

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/354

<u>Applicant</u>	: Mr. TAM Chan Fai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 3250 S.B ss.16 RP and 3250 S.B ss.17 RP in D.D. 104, Mai Po, Yuen Long
<u>Site Area</u>	: About 1,571m 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>	: “Residential (Group D)” (“R(D)”)
<u>Application</u>	: Temporary Shop and Services and Public Vehicle Park for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services and public vehicle park (PVP) for a period of three years (**Plan A-1**). The Site falls within an area zoned “R(D)” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. According to the Notes of the OZP for “R(D)” zone, ‘Shop and Services’ and ‘Public Vehicle Park (excluding container vehicle)’ are Column 2 uses which require planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of a previous application (No. A/YL-MP/318) which was submitted by the same applicant for proposed temporary shop and services and public vehicle park for a period of three years, and was approved by the Rural and New Town Planning Committee (the Committee) on 26.11.2021. However, the planning permission was revoked on 26.8.2023 due to non-compliance with approval conditions on implementation of the fire service installations (FSIs) and drainage proposals. The Site is currently used for the applied use without a valid planning permission.

- 1.3 The applied uses, with a gross floor area (GFA) of about 555m², involve five structures of 1 to 2 storeys (3m to 7m) for site office, shop and services, store room and rain shelter uses (**Drawing A-1**). 23 private car parking spaces (including two for staff use) and one loading/unloading (L/UL) space for light goods vehicle (LGV) are provided at the Site. There will be about 40 visitors per day and 13 staff members would be stationed on the Site. The operation hours of the shop and services are from 9:00 a.m. to 10:00 p.m. daily including public holidays, whereas the PVP will be operated 24 hours daily including public holidays. The Site is accessible from Kam Pok Road leading to Fairview Park Boulevard through an ingress/egress provided at its western boundary (**Plan A-2**).
- 1.4 As compared to the previous application, the major development parameters of the applied uses are largely the same, except a slight reduction in total GFA from 609m² to 555m². Besides, there is a slight adjustment to the operation hours for the shop and services and PVP.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form and Supporting Statement received on 8.8.2023 (**Appendix I**)
 - (b) Further Information (FI) received on 11.9.2023 and 13.9.2023* (**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 **Appendices I and Ia**. They can be summarised as follows:

- (a) The 'shop and services' and 'public vehicle park' are Column 2 uses within the "R(D)" zone. The temporary application will not jeopardise the long term planning intention of the "R(D)" zone. The shop and services at the Site will include uses such as retail shop, convenient store, fast food shop, clinic, real estate agency, etc. which are interchangeable, whereas the PVP is for private cars. The applied use could serve the nearby locals.
- (b) The applicant has made endeavours to comply with the approval conditions under the previous application. However, it is unable to comply with the approval conditions due to insufficient time and difficulty to identify a suitable contractor to implement the accepted FSIs and drainage proposals. Nevertheless, the accepted FSIs and drainage proposals are submitted in the current application. The applicant will make effort to implement the said FSIs and drainage proposal upon approval of the current application.

- (c) As regards the structures and uses on-site, the applicant will submit Short Term Waiver (STW) applications to LandsD accordingly and no structure is for domestic use.
- (d) The Site is accessible from Fairview Park Boulevard via Kam Pok Road. Sufficient space is provided for vehicle manoeuvring to/from and within the Site to ensure no queuing and turning back outside the Site. No medium or heavy goods vehicles, including container trailers/tractors is allowed to be parked/stored on or enter/exit the Site. Therefore, adverse traffic impact is not expected.
- (e) The development will not create significant adverse landscape and drainage impacts to the surrounding areas. Besides, 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) during operation of the applied use and will follow the Professional Persons Environmental Consultative Committee Practice Notes (ProPECCPNs) for sewage treatment at the Site to minimise adverse environmental impacts and nuisance to the surrounding area.

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. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

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

5. Previous Application

5.1 The Site is the subject to one previous application (No. A/YL-MP/318) for the same use submitted by the same applicant which was approved by the Committee in 2021 on the considerations that temporary approval of the proposed development would not frustrate the long term planning intention of the "R(D)" zone; the proposed development could serve the nearby locals and it was not considered incompatible with the surrounding land uses; and relevant departments had no objection or adverse comment on the application. The planning permission, however, was revoked on 26.8.2023 due to non-compliance with approval conditions on implementation of the FSIs and drainage proposals by the applicant.

5.2 Details of the application are summarised at **Appendix II**.

6. Similar Application

During the past five years, there was no similar planning application for shop and services and PVP within the same “R(D)” zone on the OZP.

