

RNTPC Paper No. A/YL-PH/879
For Consideration by
the Rural and New Town
Planning Committee
on 30.4.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/879

- Applicant** : Chief Force Limited
- Site** : Lots 2874, 2875 (Part), 2894 (Part) and 2895 (Part) in D.D.111 and Adjoining Government Land, Pat Heung, Yuen Long, New Territories
- Site Area** : 4,350m² (about) (Including about 240m² of Government Land (5.5%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Shop and Services (Construction Materials and Metalware Retail Shop) with Ancillary Office and Staff Rest Room for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for proposed temporary shop and services (construction materials and metalware retail shop) with ancillary office and staff rest room for a period of three years. The Site is zoned “AGR” on the Pat Heung OZP and the proposed use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the covering Notes of the OZP, temporary use or development of any land not exceeding a period of three years requires 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 vacant (**Plans A-2, A-4a and A-4b**).
- 1.2 According to the applicant, the proposed development involves a 1-storey structure (3.5m in height) with a total floor area of 90m² for ancillary office and staff rest room. The open area will be used for display samples of construction material, metalware and tools. There will be 8 private car parking spaces and 4

light goods vehicle loading/unloading spaces. The operation hours are from 9:00 a.m. to 6:00 p.m. from Tuesday to Sunday, with no operation on Mondays and public holidays. The Site is accessible by a local track leading to Kam Tin Road. The layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary statement and plans received on 3.3.2021 **(Appendix I)**
 - (b) Supplementary Information (SI) received on 16.3.2021 providing clarification **(Appendix Ia)**
 - (c) Further Information (FI) received on 23.4.2021 in response to departmental comments **(Appendix Ib)**
(exempted from publication requirement)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement in **Appendix I**. They can be summarized as follows:

- (a) The proposed development is to serve the nearby residents and businesses by providing retail for various construction materials, domestic metalware and tools for renovation works.
- (b) The proposed development is temporary in nature and will not frustrate the long-term planning intention of the “AGR” zone. Suitable landscaping will be provided along the Site boundary for a better interface with the surrounding environment. Existing vegetation within the Site will be properly maintained. Drainage facilities and fire service installations will be provided at the Site. The applicant will regularly clean up the nearby stream, and drainage facilities within the Site will also help prevent debris from entering the nearby stream.
- (c) No workshop and vehicles over 5.5 tonnes will be involved. If the application is approved by the Board, the applicant will comply with the approval conditions as soon as possible.

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

The applicant is not the “current land owners” of the private land portion of 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 notifying Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection. For the Government land portion, the "Owner's Consent / Notification" Requirements are not applicable.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Application

The Site is not involved in any previous application.

6. Similar Application

There is no similar application for temporary shop and services use within the same "AGR" zone.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4b)

7.1 The Site is:

- (a) vacant, partly paved and partly covered by vegetation; and
- (b) accessible via a local track leading from Kam Tin Road.

7.2 The surrounding area is rural in character intermixed with open storage yards, residential dwelling/ structure and vacant / unused land:

- (a) to the immediate north, east and west are vacant / unused land and a residential dwelling/ structure. To the further west are open storage yards;
- (b) to the south are a stream course and an area zoned "Conservation Area" ("CA") covered with vegetation. Lam Tsuen Country Park is located on the further east; and
- (c) the nearest village cluster (i.e. Wang Toi Shan Wing Ning Lei) is about 300m to the west of the Site (**Plan A-1**).

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views are summarized as follows:

Land Administration

9.1.1 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) No permission is given for occupation of Government land (GL) (about 240m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government's prior approval is not allowed.
- (c) Attention is drawn to the proposed structure(s) in the planning application which is for 'staff resting room' use. According to the established practice, application of Short Team Waiver, etc. of structures for domestic/ residential uses (including staff rest room) on private agricultural land will not be entertained. Hence, even if the Board approves the planning application, his office will not consider to approve/ regularize any structure(s) erected/ to be erected on the lot for domestic/ residential uses.
- (d) Should the planning application be approved, the lot owner(s) will need to apply to his office to effect the proposal (except the structure(s) for 'staff rest room' use) or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Furthermore, the applicant has to either exclude the GL from the Site or obtain a formal approval prior to the actual

occupation of the GL. Applications for any of the above will be considered by LandsD acting in the capacity as 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 fee, as may be imposed by LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

There was no environmental complaint concerning the Site received in the past 3 years. The applicant is advised to follow the relevant

mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites” issued by DEP.

