

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

APPLICATION NO. A/YL/258

<u>Applicant</u>	: Mr. TSANG Kam-tong represented by Freeman Consultancy Service Limited
<u>Site</u>	: G/F, 1/F & Flat Roof, Lots 4582 S.A (Part) and 4583 RP (Part) in D.D. 116, Tai Kei Leng Road, Yuen Long, New Territories
<u>Site Area</u>	: 78.6m ² (about)
<u>Lease</u>	: (a) Block Government Lease (demised for agricultural use) (b) Lot 4582 S.A and 4583 RP in D.D. 116 (Short Term Waiver (STW)) No. 3883 for temporary shop and services (retail shop)
<u>Plan</u>	: Approved Yuen Long Outline Zoning Plan (OZP) No. S/YL/23
<u>Zoning</u>	: “Open Space” (“O”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Shop and Services (Retail Shop) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary shop and services (retail shop) for selling frozen food at the application site (the Site) (with a 3-storey building) for a further period of 3 years. According to the Notes of the OZP for “O” zone, the proposed ‘Shop and Services’ use is a Column 2 use which requires planning permission from the Town Planning Board (the Board). Although temporary uses expected to be 5 years or less of any land or building are always permitted as long as they comply with any other relevant legislation, the conditions of the Government lease concerned, and any other Government requirements, it is the Board’s practice to treat temporary use in permanent buildings as permanent uses. As such, the proposed temporary shop and services requires planning permission under section 16 of the Town Planning Ordinance. The Site is currently occupied for the applied use with planning permission under Application No. A/YL/221 (**Plans A-1 and A-4a to A-4b**).
- 1.2 The Site was involved in 3 previous applications (No. A/YL/192, 200 and 221) for the same use. The last application (No. A/YL/221) was approved with conditions

by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 24.6.2016 with validity up to 16.8.2019. All the associated approval conditions have been complied with. Details of the previous applications are at paragraph 5 below and **Appendix III**.

- 1.3 The Site is accessible via a local track leading from Tai Kei Leng Road to its south (**Plan A-3**). According to the applicant, delivery of frozen products will be arranged between 10 a.m. and 5 p.m. by light goods vehicle (LGV) and unloaded at the local track leading from Tai Kei Leng Road opposite to the Site. Plans showing the location of the Site, site layout and fire service layout submitted by the applicant are at **Drawings A-1 to A-5** respectively.
- 1.4 The major development parameters of the application are the same as the last application (No. A/YL/221) and are summarised as follows:

Major Development Parameters	Last Approved Application No. A/YL/221	Current Application No. A/YL/258
Applied Use	Renewal of Planning Approval for Temporary Shop and Services (Retail Shop) for a Period of 3 Years	
Site Area	78.6m ² (about)	
Total Floor Area (Non-domestic)	123.2m ² (about)	
No. of Structure	1	
Height of Structure	3 storeys	
Operation Hours	3:00 p.m. to 8:00 p.m. daily	

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

- (a) Application Form received on 4.7.2019 **(Appendix I)**
- (b) Further Information dated 17.7.2019 submitting the latest approved FSIs proposal, the FS251 fire certificate and an undertaking letter to clarify that there is no change to the layout/proposed uses comparing to the previous application **(Appendix Ia)**
[accepted and exempted from publication and recounting requirements]
- (c) Further Information dated 7.8.2019 providing a revised location plan and clarification on the justification **(Appendix Ib)**
[accepted and exempted from publication and recounting requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 8 of the Application Form and the Further Information (**Appendices I and Ib**). They can be summarised as follows:

- (a) The applicant would like to continue providing services and bring convenience to the local residents.
- (b) The operation hours of the retail shop are between 3:00 p.m. and 8:00 p.m. daily. Ordering of products would be taken place once per week and the supplier would deliver products on the next day. Delivery of products would be arranged between 10:00 a.m. and 5:00 p.m. by LGV and unloaded at the local track leading from Tai Kei Leng Road opposite to the Site. Therefore, the retail shop would not generate any significant adverse impact to the nearby residents.

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 obtaining consents from the two “current land owners” of the Site on 24.6.2019. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for “Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development” (TPB PG-No. 34C) are also relevant to the application. The relevant assessment criteria are attached at **Appendix II**.

5. Previous Application

- 5.1 The Site was involved in 3 previous applications (No. A/YL/192, 200 and 221) for shop and services (retail shop) use submitted by the same applicant. Details of the applications are summarized in **Appendix III** and the boundaries of the Site are shown on **Plan A-1b**.
- 5.2 The first 2 applications (No. A/YL/192 and 200) were approved with conditions by the Committee each for a period of 3 years on 19.10.2012 and 16.8.2013 respectively mainly on the consideration that the proposed use was small in scale and not likely to cause adverse impacts on the surrounding areas. However, in view of the public concerns on the nuisances that might be generated from the proposed retail shop, a temporary approval of 3 years was granted instead of on a permanent basis as sought to closely monitor the site situation.
- 5.3 Application No. A/YL/192 was revoked on 19.4.2013 due to non-compliance with approval conditions regarding the submission and implementation of FSIs proposal. A shorter compliance period of approval conditions was granted under the application No. A/YL/200 to closely monitor the site conditions. All the time-limited approval conditions were complied with.
- 5.4 The last application (No. A/YL/221) for renewal of the planning permission for the applied use was approved by the Committee on 24.6.2016 mainly on the consideration that the proposed development was small in scale and could provide shopping facility to meet any such needs in the area and departmental

concerns/environmental nuisance could be addressed/mitigated by imposition of approval conditions. All the time-limited approval conditions under the last application have been complied with and the permission is valid up to 16.8.2019.

