

RNTPC Paper No. A/YL-NTM/413
For Consideration by
the Rural and New Town
Planning Committee
on 16.4.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/413

Applicant : Empire Motor Limited

Site : Lots 2757 RP (Part), 2758 RP (Part), 2759 (Part), 2760, 2761 S.A (Part), 2761 RP (Part) and 2762 (Part) in D.D. 102 and Adjoining Government Land (GL), Ngau Tam Mei, Yuen Long

Site Area : About 869 m² (including 24m² (about 2.8%) of GL)

Land Status : Block Government Lease (demised for agricultural use)

Plan : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. A/YL-NTM/12

Zoning : “Open Storage” (“OS”)

Application : Temporary Shop and Services (Sales Office for Sale of Goods Vehicles) 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 (sales office for sale of goods vehicles) for a period of 3 years. The Site falls within an area zoned “OS” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12 (**Plan A-1a**). 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).
- 1.2 The Site is the subject of 7 previous applications (No. A/YL-NTM/96, 163, 228, 252, 291, 336 and 344) (**Plan A-1b**) approved by the Rural and New Town Planning Committee (the Committee) between 2000 and 2017. Except for the first application (No. A/YL-NTM/96) which was submitted by another applicant for a different use, the other 6 applications (No. A/YL-NTM/163, 228, 252, 291, 336 and 344) were submitted by the current applicant for similar uses as the current application. For the last 2 applications (No. A/YL-NTM/336 and 344) which were for the same use approved on 27.5.2016 and 14.7.2017, the planning approvals were revoked on 8.12.2017 and 14.12.2019 respectively due to non-compliance with the approval conditions. The Site is now occupied by the applied use without planning permission.

- 1.3 According to the layout plan (**Drawing A-1**) submitted by the applicant, ingress/egress (11m wide) to the Site is located at the northeastern site boundary (**Plan A-2**), which is accessible to Kwu Tung Road via local access. There are 2 structures provided in the western part of the Site with a total floor area of about 234m² (including a 2-storey container converted structure for site office and store room, and a 5.3m high porch) which cover about 21% of the Site. The remaining area at the southeastern portion of the Site is for car display including 3 spaces for light goods vehicles (LGV) (20m x 7m), 2 spaces for medium goods vehicles (MGV) (11m x 11m) and 1 space for heavy goods vehicles (HGV) (18m x 11m). No parking spaces is provided within the Site. The operation hours are between 8:00 a.m. and 7:00 p.m. on Mondays to Saturdays (closed on Sundays and public holidays).
- 1.4 The current application is largely the same as the last approved Application No. A/YL-NTM/344 except for the reduction in site area from 980m² to 869m² and corresponding changes in the site layout and that 3 HGV and 2 MGV display spaces were provided in the last application. There is no change in terms of applied use, total floor area, number of structures, height of the structures and operation hours.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 16.2.2021. **(Appendix I)**
 - (b) Further Information (FI) received on 31.3.2021 providing a Fire Service Installations (FSIs) proposal and 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 **Appendices I to Ia**. They can be summarised as follows:

- (a) The Site is suitable for the applied use which has been in operation for over 15 years. The site area of the current application is smaller than the previous application (No. A/YL-NTM/344) as the business dropped by over 50% in 2020 due to COVID-19.
- (b) The development helps the community by providing employment and commercial activities. There has been no adverse impact on others during the business operation.
- (c) The Site will only be used for sales of goods vehicles with parking spaces (i.e. 1 HGV space, 2 MGV spaces and 3 LGV spaces) serving just for vehicle display purpose. No any other parking of vehicles (including staff/visitor parking) will be provided.

