurant) for a period of three years at the application site (the Site) (**Plan A-1**) which falls within an area zoned “O” on the approved Mai Po & Fairview Park OZP No. S/YL-MP/6. According to the Notes of the OZP for “O” zone, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use under the approved planning application No. A/YL-MP/299 valid until 7.11.2023.
- 1.2 The Site (in whole or in part) is subject to nine previous applications for the same restaurant use (**Plan A-1b**). The last application No. A/YL-MP/299 submitted by the same applicant was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 23.10.2020 for a period of three years. All approval conditions had been complied with. The major parameters of the current application are the same as the last application.

- 1.3 The development involves one single-storey structure (not more than 6m in height) with a total gross floor area of not more than 230m² for restaurant and kitchen uses. 20 private car parking spaces and one loading/unloading bay are provided within the Site. The operation hours of the restaurant are 7:00 a.m. to 12:00 a.m. daily, including public holidays. The Site is accessible from Palm Springs Boulevard leading to Castle Peak Road – Mai Po through an ingress/egress (6m in width) provided at its southern boundary (**Plan A-2**).
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form and Supplementary Information (SI) (**Appendix I**)
received on 4.8.2023 and 9.8.2023 respectively
 - (b) Planning Statement (**Appendix Ia**)
 - (c) Further Information (FI) received on 28.8.2023* (**Appendix Ib**)
 - (d) FI received on 13.9.2023 and 18.9.2023* (**Appendix Ic**)

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 Planning Statement and FIs at **Appendices Ia to Ic** which can be summarised as follows:

- (a) The Site is the subject of eight previously approved planning applications for the same temporary restaurant use. The major parameters of the current application are the same as the previous application in which all approval conditions had been complied with and the drainage facilities and fire services installations would remain unchanged. Without major change of planning circumstances, it is considered that planning permission should be allowed to be renewed for the applied use to serve the neighbourhood.
- (b) The development is considered compatible with the adjacent temporary commercial uses approved by the Board in the same “O” zone.
- (c) Due to a number of large-scale residential developments located in the district, there is a high demand for local catering services. The development could meet the local needs.
- (d) Additional traffic, drainage and environmental impacts are not anticipated.
- (e) The applicant would follow the layout plan of the previously approved application and there will be no unauthorised building structures at the Site.

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.

4. **Town Planning Board Guidelines**

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) and ‘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 the application. Relevant extracts of the Guidelines are at **Appendix II**.

5. **Background**

The Site is not subject to active planning enforcement action.

6. **Previous Applications**

6.1 The Site (in whole or in part) is the subject of nine previous applications, of which application No. A/YL-MP/10 for proposed restaurant was rejected by the Committee in 1996 mainly for the reasons that the development was not in line with the planning intention of the “O” zone and would adversely affect the development of the area for open space uses; there was insufficient information to demonstrate that the development will have insignificant impact on the environment, ecology, drainage, sewerage and traffic in the area; and the approval of the application would set an undesirable precedent for similar applications.

6.2 The remaining eight applications (No. A/YL-MP/22, 125, 153, 171, 194, 237, 265 and 299) for restaurant use were approved by the Committee between 1997 and 2020 for a period of three years or five years mainly on the considerations that the developments would not frustrate the long term planning intention of the “O” zone; the developments were considered not incompatible with the surrounding land uses; and the technical concerns of relevant departments could be addressed by relevant approval conditions. The planning permissions of applications No. A/YL-MP/125, and 153 were subsequently revoked due to non-compliance with approval conditions. The last application No. A/YL-MP/299 was submitted by the current application and all approval conditions have been complied with.

6.3 Details of the previous applications are summarised at **Appendix III** and their

locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 During the past five years since 2018, there have been two similar applications for eating place use within the “O” zones on the OZP, which were all approved by the Committee in 2020 and 2023 mainly on the consideration as stated in paragraph 6.2 above.
- 7.2 Details of the similar applications are summarised at **Appendix III**. Their location are shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) accessible from Palm Springs Boulevard leading to Castle Peak Road – Mai Po;
 - (b) hard paved and currently used for the applied use with valid planning permission under application No. A/YL-MP/299 until 7.11.2023; and
 - (c) located within the Wetland Buffer Area (WBA) of Deep Bay Area.
- 8.2 The surrounding areas are rural in character intermixed with shops, residential dwellings and open storage yards:
- (a) to its immediate north is a real estate agency under approved application No. A/YL-MP/325. To its further north is an open storage yard for construction material;
 - (b) to its east are Castle Peak Road – Mai Po, San Tin Highway and San Tam Road;
 - (c) to its south and southwest across Palm Springs Boulevard is a real estate agency under approved application No. A/YL-MP/351, a metal retail shop under approved application No. A/YL-MP/319, open storage yards, residential dwellings, and a pond; and
 - (d) To its immediate west are some residential dwellings. To its further west across Palm Canyon Drive is the residential development of Royal Palms.

