

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/144

- Applicant** : Ms. Wong Lai Kam represented by Metro Planning and Development Company Limited
- Site** : Lots 924 RP (Part) and 1007 RP (Part) in D.D. 125 and Adjoining Government Land (GL), Ha Tsuen, Yuen Long
- Site Area** : 1,380 m² (about) (including about 500m² of GL)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/2
- Zoning** : “Village Type Development” (“V”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Eating Place 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 eating place for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for “V” zone, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for the use for a period of 3 years. The Site is currently being used for the applied use with a valid planning permission No. A/YL-HT/1009.
- 1.2 Application No. A/YL-HT/1009 for the same temporary use covering the Site was approved by the Rural and New Town Planning Committee (the Committee) of the Board with conditions on 10.6.2016 for a period of 3 years. All the time-specific approval conditions including the provision of run-in/out, fencing as well as implementation of drainage, landscape proposals and fire services installations (FSIs) proposals have been complied with. The permission is valid up to 10.6.2019.
- 1.3 The Site is accessible from Ha Mei Road via a vehicular track to its south (within a temporary public vehicle park for private car and light goods vehicle under planning permission No. A/HSK/20) (**Drawing A-1 and Plan A-2**). As shown on

the proposed layout plan at **Drawing A-2**, the temporary eating place comprises a structure (not exceeding 7.5m high) with a total floor area of not exceeding 720m² including about 180m² for eating area, about 241m² for open sheds, about 105m² for kitchen, about 43m² for storage and about 20m² for staff rest room. 8 parking spaces for car and light goods vehicle and a manoeuvring circle are proposed at the southern portion of the site. According to the applicant, the operation hours are from 7:00 a.m. to 11:00 p.m. daily. The proposed tree preservation plan and as-built drainage plan submitted by the applicant are at **Drawings A-3 to A-4**.

- 1.4 A comparison of the major development parameters of the current application and the previous application is given in the following table.

Major Development Parameters	Last Approved Application (A/YL-HT/1009) (a)	Current Application (A/HSK/144) (b)	Difference (b) – (a)
Site Area	about 1,380m ²		No change
Applied Use	Temporary Eating Place for a Period of 3 Years		No change
Total Floor Area	620m ²	720m ²	+100m ² (+16.1%)
No. of Structures	1	1	No change
Uses of Structures	- Eating area (180m ²) - Open sheds (141m ²) - Kitchen (105m ²) - Storage (43m ²) - Staff rest room (20m ²) - Toilet (35m ²)	- Eating area (180m ²) - Open sheds (241m ²) - Kitchen (105m ²) - Storage (43m ²) - Staff rest room (20m ²) - Toilet (35m ²)	+100m ² for open shed in front of main entrance
No. of parking spaces for private car	10	8	-2 (-20%)
Operation hours	7am-11pm daily		No change

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

- (a) Application Form received on 12.3.2019 **(Appendix I)**
- (b) Supplementary planning statement with proposed vehicular access, layout plan, tree preservation plan and as-built drainage plan **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are provided in the supplementary planning statement at **Appendix Ia**. They can be summarized as follows:

- (a) The Site is the subject of a previous planning permission for the same use and the applicant had complied with all the approval conditions imposed by the Board. Due to increase in floor area of the temporary structure, a fresh planning application is submitted.

- (b) The Site is not subject to impending Small House application and temporary use would not jeopardize the planning intention of “V” zone in the long run. The proposed development, which is primarily to serve the villagers, is a commercial use serving villagers’ demand. The nature and size of the proposed development would not affect the character of the village.
- (c) Eating Place is a Column 2 use in the “V” zone. It is always permitted at the ground floor of a New Territories Exempted House (NTEH). Eating place is therefore compatible with the nearby village houses and residential units at upper floors.
- (d) The Site is surrounded by vacant land and easily accessible and is an ideal location for eating place. Part of the proposed temporary structure is two storeys high and not exceeding 7.5m in height. Considering the scale, nature, layout and form of the proposed development, it is compatible with the surrounding environment. A number of similar temporary eating places in “V” zone in the New Territories has been approved by the Board.
- (e) There are no adverse traffic, environmental, landscape and drainage impacts from the development. The applicant will implement the measures with reference to the “Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The Site and its frontage has been hardpaved. The opening hours are restricted from 7:00 a.m. to 11:00 p.m. daily.