- 5.5 Compared with the last application, the current application is submitted by the same applicant for the same use on the same Site and the site layout and development parameters remain unchanged.

6. Similar Applications

- 6.1 There are 6 similar applications (No. A/YL/156, 160, 215, 218, 233 and 241) for various shop and services uses within the same “O” zone. Details of the applications are summarised in **Appendix IV** and the locations of the sites are shown on **Plan A-1**.
- 6.2 There are 4 similar applications (No. A/YL/215, 218, 233 and 241) for temporary shop and services (farm product and grocery shop), (real estate agency and car audio shop), (real estate agency, book shop and ancillary site office) and (car beauty services) approved with conditions for a period of 6 years each by the Committee between 2015 and 2018. The applications were approved mainly on consideration that approval on temporary basis would not frustrate the long-term planning intention; the proposed uses were not incompatible with the surrounding uses; the proposed use would unlikely cause significant adverse impacts; and relevant government departments consulted had no adverse comment.
- 6.3 The other 2 similar applications (No. A/YL/156 and 160) were for temporary place of recreation (including outdoor barbecue area), eating place and shop and services (retail of frozen food) on the same site. They were rejected by the Committee of the Board on 30.11.2007 and 18.4.2018 respectively mainly on the grounds that the development was environmentally undesirable; insufficient information to demonstrate no adverse impacts on the surrounding areas; and setting undesirable precedent.

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

- 7.1 The Site is:
- (a) currently occupied by a 3-storey building;
 - (b) situated at the southeastern portion of the Yuen Long New Town;
 - (c) accessible from Tai Kei Leng Road to its south via a local track (**Plan A-3**); and
 - (d) currently occupied for the applied use with planning permission under Application No. A/YL/221 with validity up to 16.8.2019.
- 7.2 The surrounding areas have the following characteristics:
- (a) generally residential use in nature intermixed with open storage/storage yards, vehicle parks, vehicle workshops, car service yards, barbecue area, fallow/cultivated agricultural land and unused land;

- (b) to its north are residential structures, two vacant sites covered by valid planning permissions under Applications No. A/YL/215 and A/YL/233 for temporary shop and services uses;
- (c) to its further north are scattered residential structures, fallow/cultivated agricultural land, and a residential development named Sereno Verde on land zoned “Residential (Group B)”;
- (d) to its east are scattered residential structures, open storage yards, a canteen, a vehicle park and a car service yard;
- (e) to its south are two vacant sites covered by valid planning permission under Applications No. A/YL/218 and A/YL/241 for temporary shop and services uses. To its further south are Tai Kei Leng Road and the Yuen Long Highway; and
- (f) to its west are a barbecue area, a vehicle park, and car service yards.

8. Planning Intention

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

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application are summarised 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. 4582 S.A and 4583 RP in D.D. 116 are currently covered by STW No. 3883 which permits structures erected thereon for the purpose of ‘temporary shop and services (retail shop)’.
- (c) The Site is accessible from Tai Kei Leng Road via government land (GL). Her office does not provide maintenance work for this GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site does not fall within the Shek Kong Airfield Height Restriction Area.

- (e) Should planning approval be given to the subject planning application, the STW holder(s) will need to apply to her 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. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by her department acting in the capacity as landlord 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 her department.

Traffic

9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) The land status of the access road/path/track leading to the Site at Tai Kei Leng Road shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.

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

- (a) He has no comment on the renewal application from highways maintenance point of view.
- (b) His department is not and shall not be responsible for the maintenance of the existing vehicular access connecting the Site and Tai Kei Leng Road.

Environment

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

- (a) She has no comment on the renewal application.
- (b) Should the planning application be approved, the applicant will be 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” (Code of Practice) to minimise any potential environmental nuisances.

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 proposed development from the public drainage point of view.
- (b) However, the applicant is reminded to provide his own drainage facilities to collect the runoff generated from the Site or passing through the Site, and discharge the runoff collected to a proper drainage point. The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities. The applicant is also reminded to consult DLO/YL, LandsD and seek consent from the relevant owners for any works to be carried out outside his lot boundary before commencement of the drainage works.

Fire Safety

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

He has no objection in principle to the renewal application subject to the existing fire service installations (FSI) implemented on the Site being maintained in efficient working order at all times.