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 Apart from the Government department as set out in paragraph 10.2 below, other 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 IV and V** respectively.

10.2 The following Government departments have following comments on the application and their views on the application are summarised as follows:

Land Administration

10.2.1 Comments from the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) he has adverse comment on the application;
- (b) the Site comprises Old Schedule 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;
- (c) Lot No. 10 in D.D. 101 is covered by Short Term Waiver No. 4280 to permit structures for the propose of ‘Temporary Restaurant’; and
- (d) he has grave concerns given that there are unauthorised building works (UBWs) and/or uses on Lot Nos. 6, 7 S.A and 7 RP in D.D. 101 which are already subject to lease enforcement actions according to case priority. The lot owner(s) should remedy the lease breaches as demanded by LandsD.

Open Space Provision

10.2.2 Comments from the Director of Leisure and Cultural Services (DLCS):

- (a) he has no in-principle objection to the application since the application is for three years only; and
- (b) there is no plan to development the Site into public open space at present.

11. Public Comment Received During Statutory Publication Period

On 11.8.2023, the application was published for public comment. During the statutory publication period, one public comment was received from an individual raising concern that the applied restaurant use, which is temporary in nature, has been in operation for

decades (**Appendix VI**).

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning approval for temporary eating place (restaurant) for a period of three years. The Site falls within the “O” zone on the OZP which 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. Although the applied restaurant use is not entirely in line with the planning intention of the “O” zone, approval of the application on a temporary basis for three years would not frustrate the long-term intention of the “O” zone. DLCS advises that there is no plan to develop the Site into a public open space at present and has no objection to the application.
- 12.2 The applied restaurant use with one single-storey structure (6m in height) is considered not incompatible with the surrounding land uses which mainly comprise shops, residential dwellings and open storage yards. It could also provide catering services to the nearby residents and workers.
- 12.3 The renewal application is generally in line with the TPB PG-No. 34D in that there has been no major change in planning circumstances, adverse planning implications arising from the renewal of the planning approval are not envisaged, all the approval conditions under the previous approval had been complied with, and the three-year approval period sought is the same as the previous application.
- 12.4 The Site falls within the WBA of the TPB PG-No.12C and the guidelines specify that planning applications for temporary uses are exempted from the requirement of an Ecological Impact Assessment. Director of Agriculture, Fisheries and Conservation has no comment on the application.
- 12.5 DLO/YL, LandsD has adverse comments on the application in view of the existing UBWs and/or unauthorised uses at the Site. In this regards, the applicant states that the layout plan of the previously approved application would be followed and there will be no unauthorised building structures at the Site. Relevant advisory clause on need for application to LandsD for regularisation for UBWs is also recommended. Other concerned government departments, including Commissioner for Transport, Director of Environmental Protection, Chief Engineer/Mainland North, Drainage Services Department and Director of Fire Services have no objection to the application and their technical requirements are suggested to be imposed through approval conditions as recommended in paragraph 13.2 below. Besides, the applicant will be advised to follow the revised ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by the Environmental Protection Department to mitigate any potential environmental impacts on the surrounding areas.
- 12.6 The Site is the subject of eight previous approvals for the same use. Besides, the Committee has approved two similar applications for temporary eating place use

within the “O” zones on the OZP in the past five years as detailed in paragraph 7 above. Approval of the current application is in line with the previous decisions of the Committee.

- 12.7 Regarding the public comment raising concerns on the application as detailed in paragraph 11 above, the departmental comments and planning assessment above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments 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 3 years and be renewed from 8.11.2023 to 7.11.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 12:00 a.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle without valid licence issued under the Road Traffic Ordinance is allowed to be parked/stored on the Site at any time during the planning approval period;
- (c) no medium or heavy goods vehicle (i.e. exceeding 5.5 tonnes) including container trailer/tractor as defined in the Road Traffic Ordinance is allowed to ~~the~~ **be parked /store stored** on the Site at anytime 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) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (g) if any of the above planning condition (a), (b), (c), (d), (e) 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) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

[The above approval conditions are similar to those under the last approved Application No. A/YL-MP/299 except those on deletion of the maintenance of the paving and boundary fencing based on the latest requirement of Planning Department.]

Advisory clauses

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

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

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 and SI received on 4.8.2023 and 9.8.2023 respectively
Appendix Ia	Planning Statement
Appendix Ib	FI received on 28.8.2023
Appendix Ic	FI received on 13.9.2023 and 18.9.2023
Appendix II	Relevant Extracts of TPB PG-No. 12C and 34D
Appendix III	Previous and similar applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comment
Drawing A-1	Layout plan
Drawing A-2	Floors, sections and elevations plan
Plan A-1	Location plan with previous and similar applications

Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2023**