- (d) The traffic flow generated from the Site is minimal. According to the applicant's estimation (**Appendix Ia**), there will only be about 4 vehicles going in/out the Site per week. No adverse traffic impact will be resulted. Also, customers can access the Site by public transport.
- (e) The Committee approved the previous application (No. A/YL-NTM/344) with conditions in 2017. Approval conditions on submission of drainage proposal, and submission and implementation of tree preservation and FSIs proposals were complied with. The previous planning permission was revoked as the drainage works is complicated and the applicant's contractor was unable to finish the work by the compliance deadline. To support the current application, the applicant has submitted a tree preservation proposal, drainage proposal and FSIs proposal, and undertakes to comply with all approval conditions should the application be approved.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "current land owner" and 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. For the GL portion of the Site, the "Owner's Consent/ Notification" requirements are not applicable.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Guidelines (TPB PG-No. 13F) for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' is relevant to this application (**Appendix II**). According to TPB PG-No. 13F, 'Open Storage' uses relate to activities carried out on a site for which the greater part of the site (generally assumed to be more than 50%) is uncovered and used for storage, repair or breaking other than container-related uses. Although the current application applies for shop and services involving display and sale of vehicles, some 79% of the site area is open area used for storage of vehicles. Since its operation is akin to an open storage, it is considered that TPB PG-No. 13F should apply.
- 4.2 The Site falls within Category 1 areas under the guidelines. Favourable consideration will normally be given to applications within these areas, subject to no major adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments should be submitted if the proposed uses may cause significant environmental and traffic concerns.

5. **Background**

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

6. **Previous Applications**

- 6.1 The Site is involved in 7 previous applications (No. A/YL-NTM/96, 163, 228, 252, 291, 336 and 344) which were approved by the Committee between 2000 and 2017 (**Plan A-1b**).
- 6.2 Application No. A/YL-NTM/96 was submitted by a different applicant for lorry and container trailer park at a larger site area, which was approved in 2000 for 3 years, mainly because the site might be affected by the West Rail project.
- 6.3 The other 6 applications were submitted by the current applicant for similar uses with varied site areas. Application No. A/YL-NTM/163 for temporary storage of goods vehicle for sale with sales office was approved in 2004. All approval conditions were complied with.
- 6.4 Applications No. A/YL-NTM/228, 252 and 291 for temporary shop and services (sales office for sale of goods vehicles) were approved in 2008 to 2013. While planning approval of Application No. A/YL-NTM/228 was revoked on 5.12.2019 due to non-compliance with the condition relating to submission of FSIs proposal, the applicant had complied with all approval conditions of Applications No. A/YL-NTM/252 and 291.
- 6.5 Application No. A/YL-NTM/336 for the same applied use for 3 years was approved on 27.5.2016 for a period of 1 year to avoid imposing constraints on the proposed Northern Link (NOL) with recommended implementation window from 2018 to 2023. However, the planning approval was revoked on 8.12.2016 due to non-compliance of the approval conditions on implementation of tree preservation and FSIs proposals.
- 6.6 The last Application No. A/YL-NTM/344 for the same applied use was approved on 14.7.2017 as the application was generally in line with the planning intention and TPB PG-No. 13E; the applied use was compatible with the land uses of the surrounding areas; there was generally no adverse departmental comment; and departmental comments could be addressed by imposing approval conditions. Approval conditions relating to submission and implementation of tree preservation proposal and FSIs, and submission of updated drainage proposal had been fulfilled, but the planning approval was revoked on 14.12.2019 due to non-compliance with the approval condition regarding implementation of the drainage proposal.
- 6.7 Details of the applications are at **Appendix III**.

7. Similar Application

There is no similar application for shop and services use within the subject “OS” zone on the OZP.

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

8.1 The Site is:

- (a) currently used for the applied use; and
- (b) accessible from Kwu Tung Road via a local access to the north.

8.2 The surrounding areas have the following characteristics:

- (a) to its north is a local track. Across the local track are vacant land, office, open storage of recycling materials and two temporary vehicle parks (including container vehicles) with planning approvals (No. A/YL-NTM/380 and 410).
- (b) to its west are storages, open storage yards for construction and recycling materials, workshop and a few residential dwellings (the nearest one is about 11m away);
- (c) to its south are some unused land and residential dwellings; and
- (d) to its east and southeast across Kwu Tung Road are unused land, warehouse, parking of vehicles, container trailers and trailers, and open storage of transformers.

9. Planning Intention

The planning intention of the “OS” zone is primarily for the provision of land for appropriate open storage uses and to regularise the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses that cannot be accommodated in conventional godown premises.

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, LandsD (DLO/YL, LandsD):

- (a) The Site comprises GL and 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.
- (b) No permission is given for occupation of GL of about 24m² in area (subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (c) The private land Lots No. 2759 and 2760 in D.D. 102 are covered by Short Term Waivers (STWs) No. 3761 and 3762 respectively to permit structures for the purpose of "Temporary Shop and Services (Sales Office for Sale of Goods Vehicles)".
- (d) Should planning approval be given to the subject application, the STW holder(s) will need to immediately apply to his office for modification of the STW conditions where appropriate. Moreover, the lot owner(s) of the lot(s) without STW will need to apply to his office for permitting the structures to be erected or regularise any irregularity on site, if any. The applicant has to either exclude the remaining GL from the Site or apply for a formal approval prior to the actual occupation of the remaining GL. Besides, given the applied use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Applications 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 fee, as may be imposed by LandsD.

Traffic

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

- (a) The Site is connected to Kwu Tung Road via a section of 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) As there is no information about the vehicular access at the private lot(s) to the Site, the applicant should seek the relevant land owner(s)' consent on the right of using the vehicular access.
- (c) Should the application be approved, no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

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

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

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, HyD (CE/RD 2-2, RDO, HyD):

- (a) The Site falls within the Administrative Route Protection (ARP) boundary of the planned NOL.
- (b) Considered the temporary nature of the application, the impact on NOL pre-construction (e.g. geotechnical investigation) and construction works is tolerable within 3 years.
- (c) Should the above application be approved, access, occupancy and usage of the portion of GL within the application should be allowed for MTR Corporation Limited and their contractor(s) to carry out works.
- (d) The applicant should note that the alignment and the ARP boundary of NOL may be subject to further amendments.

Environment

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

- (a) He notes the application indicates 3 parking spaces for MGVs/HGVs, which is considered as “heavy vehicle”. He does not support the application as there are sensitive uses in the vicinity of the Site (the closest residential dwelling being about 11m to its west) **(Plan A-2)** and environmental nuisance is expected.
- (b) No environmental complaint pertaining to the Site has been received over the past 3 years.
- (c) Should the application be approved, the applicant is advised to follow the environmental mitigation measures as recommended in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP) in order to minimise the potential environmental impacts on the surrounding areas.

Landscape

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

- (a) The Site falls within “OS” zone which is not a landscape sensitive zoning and “Category 1” areas according to TPB-PG No. 13F. No significant landscape impact is envisaged.
- (b) Based on his site record, 6 no. of *Ficus microcarpa* (細葉榕) in fair to good condition are found in the Site. Should the application be approved, all existing trees within the Site should be maintained satisfactorily at all times during the approval period.
- (c) The applicant is reminded that approval of the application does not imply approval of tree works such as pruning, transplanting and felling. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal where appropriate.

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 application from the drainage operation and maintenance point of view.
- (b) The drainage proposal submitted by the applicant is unacceptable. Catchpit should be provided at the northwestern corner of the Site. The applicant should make re-submission to address his comments, as detailed in **Appendix V**.
- (c) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (d) No public sewerage maintained by CE/MN, DSD is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (e) The applicant is reminded that the proposed drainage works as well as the site boundary should not cause encroachment upon areas outside his jurisdiction.
- (f) The applicant should consult DLO/YL regarding all the proposed drainage works outside the site boundary in order to ensure unobstructed discharge from the Site in future.
- (g) All the proposed drainage facilities should be constructed and maintained by the applicant at his own cost. The applicant should

ensure and keep all drainage facilities on site under proper maintenance during occupancy of the Site.

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) 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 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) There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site. If the existing structures (not being a New Territories Exempted Houses) are erected on leased land without the approval of BA, they are unauthorised building works (UBW) under BO and should not be designated for any proposed use under the application.
- (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**.

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

application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Commissioner of Police;
- (c) Project Manager (West), Civil Engineering and Development Department (CEDD);
- (d) Head of Geotechnical Engineering Office, CEDD; and
- (e) District Officer (Yuen Long).

11. Public Comments Received During Statutory Publication Period

On 23.2.2021, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period which ended on 16.3.2021, 2 public comments were received from individuals (**Appendix IV**) objecting to the application on the grounds that the application would induce pollution, fire risk and affect the safety and living quality of the villagers; and the Site is subject to repeated revocation of planning approvals.

