

RNTPC Paper No. A/YL-PH/807A
For Consideration by
the Rural and New Town
Planning Committee
on 5.7.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/807

- Applicant** : Fortune Maker Investment Limited represented by R-Riches Property Consultants Limited
- Site** : Lots 1458 S.B (Part) and 1459 S.B in D.D. 111, and Adjoining Government Land in D.D. 110, Pat Heung, Yuen Long
- Site Area** : About 755m² (Including Government Land of about 108m² (about 14.3%))
- 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 Shop and Services with Ancillary Facilities for a Period of 5 Years

1. The Proposal

- 1.1 The applicant sought planning permission to use the application site (the Site) for temporary shop and services with ancillary facilities for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services (not elsewhere specified)’ is a Column 2 use in “OS” zone which requires permission from the Town Planning Board (the Board). The Site was the subject of 2 previous applications (Nos. A/YL-PH/24 and 34) for in-situ improvement works to existing open storage uses which were approved by the Rural and New Town Planning Committee (the Committee) in 1995 and 1996 respectively. The Site is fenced, paved and currently used for open storage of vehicles for sale (**Plan A-2, A-4a and A-4b**).
- 1.2 According to the applicant, the proposed development involved 12 two-storey structures (about 7m) for shop and services use with total floor area of about 692m². The ancillary facilities include fire service installations system, drainage facilities, and septic tank, etc. There will be a loading/unloading space for light goods vehicle. The operation hours are between 7 a.m. and 9 p.m. daily including public holidays. The Site is accessible via Kam Tin Road. Only vehicles not

exceeding 5.5 tonnes will be used at the Site. The site layout plan and vehicular access plan submitted by the applicant are at **Drawings A-1 and A-2**.

- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application form and supplementary information with **(Appendix I)** plans received on 13.3.2019
 - (b) Further Information (FI) received on 22.5.2019 in **(Appendix Ia)** response to departmental comments
- 1.4 The application was originally scheduled for consideration by the Committee on 3.5.2019. Upon the request of the applicant, the Committee agreed to defer making a decision on the application on 3.5.2019 for two months to allow time for the applicant to address the departmental comments. After the deferral, the applicant had submitted further information in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

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

- (a) The applicant intended to develop the Site into a shopping street to serve nearby residents. Temporary planning approval will not frustrate the long-term planning intention of the “OS” zone.
- (b) The proposed development is compatible with the nearby development. No land filling/ excavation works will be involved at the Site in order to reduce adverse impact to the surrounding environment.
- (c) Sufficient maneuvering space will be provided on-site and no vehicle will queue back to or reverse onto/from areas outside the Site. Staffs will take public transport to the Site. No car parking space will be provided for visitors and staff.
- (d) Should the application be approved, the applicant will provide landscape, drainage and fire service installations (FSIs) facilities to the satisfaction of relevant departments.

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

The applicant is not a “current land owner” 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 registered mail to the Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not the subject of any outstanding enforcement cases and not subject to any planning enforcement action. Should there be sufficient evidence to prove that unauthorized development takes place at the Site, appropriate enforcement action will be taken.

5. Previous Applications

The Site was involved in 2 previous applications (No. A/YL-PH/24 and 34¹) for in-situ environmental improvement works to an existing open storage for construction machineries and equipment (drainage improvement) and in-situ improvement works to an existing open storage for car parts for trading (paving of the site) respectively. Both applications were approved with conditions by the Committee on 17.11.1995 and 12.1.1996 respectively mainly for the reason that the improvement works could bring about environmental improvement to the site and its surroundings. Details of the applications are summarized in **Appendix II** and the locations of the sites are shown on **Plan A-1**.

6. Similar Applications

There are two similar applications (No. A/YL-PH/144 and 750) for temporary property agency office and temporary shop and services (real estate agency, car beauty product retail and auto parts retail) respectively at a site within the same “OS” zone on the OZP. They were approved with conditions by the Committee on 21.11.1997 and 28.7.2017 for 1 year and 3 years respectively mainly for the reasons that temporary nature of the proposed use would not jeopardize the long-term planning intention of the “OS” zone; not incompatible with the surrounding land uses; and no adverse comments from relevant government departments. Details of the applications are summarized in **Appendix III** and the location of the sites are shown on **Plan A-1**.

¹ The proposed in-situ improvement works on these sites constituted an alteration and/or modification of existing use. According to the Notes of the draft Pat Heung OZP No. A/YL-PH/1 at the time of consideration of these applications, any alteration and/or modification of the use existed immediately before the first publication in the Gazette of the Notice of the interim development permission area plan, unless permitted in terms of the OZP, requires permission of the Board.

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

7.1 The Site is :

- (a) fenced, paved and currently used for open storage of vehicles for sale; and
- (b) accessible via Kam Tin Road on the south.

7.2 The surrounding area is predominated by a mixture of open storage yards and workshop uses, residential dwellings/structures, agricultural land and some unused/vacant land:

- (a) to its north, east and west within the “OS” zone are open storage yards and vacant land. Some residential dwellings/structures are located to the further east. A nullah is located to its further north; and
- (b) across Kam Tin Road to its south are areas zoned “Agriculture” and “Village Type Development” mainly consisting of open storage yards, workshops, residential dwellings/ structures, a kennel and some agricultural land.

8. Planning Intention

The planning intention of the “OS” is intended 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 Departments

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, LandsD):

- (a) The Site comprises Government Land (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 (about 70m² subject to verification, i.e. 108m² minus 38m² covered by STT No. 3173)

included in the Site. Attention is drawn to the fact that any occupation of GL without Government's prior approval is not allowed.

- (c) Within the Site, Lot No. 1459 S.B in D.D. 111 is covered by Short Term Waiver (STW) whereas portion of GL under application (i.e. 38m²) in D.D. 110 is covered by a Short Term Tenancy (STT), details of which are listed below:

STW/STT No.	Lot No. in D.D. 111/ GL in D.D. 110	Permitted Use
STW 4927	Lot No. 1459 S.B	Storage and Ancillary Office Use
STT 3173	GL	

- (d) The Site is accessible from Kam Tin Road via GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (f) Should the application be approved, the STW/STT holder(s) will need to apply to his office for modification of the STW/STT conditions where appropriate. The owner(s) of the lot(s) without STW will need to apply to his office to permit the structures 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. No construction of New Territories Exempted Building(s) will be considered or allowed. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for 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 premium 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 point of view.

- (b) No vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.
- (c) The 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/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain the accesses 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):

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 the DEP.

Drainage

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

- (a) He has no objection in principle to the development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a drainage proposal for the development should be included.

Building Matters

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

- (a) There is no record of approval by the Building Authority for the existing structures at the Site, BD 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 BD, 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 BD's 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 buildings works (including containers/ open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
 - (iv) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
 - (v) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Agriculture

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

Noting that the Site is paved and disturbed, he has no comment on the application.

Fire Safety

9.1.8 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

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

His office has not received any comment from the locals upon close of consultation and he 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) Chief Engineer/Construction, Water Supplies Department;
- (c) Project Manager (West), Civil Engineering and Development Department; and
- (d) Commissioner of Police.

10. Public Comment Received During Statutory Publication Period

On 22.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 12.4.2019, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services use with ancillary facilities at the Site zoned “OS”. 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. Although the proposed development is not entirely in line with the planning intention of the “OS” zone, the temporary nature of the proposed development would not jeopardize the long-term planning intention.
- 11.2 The proposed development involving some 2-storey (7m) structures is considered not incompatible with the surrounding land uses which are mixed with open storage yards, workshop, residential dwellings/structures and vacant/unused land. Given the location of the Site abutting Kam Tin Road and the nature of the proposed retail use, it is unlikely that it would cause adverse environmental impact on the surrounding areas.
- 11.3 Relevant departments including DLO/YL of LandsD, C for T, CE/MN of DSD and D of FS have no adverse comment on the application. To minimize the possible environmental nuisance generated by the proposed development, approval conditions restricting the operation hours and types of vehicle are recommended in paragraph 12.2 (a) and (b). Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. Moreover, the technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (h) below.
- 11.4 There are two similar applications for temporary shop and services use (real estate agency, car beauty product, retail and auto parts retail) within the same “OS” zone, which were approved with conditions by the Committee in 1997 and 2017 respectively as detailed in paragraph 6 (**Plan A-2**). Approval of the current application is in line with the Committee’s previous decisions on similar application.
- 11.5 There is no public comment on the application received during the statutory publication period.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the proposed temporary shop and services with ancillary facilities 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 5.7.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 9:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance is allowed to enter/exit the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the submission of 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 5.1.2020;
- (e) in relation to (d) above, the implementation of 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 5.4.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 5.1.2020;
- (h) in relation to (g) 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 5.4.2020;

- (i) if any of the above planning conditions (a), (b), (c) or (f) 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
- (j) if any of the above planning conditions (d), (e), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

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

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

the proposed development is not in line with the planning intention of the "OS" zone which is 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. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

- Appendix I** Application form and supplementary information and plans received on 13.3.2019
- Appendix Ia** FI received on 22.5.2019

Appendix II	Previous applications covering the application site
Appendix III	Similar application within the same “OS” zone on the Pat Heung OZP
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2019**