

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-ST/630

<u>Applicant</u>	: Lotti Construction Materials Limited represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 5 and 6 (Part) in D.D. 105 and Adjoining Government Land, San Tin, Yuen Long, New Territories
<u>Site Area</u>	: About 2,220 m ² (including about 720 m ² of Government Land (GL))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8
<u>Zoning</u>	: “Other Specified Uses” annotated “Comprehensive Development to include Wetland Restoration Area” (“OU(CDWRA)”)
<u>Application</u>	: Proposed Temporary Shop and Services (Retail of Construction Materials) 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 (retail of construction materials) for a period of 3 years (**Plan A-1a**). According to the Notes of “OU(CDWRA)” zone of the OZP, ‘Shop and Services’ use is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently hard paved and used for parking of container vehicles and trailers without planning permission.
- 1.2 The Site or part of the Site is the subject of 14 previous applications as detailed in paragraph 6 below. The last application No. A/YL-ST/569 for the same proposed use submitted by a different applicant was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 24.4.2020, which was then revoked on 24.9.2022 due to non-compliance with approval conditions. The major development parameters of the current application and the previously approved application are summarised as follows:

	Application No. A/YL-ST/569 (Previous Application)	Application No. A/YL-ST/630 (Current Application)
Site Area	About 1,624 m ²	About 2,220 m ² (including about 720 m ² of Government Land (GL))
No. of Structures (Building Height, No. of Storeys)	4 1 toilet (not exceeding 3 m, 1 storey) 1 for shop and services (retail of construction materials) (not exceeding 5.5 m, 1 storey) 1 site office (not exceeding 3 m, 1 storey) 1 electricity meter room (not exceeding 3 m, 1 storey)	6 1 toilet (not exceeding 3 m, 1 storey) 4 for shop and services (including 2 for retail of construction materials, 1 for retail of stone and 1 for retail of sand) (not exceeding 5.5 m, 1 storey) 1 site office (not exceeding 3 m, 1 storey)
Total floor area	About 252m ²	About 764m ²
No. of loading/unloading spaces	2 (light goods vehicles)	2 (light goods vehicles) 1 (heavy goods vehicle for cement trailer)
Operation Hours	9:00a.m. to 7:00p.m. on all days including Sundays and public holidays	9:00a.m. to 7:00p.m. on all days including Sundays and public holidays

1.3 As shown in **Plan A-1b and Drawing A-1**, the Site is accessible at the west via a local track branching off Castle Peak Road – San Tin. The layout plan is at **Drawing A-1**. In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on **(Appendix I)** 28.9.2022
- (b) Further information (FI) received on 11.11.2022.* **(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 summarized as follows:

- (a) The proposed development is a temporary use which would not jeopardize the long term planning intention of “OU(CDWRA)” zone. The proposed shop and services use is a column 2 use in “OU(CDWRA)” zone.
- (b) The application site is subject to a previous planning permission (No. A/YL-ST/569) approved for similar use. The uncovered area of the Site will not be used for open storage of construction materials or parking of container vehicles and trailers;
- (c) The proposed development is compatible with the surrounding environment of which open storage yards, parking of vehicle and warehouse are found.
- (d) Adverse traffic, drainage and environmental impacts arising from the development on the surroundings are not envisaged. No operation will be held during sensitive hours. As the applicant will sell unpacked cement, the parking of cement trailer is proposed but no workshop activities will be carried out.
- (e) The applicant is the latest tenant of the application site so that he will implement the applied use and the approval conditions if it is approved.

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

The applicant is not a “current land owner” 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 sending notice to San Tin Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection. The remaining part of the Site is GL, and the “owner’s consent/notification” requirements are not applicable.

4. Town Planning Board Guidelines

According to the Town Planning Board Guidelines for Application for Development within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C) relevant to the application, the Site falls within the Wetland Buffer Area (WBA). Relevant extract of the Guidelines is at **Appendix II**.

5. Background

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

6. Previous Applications

- 6.1 The Site or part of the Site is the subject of 14 previous applications (No. A/DPA/YL-ST/6, 12, 26, A/YL-ST/5, 59, 80, 132, 176, 254, 267, 299, 326, 348 and 569) mainly for temporary open storage, vehicle park, tyre repair workshop, cargo handling and freight forwarding facilities and shop and services uses.

- 6.2 The last applications (No. A/YL-ST/569) covering part of the Site submitted by a different applicant was approved with conditions by the Committee on 24.4.2020 on the grounds that the proposed temporary shop and services use was not incompatible with the surrounding land uses and concerned government departments had no objection to or no adverse comments on the application. The application was then revoked on 24.9.2022 due to non-compliance with approval conditions.
- 6.3 Details of these applications are summarized at **Appendix III**. Their locations are shown on **Plan A-1b**.

7. Similar Application

- 7.1 There is one similar application (No. A/YL-ST/534) for shop and services (real estate agency) within the same “OU(CDWRA)” zone on the OZP which was approved by the Committee on 4.1.2019 mainly on the considerations that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “OU(CDWRA)” zone; the proposed temporary use was not incompatible with and would not have adverse impacts on the surrounding land uses and concerned Government departments had no objection to or no adverse comments on the application.
- 7.2 Details of the application is summarized at **Appendix III**. Its location is shown on **Plan A-1a**.