12. Planning Considerations and Assessments

- 12.1 The application is to seek planning permission to continue to use the Site within “OS” zone for temporary shop and services (sales office for sale of goods vehicles) for a period of 3 years. Though the application is for ‘shop and services’ use, it is akin to open storage of goods vehicles as the open area used for storage of vehicles accounts for 79% of the site area. The applied use is generally in line with the planning intention of the “OS” zone, which is intended primarily for the provision of land for appropriate open storage uses and to regularise the already haphazard proliferation of open storage uses. The applied use is considered compatible with the surrounding land uses which are mostly storages/open storages, container vehicle park and workshop (**Plans A-2 and A-3**).
- 12.2 The Site falls within Category 1 areas under TPB PG-No. 13F where favourable considerations will normally be given to the application. The development is in line with TPB PG-No. 13F in that there are generally no adverse comments from the concerned Government departments including C for T, CE/MN of DSD, D of FS and CTP/UD&L of PlanD from traffic, drainage, fire safety and landscape perspectives. Technical requirements of CE/MN of DSD, D of FS and C for T can be addressed by imposing the approval conditions recommended in paragraphs 13.2 (d) to (i) below should the Committee decide to approve the application. While DEP does not support the application in view of the potential environmental nuisances as the applied use involves heavy vehicles and there are sensitive receivers nearby (the nearest residential dwelling is about 11m to the west of the Site (**Plan A-2**)), no environmental complaint against the Site was received by DEP in the past 3 years. To address DEP’s concern, approval conditions restricting the operation hours and activities are recommended in paragraphs 13.2 (a) to (c) below. Besides, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest COP to mitigate

potential environmental impacts on the surrounding areas.

- 12.3 The Committee has approved 7 previous applications at the Site as set out in paragraph 6. Permission has been granted to the current applicant for similar/same uses with varied site boundaries since 2004. Approval of the last two applications (No. A/YL-NTM/336 and 344) were revoked due to non-compliance with approval conditions. For Application No. A/YL-NTM/336, the applicant failed to complete the tree preservation and FSIs works within specified time. In the subsequent application (No. A/YL-NTM/344), the applicant had fulfilled the tree preservation and FSIs conditions and submitted an updated drainage plan to DSD's satisfaction, but the approval was revoked due to non-compliance with the implementation of the drainage proposal due to complicated works involved as claimed by the applicant. In the current application, the applicant has included drainage, FSIs and tree preservation proposals to support the application. While CE/MN of DSD considers the drainage proposal not acceptable, he has no objection to the current application. D of FS and CTP/UD&L of PlanD also have no objection to the application. Sympathetic consideration may therefore be given to the current application. However, shorter compliance periods are recommended to closely monitor the progress of compliance of the approval conditions if the current application is approved. 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 would not be given to any further application.
- 12.4 Two objecting public comments were received during the statutory public inspection period of the application as detailed in paragraph 11. The planning assessment 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 3 years until 16.4.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no cutting, dismantling, cleansing, repairing and workshop activity, including container repair and vehicle repair is allowed on the Site during the planning approval period;
- (b) no operation between 7:00 p.m. and 8:00 a.m. on Monday to Saturday, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) no vehicle is allowed to queue back to or reserve onto/from public road at any time during the planning approval period;
- (e) the submission of revised drainage proposal 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 16.7.2021;
- (f) in relation to (e) above, the implementation of 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 16.10.2021;
- (g) the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.7.2021;
- (i) in relation to (h) above, the implementation 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 16.10.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d) and (g) 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
- (k) if any of the above planning conditions (e), (f), (h) or (i) 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 V**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' consideration:

the development is not in line with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13F) in that there is adverse comment from concerned government department and that no technical assessment has been submitted to demonstrate that the development would not have adverse environmental impact on the surrounding sensitive receivers.

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 received on 16.2.2021
Appendix Ia	FI received on 31.3.2021
Appendix II	Relevant Extracts of TPB PG-No. 13F
Appendix III	Previous Applications
Appendix IV	Public comments
Appendix V	Recommended Advisory Clauses
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
APRIL 2021**