

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-TYST/914**

|                           |  |
|---------------------------|--|
| <b><u>Applicant</u></b>   | : Mr. Lau Yau Sum represented by Metro Planning and Development Company Limited  |
| <b><u>Site</u></b>        | : Lots 1279 S.B ss.1 S.A (Part), 1279 S.B ss.1 S.B (Part) and 1281 (Part) in D.D. 119, Pak Sha Tsuen, Yuen Long, New Territories   |
| <b><u>Site Area</u></b>   | : About 1,630 m <sup>2</sup>   |
| <b><u>Lease</u></b>       | : Block Government Lease (demised for agricultural use)  |
| <b><u>Plan</u></b>        | : Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11 (at the time of submission)<br><br>Approved Tong Yan San Tsuen OZP No. S/YL-TYST/12 (currently in force)   |
| <b><u>Zoning</u></b>      | : “Residential (Group C)” (“R(C)”) [restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m) including car park] (no change to the “R(C)” zone) |
| <b><u>Application</u></b> | : Proposed Temporary Eating Place and Shop and Services (Grocery Store) for a Period of 3 Years  |

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place and shop and services (grocery store) for a period of 3 years (**Plan A-1a**). According to the Notes of the OZP for the “R(C)” zone, ‘Eating Place’ and ‘Shop and Services’ are Column 2 uses which require planning permission from the Town Planning Board (the Board). The Site is currently occupied for warehouse use without valid planning permission (**Plans A-2, A-4a to A-4c**).
- 1.2 The Site was the subject of three previous applications (No. A/YL-TYST/524, 577 and 738). Application No. A/YL-TYST/524 for temporary warehouse was rejected on review by the Board, while Applications No. A/YL-TYST/577 and 738 for the same use as the current application were both approved by the Rural and New Town Planning Committee (the Committee) of the Board on a temporary basis for a period of 3 years. However, both applications were subsequently

revoked due to non-compliance with approval conditions. Details of the previous applications are at **Appendix II** and paragraph 5 below. Compared with the last application (No. A/YL-TYST/738), the current application is submitted by the same applicant for the same use on a slightly larger site with similar development parameters and similar layout.

1.3 The Site is accessible via a local track leading from Kung Um Road to its east with an ingress/egress point at the southwest periphery of the site (**Plan A-3 and Drawing A-1**). According to the applicant, the proposed development is to serve the residents of the subject “R(C)” and the workforce of the “Undetermined” (“U”) zone nearby. Figures showing the vehicular access leading to the Site, site layout, internal layout, tree preservation proposal, drainage proposal, and fire service installations (FSIs) proposal submitted by the applicant are shown in **Drawings A-1 to A-6** respectively.

1.4 A comparison of the major development parameters of the current application and the last approved application is as follows:

| Major Development Parameters    | Previously Approved Application No. A/YL-TYST/738 (a)   | Current Application No. A/YL-TYST/914 (b)   | Difference (b)-(a)             |
|---------------------------------|---|---|--------------------------------|
| Applied Use                     | Proposed Temporary Eating Place and Shop (Grocery Store) for a Period of 3 Years  | Proposed Temporary Eating Place and Shop and Services (Grocery Store) for a Period of 3 Years | ---                            |
| Site Area                       | 1,560m <sup>2</sup> (about)   | 1,630m <sup>2</sup> (about)   | +70m <sup>2</sup><br>(+4.5%)   |
| Total Floor Area (Non-domestic) | 984m <sup>2</sup> (about)   | 1,151m <sup>2</sup> (about)   | +167m <sup>2</sup><br>(+17.0%) |
| No. and Height of Structures    | 2<br><ul style="list-style-type: none"> <li>• one for eating place and grocery store (6.5m, 1 storey)</li> <li>• one for toilet (6m, 1 storey)</li> </ul> |   | ---                            |
| Parking Spaces                  | 4<br>(for private cars and light goods vehicle)   | 2<br>(for private cars)   | -2<br>(-50%)                   |
| Loading/Unloading Space         | Nil   | 1<br>(for light goods vehicle)  | +1                             |
| Operation Hours                 | 8:00 a.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 23.7.2018 with annexes (**Appendix I**) and drawings
- (b) Further Information dated 3.9.2018 providing a new FSIs proposal  
*[accepted and exempted from publication and recounting requirements]* (**Appendix Ia**)

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I**. They can be summarized as follows:

- (a) The proposed eating place and grocery store is located in the “R(C)” zone and ‘eating place’ and ‘shop and services’ uses are under Column 2 uses. The previous application (No. A/YL-TYST/524) for warehouse use was rejected by the Board on 15.7.2011 and the current application aims to converting the site for active and prudent use. The proposed development would serve the need of the residents and benefit the local community and thus the proposed development is in line with the planning intention.
- (b) The proposed development is a complementary use of “R(C)” zone and the nature, form, scale and layout of the proposed development are compatible with the surrounding environment. Approval of the current planning application would encourage the phasing out of undesirable land uses such as rural workshops and open storage yards in “R(C)” zone which is a notable planning gain.
- (c) Similar application (No. A/YL-TYST/873) in the subject “R(C)” zone had been approved by the Board and favourable consideration should also be given to the current application.
- (d) The proposed development is limited in scale and its daily operation hours are from 8:00 a.m to 8:00 p.m., including Sundays and public holidays. Only private cars and light goods vehicles would access the Site. As such, no significant adverse environmental and traffic impacts will be generated.

## **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 posting a notice near the entrance of the Site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Background**

The use in the Site is subject to investigation. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorised development under the Town Planning Ordinance, enforcement action would be taken.

## **5. Previous Applications**

- 5.1 The Site is subject to three previous applications (No. A/YL-TYST/524, 577 and 738). The first application was for temporary warehouse whilst the latter two applications were for the same use as the current application. Details of the applications are summarized in **Appendix II** and the boundaries are shown on **Plan A-1b**.

- 5.2 Application No. A/YL-TYST/524 for temporary warehouse for storage of recycling materials (excluding electronic waste and not involving processing activities) submitted by the same applicant of the current application was rejected by the Board on review on 15.7.2011 on the consideration that the development was not in line with the planning intention of the “R(C)” zone; and it would generate adverse environmental impact on the residential uses located to the immediate north and in the vicinity of the site.
- 5.3 Application No. A/YL-TYST/577 for proposed temporary eating place and shop (grocery store) submitted by a different applicant was approved with conditions for a period of 3 years by the Committee on 16.3.2012. The planning approval was subsequently revoked on 16.3.2013 due to non-compliance with approval conditions requiring provision of drainage facilities and submission and implementation of water supplies for fire-fighting and fire service installations proposals.
- 5.4 Application No. A/YL-TYST/738 for proposed temporary eating place and shop (grocery store) submitted by the same applicant of the current application was approved with conditions for a period of 3 years by the Committee on 3.7.2015 on the consideration that the proposed development was not incompatible with the surrounding environment; approval on a temporary basis would not jeopardize the planning intention of the “R(C)” zone; government departments consulted had no adverse comments; relevant departmental concerns could be addressed through the imposition of approval conditions; and sympathetic consideration may be given to the application as the site was not occupied by the proposed use and the applicant (though different from the applicant of Application No. A/YL-TYST/577) demonstrated sincerity in complying with the approval conditions by submitted relevant technical proposals. However, the application was revoked on 3.4.2016 due to non-compliance with approval conditions requiring submission and implementation of the revised drainage proposal, implementation of the landscape proposal, and submission and implementation of water supplies for fire-fighting and fire service installations proposals.
- 5.5 Compared with the last application (No. A/YL-TYST/738), the current application is submitted by the same applicant for the same use on a slightly larger site with similar development parameters and similar layout.

## **6. Similar Applications**

- 6.1 There are a total of nine similar applications for various shop and services uses within the subject “R(C)” zone or also straddling the adjacent “U” zone. Detailed information of the applications is at **Appendix III** and their locations are shown on **Plan A-1a**.
- 6.2 Application No. A/YL-TYST/620 for temporary eating place and shop (grocery store); Applications No. A/YL-TYST/714, 737, 760, 774, 805, 873 and 894 for temporary shop (grocery store); and Application No. A/YL-TYST/821 for temporary plant nursery and shop and services (retail shop for plants) were approved by the Committee with conditions on temporary basis for a period of 3 years, mainly on the consideration that the proposed developments could serve the residential neighborhood and the workforce of open storage yards; they were not incompatible with the surrounding environment; approvals on a temporary basis

would not jeopardize the long-term planning intention of the “R(C)” zone; and/or the departmental concerns could be addressed through imposition of approval conditions. However, among these, six permissions were subsequently revoked due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) accessible via a local track leading from Kung Um Road (**Plans A-2 and A-3**);
- (b) paved and fenced off; and
- (c) currently occupied for warehouse use without valid planning permission (**Plan A-2 and A-4a to A-4c**).

