

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/251

<u>Applicant</u>	Access Mate (Far East) Limited represented by R-riches Property Consultants Limited
<u>Site</u>	Lot 1640 S.A (Part) in D.D. 114, Shek Kong, Yuen Long
<u>Site Area</u>	About 597m ²
<u>Lease</u>	Tai Po New Grant No. 2998 (demised for agricultural use)
<u>Plan</u>	Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	“Residential (Group D)” (“R(D)”)
<u>Application</u>	Proposed Temporary Shop and Services (Metalware Retail Shop) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (metalware retail shop) at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “R(D)” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use within “R(D)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant, paved and fenced off.
- 1.2 According to the applicant’s submission, the Site has an area of about 597m². Three 1-2 storey structures (with building heights of about 3.5-7m and a total non-domestic floor area of about 228m²) are proposed for metalware retail shop (Structures B1 and B2) and fire service water tank and pump (Structure B3) (**Drawing A-1**). The Site is accessible via a local track from Kam Sheung Road (**Plan A-2**). 3 private car parking spaces, 1 loading/unloading space for light goods vehicle and a 10m-diameter manoeuvring space are proposed on site. The opening time is 10:00 a.m. to 5:00 p.m. from Mondays to Saturdays with no operation on Sundays and public holidays. According to the applicant, the future operator of the proposed development is a metalware retailer who intends to serve the neighbourhood for purchasing metalware products such as screw and water pipes. The layout plan

submitted by the applicant is at **Drawing A-1**.

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

- (a) Application form with attachments received on 28.2.2019 **(Appendix I)**
- (b) FI dated 3.4.2019 **(Appendix Ia)**
- (c) FI dated 13.6.2019 **(Appendix Ib)**

1.4 The application was originally scheduled for consideration by the Rural and New Town Planning Committee (the Committee) on 12.4.2019. On 12.4.2019, the Committee decided to defer the consideration of the application upon the request of the applicant in order to allow time for the applicant to prepare further information (FI) to address departmental comments. Upon receipt of FI, 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 **Appendices I and Ib**. They are summarized as follows:

- (a) The proposed development is on a temporary basis for a period of 3 years and therefore will not jeopardize the long-term planning intention of the “R(D)” zone.
- (b) The proposed development is intended to serve the neighbourhood’s need for purchasing metalware products such as screw and water pipes. It is anticipated that there will be around 5-8 customers visiting the Site every day and 5 staff on site.
- (c) The proposed development is generally not incompatible with the surrounding developments/uses within the “R(D)” zone. No workshop/manufacturing activities, filling of land or excavation of land will be carried out within the Site in order to minimize the adverse impact to the surrounding environment. The applicant will strictly follow the proposed scheme after planning approval is granted by the Board.
- (d) As the rent for the available sites along Kam Sheung Road has gradually increased, the applicant finds that it is difficult to continue the business there and therefore intends to use the Site which is a more remote site about 450m south of Kam Sheung Road.
- (e) The Site is accessible via a local track from Kam Sheung Road. Only 3 private car parking spaces and 1 loading/unloading space for light goods vehicle will be provided at the Site in order to minimize the adverse traffic impact to the surrounding areas. Besides, adequate space for manoeuvring of vehicles will be provided at the Site to avoid queuing of vehicles onto the local track outside the Site.
- (f) The applicant would follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Department in order to minimize any possible environmental nuisances to the surrounding areas. Besides, the applicant is committed to submit and implement the landscape proposal, proposed drainage facilities and fire service installations upon obtaining the planning approval from the

Board.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action. An Enforcement Notice (EN) in relation to storage use was issued to the registered owner of the subject lot on 15.8.2018 under Section 23(1) of the Town Planning Ordinance (the Ordinance). Subsequently, a Compliance Notice (CN) was issued on 12.3.2019 under Section 23(8A) of the Ordinance. A Reinstatement Notice (RN) was then issued on 19.3.2019 requiring reinstatement of the concerned land under Section 23(3) of the Ordinance. Noting from the recent site inspection on 30.5.2019 that the Site was partially reinstated, the Central Enforcement and Prosecution Section (CEPS) of Planning Department (PlanD) considers taking further action.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Application

6.1 There is one similar application (No. A/YL-SK/248) for ‘Shop and Services’ use within the same “R(D)” zone on the OZP. Details of the application are summarized at **Appendix II** and its location is shown in **Plan A-1**.

6.2 Application No. A/YL-SK/248 for temporary shop and services (retail shop for hardware groceries) use was recently approved with conditions by the Committee for a period of 3 years on 17.5.2019 based on the considerations that the applied development with low-rise structures is not incompatible with the surrounding environment; the approval of the applied development on a temporary basis would not frustrate the long-term planning intention of “R(D)” zone; and Government departments consulted generally had no adverse comment on the application.

7. The Site and Its Surrounding Areas (Plans A-1, A-2 and photos on Plans A-3 and A-4)

7.1 The Site is:

- (a) vacant, paved, gently flat and fenced off; and
- (b) is accessible via a local track of about 450m from Kam Sheung Road.

7.2 The surrounding areas are predominantly rural in character with some domestic dwellings/structures, active/fallow farmland, open storage/storage yards and unused land:

- (a) to its north are some domestic dwellings/structures, and to its further north are open storage uses intermixed with domestic dwellings/structures and unused land;
- (b) to its immediate east are some domestic dwellings/structures, and to its further east is a nullah and an open storage of construction machinery;
- (c) to its south off the local track is active/fallow farmland and sheep feeding field intermixed with domestic dwellings/structures and storage use; and
- (d) to its west is a local track leading to the Site, and to its further west and northwest are unused land, active farmland and a vehicle repair workshop.

8. Planning Intention

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

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 Lot 1640 S.A (Part) in D.D. 114 held under Tai Po New Grant No. 2998 (demised for agricultural use);
- (b) the Site is accessible from Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site;
- (c) the Site falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed relevant airfield height limit within the SKAHRA; and
- (d) should planning approval be given to the planning application, the lot owner(s) 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. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application 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 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; and
- (c) the Site is connected to the public road network via a section of a local access road which is not managed by his department. The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) his department does not and will not maintain the access connecting the Site with Kam Sheung Road; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Landscape

9.1.4 Comments of the Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD):

- (a) he has no objection to the application from landscape planning perspective;
- (b) based on the aerial photo taken on 13.3.2018, the Site is situated in an area of rural landscape character comprising of scattered tree groups, temporary structures and storage yards. The application is considered not incompatible with the surrounding environment;
- (c) with reference to the site inspection on 12.4.2019, the Site is hard

paved and vacant. Four existing trees including two mature *Celtis sinensis* (朴樹) and two young *Dimocarpus longan* (龍眼) are found along the western boundary, while one mature *Celtis sinensis* (朴樹) is found adjacent to the northern boundary. All existing trees are in fair to very good condition. Referring to the submitted layout plan, all existing trees are not in direct conflict with the proposed structures. Adverse impact arising from the proposed development on significant landscape resources is not anticipated; and

- (d) should the application be approved, approval condition on maintenance of the existing trees within the Site satisfactorily at all times during the planning approval period should be included in the planning approval.

Environment

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

should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”.

Drainage

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

- (a) he has no objection in-principle to the proposed development; and
- (b) should the application be approved, the conditions requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Building Matters

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

- (a) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (b) for UBW erected on leased land, enforcement action may be taken by 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;

- (c) 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 respectively; and
- (d) 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 Building (Planning) Regulations at the 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, fire service installations are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations 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 fire service installations to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, 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):

- (a) he has no particular comment on the application; and
- (b) he consulted the locals and received one objecting comment from the incoming Vice-chairman of Pat Heung Rural Committee (PHRC) and Indigenous Inhabitant Representative (IIR) of Sheung Tsuen mainly on the grounds that the village tracks leading to the Site are narrow, one-lane two-way with limited lay-bys, which may not be able to accommodate additional traffic flow generated by the proposed development; and the heavy vehicles from/to the Site will also create traffic safety concerns to the villagers.

9.2 The following Government departments have no objection to/adverse comment on the application. Their comments, if any, are at **Appendix IV**:

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

10. Public Comments Received During Statutory Publication Period

On 8.3.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period, which ended on 29.3.2019, a total of 5 public comments was received (**Appendices IIIa to IIIe**). Four comments from IRRs and incoming IRRs of Sheung Tsuen object to the application mainly on the grounds that the village tracks leading to the Site are narrow, one-lane two-way with limited lay-bys, which may not be able to accommodate additional traffic flow generated by the proposed development; and that the heavy vehicles from/to the Site will also create traffic safety concerns to the villagers. Another commenter from a member of the public expresses concerns that the approval of the application would legitimize the ongoing brownfield operation and prolong the inappropriate use.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services (metalware retail shop) at the Site for a period of 3 years. According to the applicant, three 1-2 storey structures are proposed for metalware retail shop at the Site to serve the neighbouring community's need for purchasing metalware products. No workshop/manufacturing activities will be carried out within the Site. The Site falls within an area zoned "R(D)" on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). The shop and services use is not entirely in line with the planning intention of "R(D)" zone, which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. Nevertheless, approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the "R(D)" zone.

11.2 The proposed development with low-rise structures is not incompatible with the surrounding land uses which mainly comprise some domestic dwellings/structures intermixed with active/fallow farmland, open storage/storage yards and unused land (**Plan A-2**). According to the applicant, only 3 private car parking spaces and 1 loading/unloading space for light goods vehicle will be provided at the Site, and the estimated traffic generation by the proposed development is considered acceptable. C for T, DEP, CE/MN, DSD and CTP/UD&L, PlanD have no objection to/no comment on the application from traffic, environmental, drainage and landscape aspects. It is anticipated that the proposed development would not have significant adverse traffic, environmental, drainage and landscape impacts on the surrounding areas. To mitigate potential traffic and environmental impacts on the surrounding areas, approval conditions restricting the operation hours and days, the type of

vehicles allowed to access the Site and no workshop/manufacturing activities allowed within the Site are recommended in paragraphs 12.2 (a) to (d) below. Any non-compliance with the approval conditions will result in revocation of the planning permission. The technical requirements of C for T, CTP/UD&L, D of FS and CE/MN of DSD could be addressed by approval conditions in paragraphs 12.2 (e) to (k). Besides, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP.

- 11.3 There is one similar application (No. A/YL-SK/248) for temporary shop and services (retail shop for hardware groceries) use within the same “R(D)” zone which was recently approved with conditions by the Committee for a period of 3 years on 17.5.2019, mainly on the grounds that the applied development with low-rise structures is not incompatible with the surrounding environment; temporary approval would not frustrate the long-term planning intention of “R(D)” zone; and Government departments had no adverse comment on the application. The said considerations are generally applicable to the subject application and approval of the application is in line with the previous decision of the Committee on the similar application.
- 11.4 An objecting comment from the locals was conveyed by DO/YL, HAD, whereas 5 public comments raising objections/concerns mainly on traffic aspect were received during the statutory publication period. The departmental comments and planning considerations and assessment as stated in paragraphs 11.1 and 11.2 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local comment conveyed by DO/YL, HAD and public comments in paragraphs 9.1.9 and 10, the Planning Department has no objection to the application.
- 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 3 years until 19.7.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 10:00 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 dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (d) 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;

- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (g) the submission of proposal for fire service installations and water supplies for fire-fighting 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 **19.1.2020**;
- (h) in relation to (g) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 **19.4.2020**;
- (i) 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 **19.1.2020**;
- (j) in relation to (i) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **19.4.2020**;
- (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) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (k) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked without further notice; and
- (m) if any of the above planning conditions (g), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

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 "R(D)" zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. 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 with attachments received on 28.2.2019
Appendix Ia	Further Information (FI) dated 3.4.2019
Appendix Ib	FI dated 13.6.2019
Appendix II	Similar Application
Appendices IIIa to IIIe	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2019**