

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/858

- Applicant** : Right Lucro Industrial Limited represented by R-riches Property Consultants Limited
- Site** : Lots 2404, 2405, 2409 S.B RP and 2410 RP in D.D. 111 and Adjoining Government Land, Fan Kam Road, Pat Heung, Yuen Long
- Site Area** : About 1,386.8 m² (including Government land of about 226m² (16.3%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Open Storage” (“OS”)
- Application** : Proposed Temporary Wholesale Trade (Food) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary wholesale trade (food) for a period of 5 years. According to the Notes of the OZP, ‘Wholesale Trade’ is a Column 2 use in the “OS” zone, which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of 7 previous applications. The last application (No. A/YL-PH/773) for temporary wholesale trade (food) for a period of 3 years, submitted by the same applicant, was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2018. The planning permission was revoked in 2020 due to non-compliance with approval conditions. The approved use has not yet been in operation. The Site is paved and vacant.
- 1.3 According to the applicant, one 1-storey structure (about 8.23m in height) will be erected for wholesale trade (food) with a total floor area of about 551.2m² (site coverage of about 40%). A total of 2 loading/unloading spaces for light goods vehicles will be provided. The operation hours will be 9:00a.m. to 6:00p.m. Mondays to Saturdays, and there will be no operation on Sundays and public holidays. The Site is directly accessible from Fan Kam Road. The site layout plan submitted by the applicant is at **Drawing A-1**.

- 1.4 Compared with the last previously approved application (No. A/YL-PH/773), the current application is for the same use with the same site area and floor area, but the approval period sought is changed from 3 years to 5 years.
- 1.5 In support of the application, the applicant has submitted the following document:
- (a) Application form with plans received on 28.9.2020 (Appendix I)
 - (b) Supplementary Information (SI) received on 7.10.2020 (Appendix Ia)
 - (c) Further Information (FI) received on 11.11.2020 in response to departmental comments (Appendix Ib)
(exempted from publication requirements)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form and FI at **Appendices I and Ib**, and are briefly summarized as follows:

- (a) The proposed development will not frustrate the long-term planning intention of the “OS” zone. Since a previous planning application for the same applied use was approved by the Committee on 6.4.2018, approval of the current application would not set an undesirable precedent.
- (b) No vehicle will be allowed to queue back to or reverse onto / from public road, and no medium or heavy vehicles over 5.5 tonnes will be allowed to enter / exit the Site during the approval period. The applicant will strictly follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by the Environmental Protection Department (EPD). The proposed development will not create significant adverse traffic, environmental, landscape and drainage impacts.
- (c) Regarding the previous planning approval, the applicant had complied with some of the approval conditions. However, the Short Term Waiver (STW) was not granted by the Lands Department before the deadline of compliance with the approval conditions for the implementation of the landscape and FSIs proposals, and the planning permission was revoked. The applicant will strictly implement the proposed scheme and make effort to comply with the approval conditions after planning permission has been granted.

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

The applicant is not the “current land owner” of the private land portion of the Site but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting notice at the Site and sending notice to the Pat Heung Rural Committee. 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 not subject to planning enforcement action.

5. **Previous Applications**

5.1 The Site is the subject of 7 previous applications covering different parts of the Site mainly for various open storage and temporary wholesale trade (food). Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.

1 Rejected Application

5.2 Application Nos. A/DPA/YL-PH/27 submitted by a different applicant for open storage of vehicles was rejected by the Committee in 1994, mainly on the grounds that the development was not in line with the planning intention of the area¹; there was insufficient information on parking and loading / unloading facilities; the vehicular access was not acceptable; and no landscaping proposals had been included in the submission.

Six Approved Applications

5.3 Application Nos. A/DPA/YL-PH/26, 32 and A/YL-PH/57, 106 and 147 for various open storage uses submitted by different applicants were approved with conditions by the Committee or by the Board on review between 1994 and 1997 mainly for the reasons that the proposed uses were generally in line with the planning intention of the "OS" zone and conformed to the "Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance"; they were not incompatible with the surrounding environment; and the relevant departments had no adverse comment on the applications.

5.4 The last application No. A/YL-PH/773 for proposed temporary wholesale trade (food) for a period of 3 years submitted by the current applicant was approved with conditions by the Committee on 6.4.2018 mainly on the considerations that the approval of the application on a temporary basis would not jeopardize the long-term planning intention of the "OS" zone; the proposed development was not incompatible with the surrounding area; and relevant departments had no adverse comment on the application. The applicant had complied with approval conditions on the submission of landscape, drainage and FSIs proposals and implementation of drainage proposal, but the planning permission was revoked on 6.9.2020 due to non-compliance with approval conditions on the implementation of landscape and FSIs proposals.

¹The Site was under "Unspecified" in the draft Pat Heung Development Permission Area Plan No. DPA/YL-PH/1 when the application was considered.

6. Similar Application

There is no similar application for temporary wholesale trade (food) within the same “OS” zone.

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

7.1 The Site is:

- (a) paved and vacant; and
- (b) directly accessible from Fan Kam Road.

7.2 The surrounding areas are rural in character intermixed with open storage / storage yards, warehouse, workshop, residential structures / dwellings and vacant / unused land (**Plan A-2**):

- (a) to its north, south and west within the “OS” zone are open storage / storage yards, warehouse, workshop, and vacant / unused land; and
- (b) to its east across Fan Kam Road in the “Village Type Development” (“V”) zone are residential structures / dwellings and open storage yard.

8. Planning Intention

The planning intention of the “OS” zone is primarily for the provision of land for appropriate open storage uses and to regularize 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.

9. Comments from Relevant Government Department

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

Land Administration

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

- (a) The Site comprises Government Land (GL) and 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 GL (about 226m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.

- (c) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected 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 the 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.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Fan Kam Road.
- (b) If the proposed run-in is agreed by TD, the applicant should provide the run-in/out at Fan Kam Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement.
- (c) 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):

- (a) There was no substantiated environmental complaint concerning the Site received by DEP in the past three years.

- (b) 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.

Drainage

- 9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD):
 - (a) He has no in-principle objection 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 revised drainage proposal for the development should be included.
 - (c) His detailed comments on the submitted drainage proposal are included in **Appendix III**.

Landscape

- 9.1.6 Comments of the Chief Town Planner / Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD):
 - (a) In view of the Site not being located in landscape sensitive zoning and there is no significant landscape resources within the Site, no significant landscape impact is envisaged.
 - (b) Should the application be approved by the Board, approval conditions on the submission and implementation of a landscape proposal should be included.

Building Matters

- 9.1.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW of BD):
 - (a) As there is no record of approval granted by the Building Authority (BA) 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) The applicant’s attention is drawn to the following points:
 - (i) if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works

(UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;

- (ii) for UBW erected on leased land, enforcement action may be taken by the 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 the BO;
- (iii) 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 UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO; and
- (iv) detailed checking under the BO will be carried out at building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations 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.

Environmental Hygiene

9.1.9 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) Such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surroundings.

- (b) Proper license / permit issued by FEHD is required if there is any catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.
- (c) No environmental nuisance should be generated on the surroundings. Also, for any waste generated from the operation and work, the applicant should arrange for its disposal properly at their own expense.

District Officer's Comments

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

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

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

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

10. Public Comments Received During the Statutory Publication Period

On 9.10.2020, the application was published for public comments. During the three-week statutory publication period, two public comments were received from local residents and an individual (**Appendices IV-1 and IV-2**). They object to the application mainly on the grounds that the operation of the proposed development will be a nuisance to nearby residents; the proposed development will adversely affect the environment, hygiene, traffic and fengshui of the area; there should be high food safety and hygiene standards for the proposed use at the Site; and the Site is subject to unauthorized development.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary wholesale trade (food) for a period of 5 years at the "OS" zone. The planning intention of the "OS" zone is primarily for the provision of land for appropriate open storage uses and to regularize 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. While the proposed wholesale trade use is not entirely in line with the planning intention of the "OS" zone, it is not incompatible with the intended uses in the zone. Approval of the application on a temporary basis for a period of 5 years would not jeopardize the long-term planning intention of the "OS" zone.

- 11.2 The proposed development is not incompatible with the surrounding area which is intermixed with open storage / storage yards, warehouse, workshop, residential structures / dwellings and vacant / unused land.
- 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. To minimize the possible environmental nuisance generated by the development, approval conditions restricting the operation hours and vehicle types are recommended in paragraphs 12 (a) to (c) below. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, CE/MN of DSD, and D of FS could be addressed by approval conditions (d) to (i) recommended in paragraph 12.2 below.
- 11.4 The Site is subject to 7 previous applications. The last application No. A/YL-PH/773 submitted by the same applicant for the same applied use was approved with conditions by the Committee in 2018 for a period of 3 years, and the applicant had complied with conditions on the submission of landscape, drainage and FSIs proposals and implementation of drainage proposal, but the planning permission was revoked in 2020 due to non-compliance with conditions relating to the implementation of landscape and FSIs proposals. The approved use has not yet been commenced. In the current application, the applicant undertakes to comply with the approval conditions should the application be approved. Compared with the previous approved application, the current application is the same in terms of use, site area and floor area (except for change in approval period sought from 3 years to 5 years). As there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application. Shorter compliance periods are proposed to closely monitor the progress of compliance of the approval conditions should the Committee decide to approve the current application. The applicant will also be advised that should he fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 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 as well as planning considerations and assessments as stated 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 has no objection to the proposed temporary wholesale trade (food) for a period of 5 years.
- 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 5 years until 20.11.2025. The following conditions of approval with shorter compliance period 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 Sundays 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 submission of a run-in/out proposal at Fan Kam Road within **3** months from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by 20.2.2021;
- (f) in relation to (e) above, the implementation of the run-in/out proposal at Fan Kam Road within **6** months from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by 20.5.2021;
- (g) the submission of a landscape proposal within **3** months from the date of the planning approval to the satisfaction of the Director of Planning or the Town Planning Board by 20.2.2021;
- (h) in relation to (g) above, the implementation of the landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or the Town Planning Board by 20.5.2021;
- (i) the submission of a 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 20.2.2021;
- (j) in relation to (i) above, the implementation of the 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 20.5.2021;
- (k) in relation to (j) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (l) the submission of a 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 20.2.2021;

- (m) in relation to (l) above, the implementation of the 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 20.5.2021;
- (n) if any of the above planning condition (a), (b), (c), (d) or (k) 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
- (o) if any of the above planning condition (e), (f), (g), (h), (i), (j), (l) or (m) 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.

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "OS" zone which is primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis

Advisory Clauses

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

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 with plans received on 28.9.2020
Appendix Ia	SI received on 7.10.2020
Appendix Ib	FI received on 11.11.2020

Appendix II	Previous applications covering the Site
Appendix III	Detailed comments from the CE/MN of DSD
Appendices IV-1 and IV-2	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2020**