

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/51

<u>Applicant</u>	:	Kin Sun Pigeon represented by Metro Planning and Development Company Limited
<u>Site</u>	:	Lot 1315 RP (Part) in D.D. 124 and Adjoining Government Land, San Sang San Tsuen, Yuen Long, New Territories
<u>Site Area</u>	:	330 m ² (about) (including about 25 m ² of Government land (GL))
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Draft Hung Shui Kiu and Ha Tsuen Outline Zoning Plan (OZP) No. S/HSK/1
<u>Zoning</u>	:	“Open Space” (“O”)
<u>Application</u>	:	Proposed Temporary Shop and Services (Fresh Provision Shop) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (fresh provision shop) for a period of 3 years at the application site (the Site) (**Plan A-1**). The Site falls within the “O” zone on the Draft Hung Shui Kiu and Ha Tsuen OZP No. S/HSK/1. According to the Notes of the OZP for the “O” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary approval for a period of 3 years. The Site is currently partly vacant and partly occupied by a temporary structure and is not involved in any previous application.
- 1.2 As shown on the layout plan at **Drawing A-2**, the ingress/egress is located at the eastern boundary of the Site. There is a temporary structure with a total floor area of 310m² for storage of fresh provisions, site office and shop uses. One loading/unloading space for light goods vehicles is provided. According to the applicant, the operation hour of the Site is 9:00 am to 8:00 pm from Mondays to Sundays (including public holidays). The proposed landscape plan and proposed drainage plan are at **Drawings A-3** and **A-4** respectively.
- 1.3 The major development parameters of the application are summarized as follows:

Site Area	330 m ² (about) including 25 m ² Government Land
Total Floor Area (Non-domestic)	310 m ²
No. of Structure	1
Height of Structure	Not Exceeding 6.5m
Loading/Unloading Space	1 for light goods vehicle Only (7m x 3.5m)
Operation Hours	9:00a.m. to 8:00p.m. (including Public Holidays)

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

- (a) Application Form received on 9.1.2018 with **(Appendix I)** replacement pages received on 9.1.2018 and 12.1.2018
- (b) Supplementary planning statement with site plan, **(Appendix Ia)** location plan, proposed layout plan, proposed landscape plan and proposed drainage plan
- (c) Letter from the applicant dated 7.5.2018 in response to **(Appendix Ib)** CTP/UD&L of Planning Department's Comments

1.5 The application was originally scheduled for consideration by the Committee on 2.3.2018. At the request of the applicant, the Committee on 2.3.2018 agreed to defer a decision for two months so as to allow time for the applicant to submit further information to address departmental comments. After the deferment, further information was received by the Board on 7.5.2018. The application is therefore 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 Supplementary Planning Statement at **Appendix Ia**. They can be summarized as follows:

- (a) The proposed development would not jeopardize the long term development and the planning intention of the "O" zone. It is a Column 2 use in the "O" zone.
- (b) The existing temporary structure has existed since 1982. The proposed development is compatible with the surrounding environment. Even so, the applicant has proposed some measures to further minimize any potential impact to the nearby residents.
- (c) There are similar shops and services in "O" zone at Mai Po and Ping Shan have been approved by the Board to meet the resident's demand.

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 Ping Shan Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

Subject to the collection of sufficient evidence, appropriate enforcement action under the Town Planning Ordinance would be taken in due course.

5. Previous Application

The Site is not a subject of any previous application.

6. Similar Application

There is no similar application within the same “O” zone on the OZP. For Members’ information, Application No. A/HSK/55 for Proposed Temporary Shop and Services (Retail Shop for Pet Goods) and Dog Breeding Centre for a Period of 3 Years within the same “O” zone will also be considered at this meeting (**Plan A-1**).

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

7.1 The Site is:

- (a) currently occupied by a temporary structure;
- (b) accessible via a local track leading from Tin Ha Road to its east (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) predominately occupied by open storage, workshops, parking of vehicles uses with scattered residential structures which are all suspected unauthorized developments (UDs), unused land, cultivated agricultural land and vacant land;
- (b) scattered residential structures are found in the vicinity of the Site with the nearest one located about 18m to southwest of the Site;
- (c) a knoll with burial urns located to northeast of the Site ; and
- (d) the Kong Sham Western Highway is located to the west of the Site

8. Planning Intention

The “O” zone is intended 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 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 an Old Schedule Agricultural Lot 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) No permission is given for occupation of Government Land (GL) (about 25 m² subject to verification) included in the Site. The act of occupation of GL without Government’s prior approval is not allowed.
- (c) The Site is accessible to Tin Ha Road a local road on GL. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should the application be approved, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularize any irregularities on site. Furthermore, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application(s) will be considered by the Lands Department acting in the capacity of the 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 the Lands Department.

Traffic

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

- (a) He has no adverse comment to the application from traffic

engineering point of view.

- (b) Sufficient manoeuvring spaces shall be provided within the Site. No vehicle is allowed to queue back to public road or reverse onto/from the public road.
- (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.

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 Tin Ha Road.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past 3 years.
- (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 Environmental Aspects of Temporary Uses and Open Storage Sites".

Landscape

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

- (a) Noting that AFCD considers that the development would unlikely to have significant ecological impact to the "Green Belt" zone, San Sang Tsuen Egret and flight path of breeding ardeids, and that the Applicant has clarified the temporary structure is an existing use.
- (b) Based on the above his office has no in-principle objection on the application from the landscape planning perspective.
- (c) In consideration of the site coverage of over 90% and spatial allowance for vehicular access, there is very limited space

remaining within the site for reasonable landscape treatment. Thus his office considers it is impractical to impose a landscape condition despite the Applicant had proposed planting of two trees, adequate growing space would not be available (for canopy and root system) to achieve a sustained growth of the trees.

- (d) Given existing trees are observed close to the application boundary, the applicant should be advised that planning approval does not imply any approval of tree works (felling/transplanting or pruning) under lease. Tree works applications should be submitted direct to DLO for approval.

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 from the drainage point of view.
- (b) He has the following comments on the submitted drainage proposal:
 - (i) Peripheral surface channel along the boundary of the whole applicant site shall be provided to collect the surface runoff accrued on application site and to intercept the overland flow, especially that from the knoll to the north.
 - (ii) Please indicate clearly the full alignment of the discharge path from the Site all the way down to the ultimate discharge point (e.g. a well-established stream course/public drainage system). In the case that local village drains are involved, DO/YL should be consulted.
 - (iii) The cover levels and invert levels of the proposed u-channels, catchpits/sand traps should be shown on the drainage plan.
 - (iv) Cross sections showing the existing and proposed ground levels of the captioned site with respect to the adjacent areas should be given.
 - (v) Sand trap or provision alike should be provided before the collected runoff is discharged to the public drainage facilities.
 - (vi) Standard details should be provided to indicate the sectional details of the proposed u-channel and the catchpit/sand trap.
 - (vii) Where walls or hoarding are erected are laid along the site boundary, adequate opening should be provided to

intercept the existing overland flow passing through the site.

- (viii) The development should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.
 - (ix) The applicant should consult DLO/YL and seek consent from the relevant owners for any drainage works to be carried out outside his lot boundary before commencement of the drainage works.
- (c) Should the application be approved, conditions requiring the submission of a revised drainage proposal, the implementation and maintenance of the drainage proposal for the development to his satisfaction or of the Board should be stipulated.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of his department, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the captioned application.
 - (ii) For UBW erected on leased land, enforcement action may be taken, by his department 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.
 - (iii) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on Site, prior approval and consent of his department should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (iv) 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.
- (v) 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.

Nature Conversation

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

- (a) The Site is a piece of paved land covered by an existing temporary structure. According to the applicant's submission, it is noted that the proposed development would not involve any tree felling or cause damage to the existing trees. Other than that, the proposed temporary structure falls within the "O" zone and does not encroach into the adjoining "Green Belt" ("GB") zone nor the San Sang San Tsuen Egretty. Furthermore, the proposed vehicular access leading from Tin Ha Road, though passing through the adjoining "Green Belt" zone, is an existing access. In view of the above, the proposed development of only a 1 one-storey temporary structure of relatively small size, is unlikely to cause significant ecological impact to the "Green Belt" zone, San Sang San Tsuen Egretty and flight path of breeding ardeids. In this regard, her office has no strong view on the subject application from the nature conversation point of view.
- (b) Nevertheless, the Site is in close vicinity of the San Sang San Tsuen Egretty where the bamboo clumps are found nested by breeding egrets and herons in recent years. Should the application be approved, to avoid disturbance to the concerned egretty, the applicant should be advised to schedule all construction works (including installation of drainage facilities and crection of structures within the Site as well as planting new trees along the southeastern part of the Site) outside breeding season of ardeids (i.e. from March to August inclusive). The applicant should also be advised to preserve and properly maintain the existing trees along the Site boundary and in close vicinity of the Site, and avoid disturbing the breeding birds including their nests and eggs which are protected under the Wild Animals Protection Ordinance, Cap. 170.

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 is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. In addition, the applicant should also be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

Future Development

9.1.10 Comments of Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD):

- (a) He has no objection to the application for temporary use for 3 years, which should be considered in accordance with the provisions of the existing OZP and infrastructure capacities.
- (b) However, the Site falls within the boundary of the Hung Shui Kiu New Development Area (HSK NDA). According to the Planning and Engineering Study (P&E Study) for the HSK NDA, to ensure timely and orderly implementation, the development of HSK NDA and relevant site formation and infrastructure works would be implemented in five stages, viz. Advance Works and Stage 1 to Stage 4. The lot(s) concerned falls within a site under Stage 3 Works stage. While the detailed implementation programme for the project is still being formulated, based on the P&E Study, it is envisaged that clearance of the Site in question will not be arranged before the first population intake of the HSK NDA expected in 2024.

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

- (a) The Site is zoned "O" on the draft Hung Shui Kiu and Ha Tsuen OZP No. S/HSK/1. It is not on the priority list for development agreed by the Yuen Long District Council. Her office has no plan to develop the Site into public open space at present.
- (b) Since the application mainly involves private lots, her office has no in-principle objection to the application.

Others

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

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work/operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from such operation/work, the applicant should arrange disposal properly at her own expenses and Proper licence / permit issued by this Department is required if there is any food business / catering service / activities regulated by the Director of Food and Environmental Hygiene (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 Factory Licence must be obtained from this department for food business which involves the preparation of food for sale for human consumption off the premises before commencement of such business. Besides, a Fresh Provision Shop licence is required for any person who intends to sell fresh, chilled or frozen beef, mutton, pork, reptiles (including live snake), fish (including live fish) and poultry at any premises before commencement of such business. The application for Food Factory Licence / Fresh Provision Shop Licence, if acceptable by FEHD, will be referred to relevant government departments, such as Lands Department and Planning Department for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.

District Officer's Comments

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

His office has not received any comments 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 Engineer/Sewerage Projects, DSD (CE/SP, DSD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During the Statutory Publication Period

On 19.1.2018, the application was published for public inspection. During the first three

weeks of the statutory public inspection period, which ended on 9.2.2018, 1 public comment was received from the public (**Appendix II**) raising concern on the impact of the proposed use on the Site.

11. Planning Considerations and Assessments

- 11.1 The subject application is for proposed temporary shop and services (fresh provision shop) for a period of 3 years on the Site falling within an area zoned “O” on the OZP. The planning intention of the “O” zone is generally intended 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. Whilst the proposed development is not entirely in line with the planning intention of the “O” zone, the implementation programme for this part of NDA is still being formulated, and PM/NTW of CEDD and DLCS have no objection to the applied use for 3 years on the Site. In this regard, approval of the application on a temporary basis of 3 years would not jeopardize the long-term development of the Site. However, should the application be approved, it is suggested to include an advisory clause stating that the Site may be resumed by the Government at any time during the planning approval period for implementation of government projects.
- 11.2 The Site is located in an area mixed with open storage, parking of vehicles, workshop uses with scattered residential structures, cultivated agricultural land, unused and vacant land. The applied use is not incompatible with the surrounding land uses.
- 11.3 There is no adverse comment from the concerned Government departments, including DAFC, DEP, CTP/UD&L of PlanD, AC for T/NT of TD and CE/MN of DSD. DAFC has no strong view on the subject application from the nature conversation point of view as the proposed development would not involve any tree felling or cause damage to the existing trees. As such, he concludes that the proposed development is unlikely to cause significant ecological impact to the “GB” zone, San Sang San Tsuen Egrety and flight path of breeding ardeids. The applied use will unlikely create significant adverse ecological, environmental, landscape, traffic and drainage impacts to the surrounding area. To minimize any possible environmental impacts and nuisance on the surrounding developments, and to address the technical requirements of the 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 and unauthorized development on Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will 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.
- 11.4 There is a public comment received during the statutory publication period raising concern on the impact of the proposed use on the Site. The planning considerations and assessments in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department considers that the proposed temporary shop and services (fresh provision shop) could be tolerated for a 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 period of 3 years until **6.7.2021**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00p.m. and 9:00a.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 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 **6.1.2019**;
- (d) in relation to (c) above, the implementation of the 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 **6.4.2019**;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times 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 **6.1.2019**;
- (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 **6.4.2019**;
- (h) if any of the above planning conditions (a), (b) or (e) 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;
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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
- (j) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

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

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

The applied 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. There is no strong planning justification in the submission for 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 received on 9.1.2018
Appendix Ia	Supplementary Planning Statement with proposed layout plan, proposed landscape plan and proposed drainage plan
Appendix Ib	Letter from the applicant dated 7.5.2018 in response to CTP/UD&L of Planning Department's Comments
Appendix II	Public comment received during the statutory publication period
Appendix III	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2018**