Building Matters

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

- (a) He has no in-principle objection to the application under the Building Ordinance (BO).
- (b) There is no record of approval by the Building Authority (BA) for the structures existing at the Site.
- (c) If the existing structures are erected on leased land without the approval of his department, they are unauthorized under the BO and should not be designated for any proposed use under the application.
- (d) Before any new building works (including converted container and open sheds) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) For UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with his department'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.
- (f) If the proposed use under application is subject to the issue of a licence, the applicant should be reminded that any existing

structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

- (g) 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.
- (h) 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.

Others

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

- (a) The Site is zoned “O” on the approved Yuen Long OZP No. S/YL/23. It is not on the priority list for development agreed by the Yuen Long District Council. He has no plan to develop the Site into public open space at present.
- (b) Since the application involves private lot only, he has no in-principle objection to the application.

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

- (a) No Food and Environmental Hygiene Department’s (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) Proper licence/ permit issued by FEHD is required if there is any catering service/ food business/ activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.
- (c) For any waste generated from the such activity/ operation, the applicant should arrange disposal properly at their own expenses.

District Officer’s Comments

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

- (a) The concerned access road/path with drainage (but excluding Tai Kei Leng Road) is under ad-hoc maintenance of his office. His office has no comment on the subject application on condition that the flow capacity of above drainage would not be adversely affected.

- (b) The local consultation was completed on 2.8.2019 and his office has not received any feedback from the locals on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Architect/CMD2, Architectural Services Department (CA/CMD2, ArchSD);
- (c) Head of the Geotechnical Engineering Office, CEDD;
- (d) Project Manager (West), CEDD (PM(W), CEDD); and
- (e) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 12.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 2.8.2019, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The current application is for renewal of the planning permission under previous Application No. A/YL/221 for temporary shop and services (retail shop) for a further period of 3 years at the Site zoned "O" on the OZP. Although the proposed use is not in line with the planning intention of the "O" zone which is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public, it would provide a shopping facility to serve any such need in the area. DLCS also advises that there is no plan to develop the Site into public open space at present. Approval of the application on a temporary basis would not frustrate the long-term planning intention of the subject "O" zone.
- 11.2 The proposed development is in a 3-storey building with a total floor area of about 123.2m². It would be operated between 3 p.m. and 8 p.m. daily. Delivery of products would be arranged between 10 a.m. and 5 p.m. by LGV. It is considered that the proposed development is small in scale and not incompatible with the surrounding uses which are residential in nature (**Plan A-2**).
- 11.3 The application is generally in line with TPB PG-No. 34C in that there has been no material change in planning circumstances since the granting of the previous renewal approval under Application No. A/YL/221; the approval conditions have been complied with; and the 3-year approval period sought is reasonable and of the same timeframe as the previous approval.
- 11.4 Relevant government departments consulted have no objection to or adverse comment on the application. Significant adverse environmental, traffic, drainage, fire safety and landscape impacts are not anticipated. To prevent any potential adverse impacts and nuisance on the surrounding areas or to address the technical requirements of concerned government departments, relevant approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission. Should

the planning application be approved, the applicant will also be advised to follow the latest Code of Practice in order to minimise any potential environmental nuisance.

- 11.5 All the approval conditions of the latest previous application (No. A/YL/221) have been complied with, with the planning permission valid up to 16.8.2019. Given that the Committee has approved 3 previous applications of the same use at the Site and 4 similar applications in the same “O” zone, approval of the application is in line with the Committee’s previous decisions.
- 11.6 There is no public comment received on the application during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department considers that the proposed shop and services (retail shop) could be tolerated for a further period of 3 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 further period of 3 years from 17.8.2019 to 16.8.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) The operation hours of the development is restricted from 3:00 p.m. to 8:00 p.m. daily, as proposed by the applicant, during the planning approval period;
- (b) The existing FSIs implemented on the site should be maintained in efficient working order at all times;
- (c) if any of the above planning condition (a) and (b) 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.

*[Approval condition (a) is the same as that under the previous permission for Application No. A/YL/221 while the previous conditions on submission and implementation of fire service installations are replaced by condition (b), as the latest fire certificates in **Appendix Ia** have been accepted by D of FS.]*

Advisory clauses

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

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

as the general public. There is no strong planning justification in the submission for a departure from such 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 received on 4.7.2019
- Appendix Ia** Further Information dated 17.7.2019 submitting the latest approved FSIs proposal, the FS251 fire certificate and an undertaking letter to clarify that there is no change to the layout/proposed uses comparing to the previous application
- Appendix Ib** Further Information dated 7.8.2019 providing a revised location plan and clarification on the justification
- Appendix II** Relevant extract of the Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C)
- Appendix III** Previous applications covering the Site
- Appendix IV** Similar applications within the same “O” zone on the Yuen Long OZP
- Appendix V** Recommended Advisory Clauses
- Drawing A-1** Revised Location Plan
- Drawings A-2 to A-4** Site Layout Plans
- Drawing A-5** Fire Service Layout Plan
- Plan A-1** Location Plan with Previous and Similar Applications
- Plan A-2** Site Plan
- Plan A-3** Aerial Photo
- Plans A-4a and A-4b** Site Photos