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

7.1 The Site is:

- (a) accessible from Kam Pok Road leading to Fairview Park Boulevard from its west; and
- (b) currently occupied by the applied use without a valid planning permission.

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 Park Boulevard:

- (a) to its immediate north is the site of an approved residential development under application No. A/YL-MP/287;
- (b) to its immediate east are residential dwellings. To its further east is an open storage of construction materials, parking of tractors and vehicles;
- (c) to its immediate south across Ha San Wai Road and an adjoining nullah are a temporary restaurant under application No. A/YL-MP/342, vehicle repair workshop, pet clinic, shops and the residential development of Helene Terrace within the “Commercial/Residential” zone. To its further south is the Fairview Park Boulevard; and
- (d) to its west across Kam Pok Road are a nullah and vacant land within the “Recreation” zone.

8. Planning Intention

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 Apart from the government departments as set out in paragraph 9.2 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 III and IV** respectively.

9.2 The following government departments have the following comments on the

application.

Land Administration

9.2.1 Comments of 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 contain the restriction that no structures are allowed to be erected without the prior approval of the government.
- (c) He has grave concern given that there are unauthorised building works and/or uses on the concerned lots 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.
- (d) Should planning approval be given to the application, the lot owner(s) will need to immediately apply to LandsD to permit the structures to be erected or regularise any irregularity on site, if any. Besides, given the applied 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 of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) 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 fees, as may be imposed by LandsD.

Building Matters

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

- (a) There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site. If the existing structures are erected on leased land without approval of BA, they are unauthorised building works (UBW) under BO and should not be designated for the 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.
- (b) His advisory comments are at **Appendix IV**.

10. Public Comment Received During Statutory Publication Period

On 15.8.2023, the application was published for public comment. During the statutory publication period, one public comment was received from an individual providing comment that the application should not be approved as the planning conditions pertaining to the previous application had not been complied with by the applicant (**Appendix IV**).

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services and PVP for a period of 3 years at the Site in the “R(D)” zone which is intended for low-rise, low-density residential developments subject to planning permission from the Board. The applied uses are not in line with the planning intention of “R(D)” zone. Nevertheless, there is no committed residential development at the Site which is currently occupied by the applied use. 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 shop and services and PVP for private cars would serve the nearby locals, which is considered not incompatible with the surrounding land uses including residential developments and retail shops and along Ha San Wai Road and Fairview Park Boulevard. Commissioner for Transport supports the application from traffic engineering perspective for meeting the public demand of car parking spaces.

11.3 DLO/YL, LandsD has adverse comment on the application as there are unauthorised building works/uses on-site which are subject to lease enforcement actions. The applicant has advised that he will submit STW applications to LandsD for the concerned structures accordingly. Other relevant government departments including Director of Environmental Protection, Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD), Director of Fire Services (D of FS) and Chief Town Planner/Urban Design and Landscape, Planning Department have no objection to or no adverse comment on the application. Technical requirements of the concerned departments are suggested to be imposed through approval conditions as recommended in paragraph 12.2 below. Besides, the applicant will be advised to follow the latest ‘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.

11.4 The Committee has approved a previous application (No. A/YL-MP/318) in 2021 for the same use at the Site submitted by the same applicant. As compared with the previous application, the current application involves slight reduction of GFA and minor adjustment of the operation hours for the shop and services and PVP. Approval of the current application is in line with the previous decision of the Committee. While the previous application was revoked on 26.8.2023 due to non-compliance with approval conditions on the implementation of FSIs and drainage proposals, the applicant has submitted a FSIs proposal and a drainage

proposal to support the current application, and have been accepted by D of FS and CE/MN, DSD respectively. Should the Committee decide to approve the application, the applicant will be advised that should the applicant fail to comply with the approval condition(s) again resulting in the revocation of the planning permission, sympathetic consideration may not be given by the Committee to any further application.

- 11.5 Regarding the public comment as detailed in paragraph 10, the planning assessment 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 22.9.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 10:00 p.m. and 9:00 a.m. including public holidays for the shop and services, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the implementation of *the accepted* 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 22.3.2024;
- (d) the implementation of the *accepted* 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 22.3.2024;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) if any of the above planning conditions (a), (b) or (e) 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
- (g) if any of the above planning conditions (c) or (d) 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 and Supporting Statement received on 8.8.2023
Appendix Ia	FI dated 11.9.2023 and 13.9.2023
Appendix II	Previous Application
Appendix III	Government departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comment
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos