

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1105

- Applicant** : Mr. TO Wong represented by Metro Planning and Development Company Limited
- Site** : Lot 221 (Part) in D.D. 128, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : 400 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Coastal Protection Area” (“CPA”)
- Application** : Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (convenience store) for a period of 3 years. The Site falls within an area zoned “Coastal Protection Area” (“CPA”) on the Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12 (**Plan A-1a**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of 3 years within the zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP for “CPA” zone. The Site is currently occupied by some temporary structures and partly for selling of soft drinks and light refreshments without valid planning permission (**Plans A-4a and A-4b**).
- 1.2 The Site involves four previous applications (No. A/YL-HT/805, 838, 1010 and A/YL-HTF/1094). Application No. A/YL-HT/805 for temporary organic farm with education and activity centre and barbecue spot, which covers the Site and the adjoining land in a larger site extent (about 2.2 ha), was rejected by the Board upon review in 2013. Applications No. A/YL-HT/838, 1010 and A/YL-HTF/1094 for temporary fishing ground use on the same site, which cover a small portion of the Site (about 68m² or 17%) and two fish ponds to the west were approved by the Committee between 2013 and 2019 (**Plan A-1b**).
- 1.3 The Site is accessible via a local track to Deep Bay Road (**Drawing A-1 and Plans A-2 and A-3a**). As shown on the proposed layout plan at **Drawing A-2**, there are two structures with a total floor area of about 210 m² and building height of 4.5m

for shop and services (convenience store) and toilet uses. The applicant proposes one private car parking space and one light goods vehicle loading / unloading bay at the Site. The applicant indicates that the operation hours are from 9 am to 7 pm every day. The proposed access plan, layout plan and drainage plan are shown at **Drawings A-1, A-2 and A-3** respectively.

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

- (a) Application Form with annexes and plans received on (Appendix I) 14.5.2020
- (b) Further Information (FI) clarifying the extent of the (Appendix Ia) 'Shop and Services' use received on 10.9.2020 [*exempted from publication requirements*]

1.5 On 10.7.2020, the Committee agreed to the applicant's request to defer making a decision on the application for two months to allow time for the preparation of FI to clarify the extent of the convenience store at the Site. Subsequently, the applicant submitted FI to address comments from Government department. 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 Application Form and FI respectively (**Appendices I and Ia**). They can be summarized as follows:

- (a) The applied use is a complementary use to the adjoining hobby farm and fishing ground in the "CPA" zone. The development would generate income for the applicant while the temporary conversion for the development would not affect the existing natural landscape and scenic quality of the area.
- (b) The surrounding area in the "CPA" zone is mainly dominated by land under active cultivation, fishing ponds and existing structures. Considering the scale, form, layout and nature of the development, the applied use is not incompatible with the surrounding areas.
- (c) The applied use only involves existing structures. The convenience store will be confined to structure 1 (**Drawing A-2**). No new structure is proposed at the Site.
- (d) The development will not generate adverse traffic, environmental and drainage impact to the surroundings.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "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 notice at the Site and sending registered post to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is located within an area which is subject to an enforcement action against unauthorised development (UD) involving recreation use (including climbing facilities and hobby farm). Enforcement Notice (E/YL-HTF/918) (**Plan A-1b**) was served on 4.11.2019 and expired on 4.1.2020. Recent site inspection on 24.2.2020 revealed that UD was not discontinued and prosecution action would be taken against the notice recipients if no valid planning permission was granted.

5. Previous Applications

- 5.1 The Site involves 4 previous applications (No. A/YL-HT/805, 838, 1010 and A/YL-HTF/1094) for agriculture/recreation or fishing ground uses. Application No. A/YL-HT/805 was rejected by the Board on review whilst Applications No. A/YL-HT/838, 1010 and A/YL-HTF/1094 were approved by the Committee. Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Application No. A/YL-HT/805 (covering the Site and adjoining land in a larger site extent of about 2.2 ha) for temporary organic farm with ancillary education and activity centre and small-scale barbecue spot was rejected by the Board on review on 4.1.2013 on the grounds that the proposed development was not in line with the planning intention of the “CPA” zone; there was insufficient information to demonstrate no adverse landscape impact; and the proposed development would set an undesirable precedent for other similar applications.
- 5.3 Applications No. A/YL-HT/838, 1010 and A/YL-HTF/1094 (covering a small portion of the Site and two fish ponds to the west) for temporary fishing ground and ancillary refreshment kiosk (about 20m²) submitted by the same applicant as the current application were approved by the Committee between 2013 and 2019 mainly on the considerations of only using the existing fish ponds as recreational fishing ground and no pond filling being involved; and no adverse comments from concerned Government departments.

6. Similar Application

There is no similar application within the same “CPA” zone.

7. The Site and Its Surrounding Areas (Plan A-2 to Plans A-4a and 4b)

- 7.1 The Site is:
 - (a) currently occupied by some temporary structures and partly for the applied use without valid planning permission; and
 - (b) accessible via a local track from Deep Bay Road (**Drawing A-1 and Plans A-2 and A-3a**).
- 7.2 The surrounding areas have the following characteristics (**Plan A-2**):
 - (a) to its north and northwest are two fish ponds for temporary place of recreation, sports or culture (fishing ground) and ancillary refreshment kiosk covered by

valid planning permission. To its further north is another pond and a nullah leading to Deep Bay;

- (b) to its east is a farm for temporary place of recreation, sports or culture (hobby farm) covered by valid planning permission. To its further east are suspected unauthorised developments (UDs) of open storage and parking of vehicles;
- (c) to its west is suspected UD of storage of old cars and a farm for temporary place of recreation, sports or culture (hobby farm) covered by valid planning permission; and
- (d) to its southwest are some temporary structures for storage and residential uses. To its further southwest is a site for temporary training centre (tree care training centre) covered by valid planning permission. To its south is a vegetated slope and to its further southeast is Deep Bay Road.

8. Planning Intention

- 8.1 The planning intention of “CPA” zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. It may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion.
- 8.2 There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.

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 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. 221 in D.D. 128 is covered by a Short Term Waiver No. 4639 for temporary place of recreation, sports or culture (fishing ground) and ancillary refreshment kiosk.
 - (c) According to site inspection and survey record, it is noted that there are 8 squatter control surveyed structures involved in the Site for private residential, porch and kitchen uses.

- (d) Should planning approval be given to the application, the STW holders will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application(s) 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 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 adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under Transport Department's (TD) purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Nature Conservation

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

- (a) The Site is located within "CPA" zone. The planning intention of the "CPA" zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value and there is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or the development is an essential infrastructure project with overriding public interest may be permitted. It is noted that the Site is currently occupied by a convenience store.

- (b) Although the Site is disturbed in nature and has been largely hard paved, there are some ponds in the nearby areas. While a drainage proposal on surface run-off and storm water has been provided in the application, it seems that the proposal does not mention about how the sewage from the toilet would be collected, and whether the sewage would cause adverse impact on the nearby ponds especially the neighbouring pond to the north of the Site.
- (c) Nevertheless, should the application be approved, the applicant shall ensure that the operation of the proposed shop and services and the associated visitors' activities would not encroach on or affect the surrounding area in particular the neighbouring pond to the north of the Site as well as mangrove/ mudflat habitat along the coast of Deep Bay.

Environment

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

- (a) He has no adverse comment on the application.
- (b) The applicant shall follow the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by the DEP to minimize potential environmental nuisance to the surrounding area.
- (c) There is no substantiated complaint pertaining to the Site received in the past 3 years.

Landscape

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

- (a) The Site, located to the west of Deep Bay Road, lies in an area of "CPA" zone. A small part of the Site is the subject of an application (No. A/YL-HTF/1094) for temporary fishing ground approved with conditions by the Committee on 22.3.2019. The current application seeks planning permission for temporary use for a period of 3 years.
- (b) With reference to site visit on 13.3.2020 and aerial photo taken in 2018, the Site is hard paved and approximate half of the Site is occupied by temporary structures. Two existing semi-mature trees are found within the Site. The applied use appears already in operation. The Site is situated in an area of rural coastal plain character predominated by cultivated land, mangroves, ponds, woodlands and temporary structures. The development is not entirely incompatible with the surrounding environment.
- (c) When comparing the aerial photos of 2010 and 2011 (**Plans A-3b and A-3c**), tree removal, site formation and construction of temporary structures were observed within the Site. Significant landscape impact has taken place. Approval of the application would set an undesirable precedent to encourage other similar applications to carry out vegetation clearance and site formation prior to obtaining planning

permission. The cumulative effect of which would result in a general degradation of the rural coastal plain landscape character of the area. Hence, he has reservation on the application from landscape planning perspective.

Drainage

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

- (a) He has no objection in principle to the application from a drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest conditions should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and to maintain the proposed drainage facilities to his satisfaction.

Building Matters

9.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, 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 the suitability for the use proposed in the application.
- (b) 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.
- (c) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with 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.
- (d) Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW under the BO. An Authorized Person should be appointed as the coordinator for the proposed works in accordance with the BO.
- (e) 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.

- (f) 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.

Fire Safety

9.1.9 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 (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 shall submit relevant layout plans incorporated with the proposed FSIs for his approval.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Others

9.1.10 Comments of the Antiquities and Monuments Office, Development Bureau (AMO, DEVB):

In view of the location and scope of the temporary shop and services, AMO has no objection to the application from cultural heritage viewpoint. Nevertheless, the applicant is required to inform AMO immediately if antiquities or supposed antiquities are discovered within the Site.

District Officer's Comments

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

His office has not received any comment from the locals on the application and he has no comment on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Leisure, Cultural and Services (DLCS);
- (e) Commissioner of Police (C of P); and
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comment Received During Statutory Publication Period

On 22.5.2020, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual (**Appendix III**) was received objecting to the application on the grounds that the development is not a compatible use in the “CPA” zone; not in line with the planning intention of the “CPA” zone; and involves site clearance and pavement with concrete.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (convenience store) for a period of 3 years at the Site zoned “CPA” on the OZP. The “CPA” zone is intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. There is a general presumption against development in this zone. The Site is currently occupied by some temporary structures and selling of soft drinks and light refreshments (**Plans A-3a, A-4a and A-4b**). Although the applicant claims that the proposed convenience store is a complementary use to the fishing grounds and hobby farm in the nearby areas, the applicant did not provide any justifications on the suitability of the Site and the scale (about 180m² of the store) for the development. In fact, to the immediate west of the Site, the planning permission for temporary fishing ground (Application No. A/YL-HTF/1094) has included an ancillary refreshment kiosk (about 20m²) to meet such demand (**Plan A-2**). There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- 11.2 The Site is situated in an area of rural coastal plain character predominated by cultivated land, ponds, shrubland and temporary structures (**Plans A-2 and A-3**). The development is not entirely incompatible with the surrounding environment.
- 11.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. It is noted that from the aerial photo taken in 2010 and 2011 (**Plans A-3b and A-3c**), tree removal, site formation and construction of temporary structures were observed within the Site. Significant landscape impact has taken place. Approval of the application would set an undesirable precedent to encourage other similar applications to carry out vegetation clearance and site formation prior to obtaining planning permission. The cumulative effect of which would result in a general degradation of the rural coastal plain landscape character of the area.
- 11.4 Other relevant Government departments, including C for T, DEP, CE/MN of DSD and D of FS have no objection to or no adverse comment on the application. The applied use will unlikely create significant adverse traffic, environmental, drainage and fire safety impacts to the surrounding areas.
- 11.5 There is no similar application for shop and services use in the same “CPA” zone. Although three previous applications (No. A/YL-HT/838, 1010 and A/YL-HTF/1094) for temporary fishing ground and ancillary refreshment kiosk were approved by the Committee between 2013 and 2019 (**Plan A-1b**), they only cover a small portion of the Site and were approved on the considerations of only using the existing fish ponds as recreational fishing ground and no pond filling being involved; and no adverse comment from relevant Government departments. For the

current application, it is different in nature and there is adverse comment from CTP/UD&L, PlanD on the landscape aspect.

- 11.6 There was one public comment objecting to the application mainly on grounds stated in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.5 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 does not support the application for the following reasons:

- (a) the applied use is not in line with the planning intention of the “Coastal Protection Area” (“CPA”) which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate that the applied use would not generate adverse landscape impact.

- 12.2 Alternatively, 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 **9.10.2023**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 7:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (c) the submission of a 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 **9.4.2021**;
- (d) in relation to (c) above, the implementation of the revised drainage proposal within **9 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.7.2021**;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) all existing trees within the Site shall be maintained in good condition at all times during the planning approval period;
- (g) the submission of a fire service installations proposal within **6 months** from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **9.4.2021**;

- (h) in relation to (g) above, the implementation of the fire service installations proposal within **9 months** from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **9.7.2021**;
- (i) if any of the above planning conditions (a), (b), (e) 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;
- (j) if any of the above planning conditions (c), (d), (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; and
- (k) upon expiry of the planning permission, the reinstatement of the Site to amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application form with attachments received on 14.5.2020
Appendix Ia	FI clarifying the extent of the 'Shop and Services' use received on 10.9.2020
Appendix II	Previous Applications
Appendix III	Public Comment
Appendix IV	Advisory Clauses
Drawing A-1	Site Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plans A-3a to A-3c	Aerial Photos
Plans A-4a and A-4b	Site Photos