Landscape

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

- (a) Based on the aerial photo in 2020, the Site is situated in an area of rural landscape character comprising of vacant land, vehicle parks, scattered tree groups, temporary structures and open storage. While the existing open storages and vehicle parks are suspected unauthorized development, in view of the nature and scale, the proposed development is considered not entirely incompatible to the surrounding landscape character of the area.
- (b) Referring to the site visit dated 29.3.2021, the Site is vacant and partly covered with wild grasses and shrubs, and partly covered with sand and gravels. No active farming is observed within the Site and in the close vicinity. Some existing trees of common species generally in fair to poor conditions are observed at the northern, southwestern, and southeastern side of the Site. It is noted that the proposed structure and car parking spaces have been shifted to avoid possible conflict with the existing trees in the southeastern part of the Site. Besides, the applicant also indicated that all existing trees within the Site, except for the dead or dying ones, will be preserved and maintained. Moreover, new fixed planters with trees will be provided and take into consideration the location of existing trees within and nearby the Site.
- (c) The proposed large tree size species, i.e. *Ficus microcarpa*, is not advisable for the small soil volume of the fixed planters. It is advised to review the planting species for viable landscape treatment.
- (d) The applicant is reminded that approval of the planning application under the Town Planning Ordinance does not imply approval of the tree preservation / removal scheme under the lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

- (e) Should the application be approved, a condition to maintain the existing trees within the Site satisfactorily at all times during the planning approval period should be included.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions on the submission of a revised drainage proposal, and implementation and maintenance of the drainage proposal for the development should be included.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix III**.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise, they are Unauthorized Building Works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (c) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix III**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Agriculture and Nature Conservation

9.1.8 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC)

- (a) The Site falls within the “AGR” zone. Although agricultural activities are not active in the vicinity, agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) Noting that appropriate measures will be adopted to avoid polluting the nearby natural stream by the proposed development, he has no comment on the planning application from nature conservation perspective.

Fire Safety

9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no in-principle objection 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 layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

9.1.10 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from locals on the application upon close of consultation and has no particular comments on the application.

9.2 The following Government departments have no comment on the application:

- (a) Director of Electrical and Mechanical Services;
- (b) Project Manager/West, Civil Engineering and Development Department;
- (c) Chief Engineer / Construction, Water Supplies Department; and
- (d) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 23.3.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments from the Kadoorie Farm & Botanic Garden Corporation and an individual were received (**Appendices IIa and IIb**). They object to the application mainly on the grounds that the proposed use is not in line with the planning intention; approval of the application would set an undesirable precedent; and the Site is not subject to any previous approval and there is no justification to approve the application.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (construction materials and metalware retail shop) with ancillary office and staff rest room for a period of 3 years at the “AGR” zone. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed development is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

11.2 The Site is immediately surrounded by vacant/ unused land and a stream course. Also, the “CA” zone and Lam Tsuen Country Park are located in the proximity of the Site. While the applicant stated that the proposed use is to serve nearby residents and businesses, there is no major residential settlement near the Site. The nearest village cluster (i.e. Wang Toi Shan Wing Ning Lei) is about 300m to the west (**Plan A-1**), and there is no proper pedestrian access from the Site to the village cluster. The area in the vicinity are either vacant or used as open

storage yards and some of them are suspected unauthorized developments. The proposed development with a large site area of 4,350m² and involves displaying of construction materials, metalware and tools in the open area, which is akin to an open storage, is considered not compatible with the rural character of the locality.

- 11.3 Relevant departments consulted, including C for T, DEP, CE/MN of DSD, and D of FS have no adverse comment on the application.
- 11.4 The Site is not subject to any previous application, and there is no similar application for shop and services within the same “AGR” zone on the OZP. The approval of the application would set an undesirable precedent for other similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 11.5 Two public comments objecting to the application were received during the statutory publication period as stated in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as mentioned above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11, and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “AGR” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the proposed development is not compatible with the surrounding area which is mainly vacant/unused land with “CA” zone and Lam Tsuen Country Park in the vicinity.
- 12.2 Alternatively, 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 30.4.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Mondays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time 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 trees within the Site shall be maintained satisfactorily at all times during the planning approval period;
- (f) 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 30.10.2021;
- (g) in relation to (f) above, 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 30.1.2022;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of a 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 30.10.2021;
- (j) in relation to (i) above, the implementation of the 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 30.1.2022;
- (k) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) 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;

- (l) if any of the above planning conditions (f), (g), (i) or (j) 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; and
- (m) upon 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.

Advisory Clauses

The recommended advisory clauses are at **Appendix III**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application form with supplementary statement and plans received on 3.3.2021
Appendix Ia	SI received on 16.3.2021
Appendix Ib	FI received on 23.4.2021
Appendices II-a and II-b	Public comments received during the statutory publication period
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan

Plan A-3 Aerial Photo

Plans A-4a and A-4b Site Photos

**PLANNING DEPARTMENT
APRIL 2021**