7.2 The surrounding areas have the following characteristics:

- (a) mixed with warehouses, open storage yards, scattered residential structures, fallow agricultural land and unused land;
- (b) about 180m to its further northeast within the subject “R(C)” zone is a low-density residential development known as One Hyde Park (**Plan A-1a**); and
- (c) except the warehouses in the vicinity which are operated with valid planning permissions granted under Applications No. A/YL-TYST/773, 797, 843 and 856 respectively, the other warehouses and open storage yards in its vicinity are mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

## 8. **Planning Intention**

The planning intention of the “R(C)” zone is primary for low-rise, low-density residential developments where commercial uses serving the residential neighborhood may be permitted on application to the Board.

## 9. **Comments from Relevant Government Departments**

9.1 The following government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots held under Block Government Lease which contains the restriction that no

structures are allowed to be erected without the prior approval of the Government.

- (b) Lots 1279 S.B ss.1 S.A and 1281 in D.D. 119 are covered by Short Term Waiver (STW) No. 3656 to permit structure erected thereon for the purpose of “Eating place and shop (grocery store)”.
- (c) Lot 1279 S.B ss.1 S.B in D.D. 119 is covered by STW No. 3663 to permit structures erected thereon for the purpose of “Eating place and shop (grocery store)”.
- (d) The Site is accessible from Kung Um Road via Government land (GL) and private land. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way to the Site.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) Should planning approval be given to the subject application, the STW holders 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 of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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) No medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (b) The land status of the access road/path/track leading to the Site at Kung Um Road shall be checked with the lands authority.
- (c) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (d) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, vehicle queuing and reverse movement of vehicles on public road are allowed.

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

- (a) The proposed access arrangement of the Site from Kung Um Road should be commented by the Transport Department.
- (b) His Department does not and will not maintain any access connecting the Site and Kung Um Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

**Food and Environmental Hygiene**

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

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities shall be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) The refuse generated by the proposed eating place are regarded as trade refuse. For any waste generated from such activity/operation, the management or owner of the Site is responsible for its removal and disposal at their expenses.
- (c) Proper license/permit issued by FEHD is required if there is any catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. If the operator intends to operate a restaurant business in the territory, a general restaurant/light refreshment restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). The application for restaurant licence, if acceptable by FEHD, will be referred to relevant government departments, such as Buildings Department, Fire Services 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.
- (d) There is no complaint record in respect of the Site.

**Environment**

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

- (a) Provided that the development is properly designed to incorporate suitable environmental mitigation measures, it is unlikely to cause major pollution.

- (b) Sewage discharge from the Site should be directed to nearby public sewer. In case of unavailability of public sewer, a septic tank and soak-away pit should be provided and the applicant should design and maintain the septic tank and soak-away pit according to the ProPECC Note No. 5/93 requirements. Any effluent discharge from the Site should also comply with the requirements under the Water Pollution Control Ordinance.
- (c) The applicant is also reminded of his obligation to take appropriate measure to minimize oily fume, cooking odour and noise impact as required under the Air Pollution Control Ordinance and Noise Control Ordinance.

### **Landscape**

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

- (a) The Site is for temporary eating place and shop (grocery store) within in an area zoned “R(C)” on the OZP for a period of 3 years. The Site was subject of three previous applications (No. A/YL-TYST/524, 577 and 738) for warehouse and similar uses.
- (b) With reference to the information submitted and aerial photo taken in December 2015, the Site is occupied by some temporary structures with some existing trees along east and south boundary to be reserved. Significant landscape impact arising from the proposed use on the area is not anticipated. Therefore, she has no objection to the application from the landscape planning perspective.
- (c) Should the Board approve this application in view of the above, she would recommend the approval condition for maintenance of all existing trees and landscape plantings within the Site at all times.
- (d) The applicant is reminded to conduct routine vegetation maintenance works, such as irrigating the trees and removing weeds regularly throughout the period. Fence and/or kerb or bollard should be constructed with a minimum distance of 1m around the planting areas to guard against damage to the trees and shrubs. The applicant should make reference to “Technical Note on the Submission and Implementation of Landscape Proposals for Compliance with Conditions for Approved Applications for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance”.
- (e) The applicant shall make reference to the following information/guideline published by the Greening, Landscape and Tree Management Section, Development Bureau for tree maintenance: 私人物業樹木護理資料 Information About Tree Maintenance For Private Properties ([https://www.greening.gov.hk/tc/tree\\_care/Handbook\\_on\\_Tree\\_Management.html](https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html)) and



護養樹木的簡易圖解 Pictorial Guide for Tree Maintenance  
([https://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/Pictorial\\_Guide\\_for\\_Tree\\_Maintenance.pdf](https://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf))

### **Drainage**

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

- (a) He has the following comments on the submitted drainage proposal (**Drawing A-5**):
  - (i) The existing drainage facilities, to which the stormwater of the development from the Site would discharge, are not maintained by his Office. The applicant should identify the owner of the existing drainage facilities to which the proposed connection will be made and obtain consent from the owner prior to commencement of the proposed works. In the case that it is a local village drain, DO(YL) should be consulted.
  - (ii) The applicant should provide justifications to demonstrate the hydraulic capacity of the existing drainage facilities, especially the existing 750mm dia. surface channel downstream of the proposed site, would not be adversely affected by the proposed development.
  - (iii) The location and details of the proposed hoarding/peripheral wall should be provided for comment.
  - (iv) Standard details should be provided to indicate the sectional details of the u-channel and the catchpit.
  - (v) Sand trap and provision alike should be provided before the collected runoff is discharged to the public drainage services.
  - (vi) The development should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.
  - (vii) The applicant should consult DLO/YL, LandsD 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.
- (b) Despite the above, since he noted that the existing site is already hard-paved, he has no objection in principle to the proposed development from the public drainage point of view. Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a revised drainage proposal, and the

implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

### **Fire Safety**

#### 9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the *proposal application* subject to FSIs being provided to his satisfaction.
- (b) In consideration of the design/nature of the *proposal application*, 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 be advised on the following points:
  - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
  - (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) or application for food licence for the subject eating place is required, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

### **Building Matters**

#### 9.1.9 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 the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
  - (ii) 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.

- (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 the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (iv) If the proposed use under application is subject to issue of a license, 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.
- (v) 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.
- (vi) 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 B(P)R at the building plan submission stage.

### **Other**

#### 9.1.10 Comments of the Chief Engineer/Cross-Boundary Infrastructure and Development, Planning Department (CE/CID, PlanD):

- (a) CEDD and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation” (the Study). According to the Recommended Outline Development Plan of YLS promulgated on 8.8.2017, the Site mainly falls outside the development area of YLS and partly falls within an area shown as ‘Road’.
- (b) The objective of YLS is to transform the degraded rural land predominantly occupied by brownfield operations including open storage yards, warehouses and rural industrial uses into housing and other uses with supporting infrastructure and community facilities, and to improve the existing environment. It is noted that the application is for temporary use for a period of 3 years. In considering the application for temporary uses, due consideration should be given on the possible implication on land clearance which would affect the future implementation of YLS.

### **District Officer's Comments**

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

The local consultation was completed and his office has not received any comments from the village representatives in the vicinity regarding the application.

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

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

## **10. Public Comment Received During the Statutory Publication Period**

On 31.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.8.2018, one public comment (**Appendix IV**) was received from a member of the public objecting to the application on grounds on history of non-compliance with approval conditions and hygiene and safety issues.

## **11. Planning Considerations and Assessments**

- 11.1 The subject application is for proposed temporary eating place and shop and services (grocery store) on a site zoned "R(C)" on the OZP. The planning intention of the "R(C)" zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighborhood may be permitted on application to the Board.
- 11.2 The proposed development, which is housed within a single-storey structure, is considered not incompatible with the surrounding environment which comprises a mix of warehouses, open storage yards, scattered residential structures, fallow agricultural land and unused land (**Plan A-2**). The Site is located far apart from the major road. It is accessible via a local track of about 620 m from Kung Um Road (**Plan A-1a**).
- 11.3 The Site is the subject of two previous planning permissions for the same use on similar sites (**Plan A-1a**) granted in 2012 and 2015 (Applications No. A/YL-TYST/577 and 738 respectively). The last application (No. A/YL-TYST/738) was submitted by the same applicant whilst the earlier one was submitted by a different applicant. Both planning approvals had not been implemented and were subsequently revoked due to non-compliance with the approval conditions regarding drainage, fire service installations and/or landscape aspects. For the current application, although the applicant has submitted drainage, tree preservation and fire service installations proposals, the applicant has yet to address CE/MN, DSD's comments on the submitted drainage proposal.

As such, the applicant has failed to demonstrate that the proposed development would not cause adverse drainage impact on the surrounding area.

- 11.4 Whilst nine similar applications for various shop and services uses including eating place and/or grocery store (No. A/YL-TYST/620, 714, 737, 760, 774, 805, 873 and 894) and plant nursery and retail shop for plants (No. A/YL-TYST/821) were approved by the Committee with conditions on temporary basis, six of them have been revoked due to non-compliance with approval conditions. The remaining three similar applications for grocery store use covered by valid planning permission (No. A/ YL-TYST/737, 873 and 894) are of relatively small scale compared with the current application.
- 11.5 Whilst the applicant claims that the current application is to convert the Site from warehouse use, which had been rejected by the Board on review under Application No. A/YL-TYST/524 on 15.7.2011, to more prudent uses serving the need of the local residents, it should be noted that the applicant has never implemented the proposed temporary eating place and grocery store since obtaining the planning approval under Application No. A/YL-TYST/738 in 2015 and none of the time-limited approval conditions has been complied with (see paragraph 5.4 above). Although the applicant had been advised in the last approval (No. A/YL-TYST/738) that the warehouse use that existed on Site was not condoned by the planning approval and shall be discontinued immediately, such warehouse use is still found on site (**Plans A-2, A-4a to A-4c**). There is no indication that the applicant would discontinue the warehouse use. Since the last approval was revoked and the applicant has not provided any justification in the submission for non-compliance with the approval conditions imposed on the previous permission, approving the current application would set an undesirable precedent for other similar planning applications for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control.
- 11.6 There is one public comment received during the statutory publication period as summarised in paragraph 10. Regarding the hygiene and safety concerns, the relevant government departments, including DFEH, D of FS and C of P, have been consulted and they have no adverse comments on or objection to the application. As for the concern over non-compliance with approval conditions, the planning considerations and assessments in paragraphs 11.3 and 11.5 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 as mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
- (a) the applicant fails to demonstrate that the proposed development would not cause adverse drainage impacts on the surrounding area; and
  - (b) previous planning permission for the same proposed use granted under Application No. A/YL-TYST/738 was revoked due to non-compliance with approval conditions. Approval of the application would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

- 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 21.9.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium and heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing trees and landscape planting on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a revised drainage proposal 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 21.12.2018;
- (f) the implementation of the 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 21.3.2019;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the submission of a fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.12.2018;
- (i) in relation to (h) above, the implementation of the 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 21.3.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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;
- (k) if any of the above planning conditions (e), (f), (h) or (i) 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
- (l) 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 V**.

**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**

|                           |  |
|---------------------------|--|
| <b>Appendix I</b>         | Application Form received on 23.7.2018 with annexes and drawings |
| <b>Appendix Ia</b>        | Further Information dated 3.9.2018 providing a new FSIs proposal |
| <b>Appendix II</b>        | Previous Applications Covering the Application Site              |
| <b>Appendix III</b>       | Similar Applications within the Same “R(C)” Zone on the OZP      |
| <b>Appendix IV</b>        | Public comment received during the statutory publication period  |
| <b>Appendix V</b>         | Recommended Advisory Clauses                                     |
| <b>Drawing A-1</b>        | Vehicular Access Leading to the Site                             |
| <b>Drawing A-2</b>        | Proposed Layout Plan   |
| <b>Drawing A-3</b>        | Proposed Internal Layout Plan                                    |
| <b>Drawing A-4</b>        | Proposed Tree Preservation Plan                                  |
| <b>Drawing A-5</b>        | Proposed Drainage Plan   |
| <b>Drawing A-6</b>        | Proposed Fire Service Installations Plan                         |
| <b>Plan A-1a</b>          | Location Plan with Similar Applications                          |
| <b>Plan A-1b</b>          | Previous Applications Plan                                       |
| <b>Plan A-2</b>           | Site Plan  |
| <b>Plan A-3</b>           | Aerial Photo   |
| <b>Plans A-4a to A4-c</b> | Site Photos  |