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

- 8.1 The Site is:
- (a) accessible at the west via a local track branching off from Castle Peak Road – San Tin;
 - (b) hard paved and used for parking of container vehicles and trailers;
 - (c) located within the WBA of Deep Bay area.
- 8.2 The surrounding area is intermixed with open storage yards, car service yard, vehicle parks, residential dwellings, vacant land and ponds:
- (a) to its east and southeast across a local track is car services yard, vehicle parks and residential dwelling;
 - (b) to its north and northeast is vacant land and ponds;
 - (c) to its west across a local track is vacant land, open storage yards of vehicles, vehicle parts and construction materials; and

- (d) to its immediate south are residential dwellings; to the further south across Castle Peak Road – San Tin are residential dwellings and open storage yards of construction machinery approved under application No. A/YL-ST/623.

9. Planning Intention

The planning intention of the “OU(CDWRA)” zone is to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area. It is also intended to phase out existing sporadic open storage and port back-up uses on degraded wetlands. Any new building should be located farthest away from Deep Bay.

10. Comments from Relevant Government Departments

10.1 Apart from the government departments as set out in paragraph 10.2 below, other 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 department has reservation on the application.

Environment

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

- (a) There was no environmental complaint related to the Site in the past 3 years;
- (b) The application includes 1 parking space for cement trailer and the use of heavy vehicle is expected under the context of the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (“the COP”). She does not support the application as the applied use will generate traffic of heavy vehicles and the Site is within 100m from the nearest sensitive use (i.e. a residential dwelling is about 7m south of the Site) and environmental nuisance is expected (**Plan A-2**). If the application is approved, the applicant is advised to follow the relevant mitigation measures and requirements in the COP to minimise potential environmental impacts on the surrounding areas.
- (c) Advisory comments as detailed in Appendix V.

11. Public Comments Received During Statutory Publication Period

On 7.10.2022, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three objecting public comments were received from individuals on the grounds that the proposed development was not in line with the planning intention of the “OU(CDWRA)” zone and TPB PG-No. 12C. There would also be environmental problem and fire risk to the surroundings (**Appendix IV**).

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary shop and services (retail of construction materials) for a period of 3 years. The Site falls within the “OU(CDWRA)” zone which is to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area. It is also intended to phase out existing sporadic open storage and port back-up uses on degraded wetlands. Any new building should be located farthest away from Deep Bay. According to the applicant, the proposed shop is for selling construction materials and could serve the nearby landlords and residents. As there is no immediate development proposal for the Site, approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “OU(CDWRA)” zone. The proposed small-scale temporary shop and services is not incompatible with the surrounding land uses, comprising mainly open storage yards, vehicle parks, car service yards, residential dwellings, vacant land and ponds (**Plan A-2**).
- 12.2 Although the Site falls within the WBA of the TPB PG-No. 12C, the guidelines also specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC note that the application site is subject to a previously approved application for the same applied use largely on the same site. The applicant has submitted a layout plan and drainage plan at **Drawings A-1** and **A-2**. The surface run-off will be intercepted and discharged to an existing nullah at the west of the Site according to the applicant. As such, she has no adverse comments on the application.
- 12.3 DEP does not support the application as there are sensitive receivers in vicinity of the Site (the nearest residential dwelling is located about 7m away from the Site) (**Plan A-2**), and the applied use will generate traffic of heavy vehicles and environmental nuisance is expected. Nevertheless, there was no environmental complaint against the Site in the past 3 years. To address DEP’s concern and mitigate any potential environmental impacts, approval conditions restricting operation hours and on traffic arrangement have been recommended in paragraphs 13.2 below. Any non-compliance with these approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses’. Other concerned Government departments consulted including C for T, D of FS, CE/MN of DSD and CTP/UD&L of PlanD have no objection to or adverse comment on traffic, fire safety, drainage and landscape aspects respectively.
- 12.4 The Committee has approved one previous application for the same use on part of the Site and one similar application for temporary shop and services use within the “OU(CDWRA)” zone. Approval of the current application is in line with the previous decisions of the Committee.
- 12.5 There are 3 objecting public comments on the application received during the statutory publication period as stated in paragraph 11. The planning assessment and departmental comments above are of relevance.

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 25.11.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 7:00p.m. and 9:00a.m., 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 reserve onto/from the Site to the public road at any time during the planning approval period;
- (c) the submission 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 25.5.2023;
- (d) in relation to (c) above, the implementation of 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 25.8.2023;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the submission 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 25.5.2023;
- (g) in relation to (f) above, the implementation of 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 25.8.2023;
- (h) 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
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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' reference:

The proposed temporary shop and services (retail of construction materials) is not in line with the planning intention of the "OU(CDWRA)" zone, which is to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area, and to phase out existing sporadic open storage and port back-up uses on degraded wetlands. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

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 28.9.2022
Appendix Ia	FI received on 11.11.2022
Appendix II	Relevant extract of TPB PG-No. 12C
Appendix III	Previous and similar applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comments
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Drainage Plan
Plan A-1a	Location Plan with Similar Application
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos