

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-MP/299

- Applicant** : Fu Hop Yick Company Limited represented by Lanbase Surveyors Limited
- Site** : Lots 5, 6, 7A, 7 RP, 8 RP, 9 RP and 10 in D.D. 101, Mai Po Yuen Long, New Territories
- Site Area** : 2,177m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
- Zoning** : “Open Space” (“O”)
- Application** : Renewal of Planning Approval for Temporary Restaurant under Application No. A/YL-MP/265 for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary restaurant for a period of 3 years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. According to the Notes of OZP, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission.
- 1.2 The Site in whole or in part is the subject of 8 previous applications for the same temporary restaurant use (**Plan A-1b**). The last application submitted by the same applicant was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 27.10.2017 for a period of 3 years up to 7.11.2020. All approval conditions have been complied with.
- 1.3 As shown on the layout plan (**Plan A-2**), the Site is accessible at the south to Palm Springs Boulevard leading to Castle Peak Road – Mai Po. The layout

and major parameters of the current application are the same as the last approved Application No. A/YL-MP/265 and are summarized below:

Major Development Parameters	Current Application No. A/YL-MP/299
No. of Structure	1
Total Floor Area	Not exceeding 230m ²
Maximum Building Height	1 storey (6m)
No. of car parking spaces	20 (including 1 for disabled)
No. of Loading/Unloading Bay	1
Operation Hours	Between 7:00 a.m. and 12:00 a.m. from Mondays to Sundays and public holidays

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form received on 3.9.2020 **(Appendix I)**
- (b) Planning Statement **(Appendix Ia)**
- (c) Further Information (FI) dated 23.9.2020 clarifying no change to the previous application with a set of latest fire certificates (FI-1)[#] **(Appendix Ib)**
- (d) FI dated 7.10.2020 providing responses to departmental comments with as-built drainage plan and photographic records (FI-2)[#] **(Appendix Ic)**

[#] *exempted from the 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 at **Appendix Ia** and the FIs (**Appendix Ib and Appendix Ic**). They can be summarized as follows:

- (a) The Site was granted several planning permissions for the same temporary restaurant use. There are no major change of the site conditions and planning circumstances and additional traffic, drainage and environmental impacts are not anticipated. It is considered that the planning permission should be allowed to be renewed for the applied use to serve the neighbourhood.
- (b) All the approval conditions of the previously approved Application No. A/YL-MP/265 in relation to the submission and implementation of drainage proposal and fire service installations (FSIs) proposal have been complied with and the fire certificates (FS 251) and as-built drainage plan and photographic records of the existing drainage facilities are provided.

- (c) There were some applications for temporary commercial uses within the subject “O” zone recently approved by the Board, indicating that temporary restaurants are considered compatible with the surrounding uses.
- (d) Due to a number of large-scale residential developments located in the district, there is a high demand for local catering services. The proposed renewal of the planning permission for the temporary restaurant meets the local needs.

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 notice to San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C)

- 4.1 According to TPB PG-No. 34C, the main criteria for assessing applications for renewal of planning approval are as follows:
- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
 - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
 - (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
 - (d) whether the approval period sought is reasonable; and
 - (e) any other relevant considerations.

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

- 4.2 According to TPB PG-No. 12C, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:
- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
 - (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

5. Background

The Site is not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site in part or in whole is the subject of 8 previous applications (Applications No. A/YL-MP/10, 22, 125, 153, 171, 194, 237 and 265) for restaurant/temporary restaurant use, of which the first was rejected and the remaining 7 approved (**Plan A-1b**).
- 6.2 Application No. A/YL-MP/10 for proposed restaurant was rejected by the Committee on 20.9.1996 for the reasons that the proposed development, segregating two “O” zones and blocking the access, would adversely affect the development of the area for open space use; there was insufficient information to demonstrate that the development would not have adverse environmental, ecological, drainage, traffic and sewerage impacts on the surrounding areas; the development was not in line with the planning intention of the “O” zone; and the approval of the application would set an undesirable precedent for similar applications.
- 6.3 Application No. A/YL-MP/22 for the same use was approved by the Committee on 8.8.1997 for a period of 5 years up to 8.8.2002 mainly on the consideration that concerned Government departments had no adverse comments on the proposed development in terms of its potential impacts on the environment, ecology, drainage, sewerage and traffic of the surrounding areas.
- 6.4 The remaining 5 applications were approved by the Committee between 2003 and 2014 for a period of 3 years each mainly on the consideration that the development was considered not incompatible with the surrounding land uses; the development would not frustrate the long-term planning intention of the “O” zone; and previous planning approvals had been granted. Two

applications were revoked in 2006 and 2008 due to non-compliance with approval conditions. The last Application No. A/YL-MP/265 was submitted by the current applicant and approved up to 7.11.2020. All approval conditions have been complied with.

6.5 Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1b**.

7. **Similar Applications**

There is one similar application (No. A/YL-MP/292) for temporary restaurant use with private vehicle park for a period of 3 years and filling and excavation of land within the same “O” zone on the OZP. The application was approved by the Committee on 24.4.2020 mainly on the consideration that the development was considered not incompatible with the surrounding land uses; the development would not frustrate the long-term planning intention of the “O” zone; concerned Government departments had no adverse comments on or no objection to the proposed development; significant adverse impacts on the surrounding areas were not expected; and similar temporary restaurant use was approved in the same “O” zone and approval for the current application was in line with the previous decision of the Committee. Details of this application are summarized at **Appendix III**. Its location is shown on **Plan A-1a**.

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

8.1 The Site is:

- (a) accessible at the south via Palm Springs Boulevard leading to Castle Peak Road – Mai Po; and
- (b) located within the WBA of Deep Bay.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate north is sales offices for real estate and furniture and furniture showrooms with planning approval; and to the further north is open storage of construction materials;
- (b) to the immediate west is a nullah; and to the further west across Palm Canyon Drive is the residential development of Royal Palms;
- (c) to the south across Palm Springs Boulevard is a real estate agency with planning approval, domestic structures, ponds and open storage of construction materials; and
- (d) to the east are Castle Peak Road – Mai Po, San Tin Highway and San Tam Road.

9. Planning Intention

The planning intention of the “O” zone is primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises 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) Lot No. 10 in D.D. 101 is covered by Short Term Waiver (STW) No. 4280 to permit structures for the purpose of “Temporary Restaurant”.
- (c) Should the application be approved, the STW holder will need to apply to his Office for modification of the STW conditions where appropriate. Moreover, the lot owner without STW will need to apply to his Office for permitting the structures to be erected or regularize any irregularities on site. Besides, given the proposed use is temporary in nature, only application for regularization 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 applications will be approved. If such applications are 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 Castle Peak Road – Mai Po via a section of a local access which is not managed by Transport Department (TD). The land status of the local access should be clarified with the 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) No vehicles is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.
- (c) Should the application be approved, the following condition should be incorporated:

no vehicle is allowed to queue back to or reverse onto/from the Site 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) Palm Springs Boulevard is not maintained by HyD.
- (b) The proposed access arrangement of the Site from Castle Peak Road – Mai Po should be commented and approved by TD.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road – Mai Po.
- (d) 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, Highways Department (CE/RD 2-2, RDO, HyD):

- (a) He has no comment on the renewal application from railway development viewpoint.
- (b) The Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems.

Open Space Provision

10.1.5 Comments of the Director of Leisure and Cultural Services (DLCS):

- (a) He has no in-principle objection to the renewal application.
- (b) The Site is zoned “O” on the approved Mai Po and Fairview Park OZP No. S/YL-MP/6. It is not on the priority list for development as agreed by the Yuen Long District Council. He has no plan to develop the Site into a public open space at present.

Environment

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

- (a) In accordance with the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sties”, he has no comment on the renewal application.
- (b) No environmental-related complaint related to the Site was recorded in the past 3 years.

Nature Conservation

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

He has no comment on the renewal application from nature conservation point of view.

Drainage

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

- (a) He has no in-principle objection to the renewal application from the drainage operation and maintenance point of view.
- (b) He notes that the applicant implemented the drainage facilities on the Site under the last previous planning Application No. A/YL-MP/265. The relevant drainage proposal and implementation works were considered satisfactory at the time. The applicant has submitted a set of latest record photographs showing the completed drainage works with corresponding photograph locations marked on the approved drainage plan (**Appendix Ic**). As revealed by the joint site inspection held with the applicant’s representative on 14.10.2020, construction of the drainage facilities at the Site has been checked to his satisfaction. As such, he has no further comment on the renewal application.
- (c) His detailed advisory comments are at **Appendix V**.

Landscape

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

- (a) He has no objection to the renewal application from landscape planning perspective.
- (b) The Site, located to the west of Castle Peak Road – Mai Po and north of Palm Springs Boulevard, falls within an area zoned “O” on the approved Mai Po and Fairview Park OZP No. A/YL-MP/6. It was the subject of 8 previous applications. The latest Application No. A/YL-MP/265 for the same use as the current application was approved with conditions by the Committee of the Board on 27.10.2017 and all approval conditions had been complied with.
- (c) According to the applicant’s submission (**Appendices I and Ia to Ic**), it is observed that the layout of the applied use in the current application is the same as the previous approved Application No. A/YL-MP/265 and therefore impact on the existing vegetation within the Site is not anticipated.

Fire Safety

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

He has no in-principle objection to the renewal application subject to the existing FSIs implemented on the Site being maintained in efficient working order at all times.

Building Matters

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

- (a) A Temporary Occupation Permit (TOP) in respect of the subject premises was issued to the Authorized Person (AP) and will be expired on 7.11.2020. The applicant shall be reminded to submit the TOP renewal application in due course.
- (b) Apart from the building covered by the TOP, there are other existing structures at the Site with no record of approval by the Building Authority. BD is not in a position to offer comments on their suitability for the use related to the renewal application.
- (c) The details of the advisory comments are at **Appendix IV**.

Environmental Hygiene

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

The details of the advisory comments are at **Appendix V**.

District Officer's Comments

10.1.13 Comments of the District Officer (Yuen Long) (DO(YL)):

His office has not received any feedback from the locals.

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

- (a) Commissioner of Police (C of P);
- (b) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (c) Head of the Geotechnical Engineering Office (H(GEO)), CEDD;
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comments Received During Statutory Publication Period

On 11.9.2020, the application was published for public comments. During the first three weeks of the statutory publication period, two public comments were received from two private individuals. One comment has raised objection to the commercial use in the crowded living neighbourhood which would affect the rural environment, while the other one raised concern that the applied use is not in line with the planning intention of the "O" zone and appropriate facilities should be provided in the "O" zone to serve the community (**Appendix IV**).

12. Planning Considerations and Assessments

12.1 The application is for renewal of the planning approval for temporary restaurant for a period of 3 years within "O" zone. The planning intention of the "O" zone is primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. Although the applied restaurant is not entirely in line with the planning intention of the "O" zone, approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the "O" zone as there is no programme for implementing the proposed open space at present, as advised by DLCS.

12.2 The temporary restaurant is considered not incompatible with the surrounding land uses which comprise mainly real estate agency, sales offices and

furniture showrooms, and large-scale low-density residential developments (**Plan A-2**). The temporary restaurant could provide catering services to the nearby residents and workers.

- 12.3 The current application is for the renewal of the planning permission under Application No. A/YL-MP/265 for the same use for a further period of 3 years. The renewal is in line with TPB PG-No. 34C in that there has been no major change in planning circumstances since the last approval; concerned Government departments have no objection to or no adverse comment on the application and adverse impacts arising from the renewal of the planning approval are not expected; all the approval conditions under the last approval have been complied with, and the 3-year approval period sought is the same as the previous approval.
- 12.4 The Site falls within the WBA of the TPB PG-No. 12C which specifies that planning applications for temporary uses are exempted from the requirement of EcoIA. In view that the Site is located at some distance from the fish ponds and wetlands in the Deep Bay area and separated by the residential development, significant negative off-site disturbance impact on the ecological value of the wetlands and fish ponds is not envisaged. DAFC has no comment on the application.
- 12.5 Relevant departments consulted including DEP, C for T, D of FS, CE/MN of DSD, DFEH and CTP/UD&L of PlanD have no objection to or no adverse comment on the renewal application. To mitigate any potential environmental impacts on the surrounding area and to address their requirements, approval conditions governing the operation of the applied use and on the technical requirements of departments are recommended in paragraphs 13.2 (a) to (g) below and in the advisory clauses in **Appendix V**. Besides, the applicant should be advised to follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- 12.6 The Site is the subject of 7 previous approvals for the same use as detailed in paragraph 6 above. Approval of the current renewal application is in line with the previous decisions of the Committee.
- 12.7 There are two public comments objecting to the application 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 considers that the temporary restaurant could be tolerated for a further period of 3 years.

- 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, and be renewed from 8.11.2020 to 7.11.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 12:00 a.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle without valid licence issued under the Road Traffic Ordinance is allowed to be parked/stored on the Site at any time during the planning approval period;
- (c) no medium or heavy goods vehicle (i.e. exceeding 5.5 tonnes) including container trailer/tractor as defined in the Road Traffic Ordinance is allowed to be parked/stored on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period;
- (e) the paving and boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (f) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (h) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (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
- (i) upon the 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.

[The above approval conditions are similar to those under the last Application No. A/YL-MP/265, except for those on traffic, landscape, drainage and FSIs facilities which are revised to accord with the latest circumstances/comments of relevant departments.]

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 development of a restaurant is not in line with the planning intention of the "O" zone which is intended primarily for the provision of outdoor open-air space for active and/or passive recreational uses serving the needs of local residents as well as the general public. 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 3.9.2020
Appendix Ia	Planning Statement
Appendix Ib	FI dated 23.9.2020
Appendix Ic	FI dated 7.10.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar application
Appendix IV	Public comments received during the statutory publication period
Appendix V	Recommended advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Floors, Sections and Elevations Plan
Drawing A-3	Emergency 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 and A-4b	Site Photos