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. 31) by posting site notice and sending notice to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to any planning enforcement action.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Eating Place within “V” Zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) are relevant to the application. The relevant assessment criteria are at **Appendix II**.

6. Previous Applications

6.1 The Site is related to 2 previous applications No. A/YL-HT/895 and 1009. Details of these two application are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

- 6.2 The last planning application No. A/YL-HT/1009 for the same use for a period of 3 year was approved with conditions by the Committee on 10.6.2016. All the time-specific approval conditions have been complied with. Compared with the last application, the current application is submitted by a different applicant for the same use on the same site but with an increase in GFA for the provision of open shed.

7. Similar Application

There is no similar application within the same “V” zone on the OZP.

8. The Site and Its Surrounding Areas (Plan A-1 to Plan 4b)

8.1 The site is:

- (a) currently occupied by an eating place under a valid planning permission; and
- (b) accessible from Ha Mei Road via a vehicular track to its south.

8.2 The surrounding areas have the following characteristics:

- (a) to its north is a pond and to its northeast are an amenity area, a basketball court, an electricity sub-station and a pump house. To the further north is a vehicle park and the village settlement of Lo Uk Tsuen;
- (b) to its east are a football field, a nullah and Ping Ha Road;
- (c) to its south is a temporary public vehicle park for private car and light goods vehicle under a valid planning permission No. A/HSK/20, the Ha Tsuen Rural Committee building and a public toilet; and
- (d) to its west across Ha Mei Road are the village settlement of Sik Kong Tsuen (the nearest residential dwelling is about 23m away), two yards for parking of vehicles, a playground, a basketball court, an amenity area and a sitting-out area.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application and public comments 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 prior approval of the Government.
- (b) The Government Land (GL) (about 500m² subject to verification) is covered by Short Term Tenancy No. 3027 (STT3027) for the purposes of temporary eating place.
- (c) The private lots No. 924 RP and 1007 RP in D.D.125 are covered by Short Term Wavier (STW) No. 4658 and STW No. 4659 respectively both for the purposes of temporary eating place.
- (d) The Site is accessible to Ha Mei Road through GL and private lot(s). His office provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) According to his record, there are no Small House (SH) applications approved/under processing within the “V” zone portion of the Site, and there are 4 SH applications approved and 1 small house application under processing in the area within 30m from the Site.
- (g) Should the application be approved, the STW/STT holders will need to apply to his office for modification of the STW/STT 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. Application(s) for any of the above will be considered by the 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 the LandsD.

Traffic

10.1.2 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment on the application from traffic engineering viewpoint.
- (b) Sufficient manoeuvring spaces 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 TD's 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.

10.1.3 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 Ha Mei Road.

Environment

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

- (a) No substantiated environmental complaint against the site has been received over the past 3 years.
- (b) Should the planning application be approved, the applicant shall be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites".

Drainage

10.1.5 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) According to the applicant's submission, the existing drainage facilities which was implemented under an approved application no. A/YL-HT/1009 will be maintained for the subject development.
- (c) Should the application be approved, he would suggest imposing a planning condition requiring the applicant to maintain the existing

drainage facilities and submit condition record of the existing drainage facilities to the satisfaction of his Division.

Building Matters

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

- (a) There is no record of approval by the Building Authority for the existing structures at the Site and Buildings Department (BD) is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a NTEH) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the coordinator for the proposed building 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) Regulation respectively.
- (f) 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) Regulation at the building plan submission stage.

Fire Safety

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

- (a) He has no objection to the proposal subject to fire services installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the structures, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval.

- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Other Aspects

10.1.8 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) For any waste generated from such activity/operation, the applicant should arrange disposal properly at her own expenses.
- (c) Proper licence/permit issued by his department is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Under the Food Business Regulation, Cap. 132X, a food business licence is required for the operation of the relevant type of food business listed in the regulation.

District Officer's Comment

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

He has not received any comment on the application from the locals on the application.

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

- (a) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD);
- (b) Commissioner of Police (C of P); and
- (c) Chief Engineer/Development (Construction), Water Supplies Department (CE/C, WSD).

11. Public Comments Received During Statutory Publication Period

On 19.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 9.4.2019, no public comment was received.

12. Planning Considerations and Assessment

- 12.1 The planning intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Although the temporary eating place use is not entirely in line with the planning intention of the “V” zone, it could provide catering service to meet any such demand in the area. Whilst DLO/YL of LandsD advises that there are no Small House (SH) applications approved/under processing within the Site, and there are 4 SH applications approved and 1 small house application under processing in the area within 30m from the Site, he has no objection to the application for temporary use. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the Site.
- 12.2 The site is located at the fringe of the “V” zone and the surrounding areas of the Site are predominantly rural in character with a football field adjoining the site and village settlements of Sik Kong Tsuen and Sik Kong Wai to the west across Ha Mei Road. As such, the eating place is considered not incompatible with the surrounding land uses.
- 12.3 The application is generally in line with TPB PG-No. 15A in that the eating place is located at the fringe of the “V” zone and accessible from Ha Mei Road via a vehicular track to its south. The eating place is also located adjacent to recreational uses that worthy of favourable consideration. In addition, there is no adverse comment from the concerned Government departments, including DEP, AC for T/NT of TD and CE/MN of DSD, D of FS and DFEH. Significant environmental, traffic, drainage and environmental hygiene impact to the area is not expected.
- 12.4 To minimize possible nuisances, relevant approval conditions have been recommended in paragraph 13.2 to minimize any possible nuisances or to address the technical requirements of the concerned Government departments. Approval condition restricting the operation hours, as proposed by the applicant, has been recommended in paragraph 13.2(a) below. Approval conditions in paragraphs 13.2 (b) to (g) below are included to prohibit queuing back and reversing movement of vehicles on public road, maintenance of existing drainage and landscape planting, and to require the submission of drainage record and implementation of FSIs proposals for addressing the relevant concerns. The applicant will also be advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ in order to minimize the possible environmental impacts on the nearby sensitive receivers.
- 12.5 The current application is a subsequent one before expiry of the last approved application (No. A/YL-HT/1009) for the same use for three years. There has been no major change in planning circumstances of the Site and the surrounding areas since the granting of the previous temporary approval. In addition, the applicant has complied with all the approval conditions under previous approval. Approval of the subject application is in line with the Committee’s previous decision.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 above, the Planning Department has no objection to the temporary eating place for a 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 until **3.5.2022**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the public road at any times during the planning approval period;
- (c) the submission of a condition record of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **3.8.2019**;
- (d) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the existing trees and landscape planting on the Site shall be maintained at all time during the planning approval period;
- (f) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **3.11.2019**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **3.2.2020**;
- (h) if any of the above planning conditions (a), (b), (d) or (e) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (i) if any of the above planning conditions (c), (f) or (g) is not complied with by the above 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**.

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

the development is not in line with the planning intention of the "Village Type Development" zone which is primarily to designate both existing recognized villages and areas of land considered suitable for village expansion. There is no strong justification to deviate 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 reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 12.3.2019
Appendix Ia	Supplementary planning statement with proposed vehicular access plan, layout plan, tree preservation plan and as-built drainage plan
Appendix II	Relevant extracts of Town Planning Board Guidelines for 'Application for Eating Place within "V" Zone in Rural Areas under Section 16 of the Town Planning Ordinance' (TPB PG-No. 15A)
Appendix III	Previous Applications covering the Application Site
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Tree Preservation Plan
Drawing A-4	As-built Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos