

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-YTT/2

<u>Applicant</u>	Mr LAM Chun Cheung represented by Lanbase Surveyors Limited
<u>Site</u>	Lot 70 (Part) in D.D. 27 and Adjoining Government Land, Yim Tin Tsai, Tai Po, New Territories
<u>Site Area</u>	About 1,672m ² (including about 1,172m ² of government land (about 70%))
<u>Land Status</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Yim Tin Tsai and Ma Shi Chau Outline Zoning Plan (OZP) No. S/NE-YTT/2
<u>Zonings</u>	“Residential (Group D)” (“R(D)”) (about 89%) and “Government, Institution or Community” (“G/IC”) (about 11%)
<u>Application</u>	Proposed Temporary Eating Place (Outside Seating Accommodation of a Restaurant) and Ancillary Vehicle Park for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for outside seating accommodation (OSA) to an existing restaurant adjoining to its west and ancillary vehicle park for a period of 3 years (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use under both “R(D)” and “G/IC” zones which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by three converted containers for storage use, and is partly used for parking of vehicle and storage of restaurant furniture without valid planning permission.
- 1.2 The proposed OSA comprises two parts, one will be open-air (about 325m²) and one will be covered by four open-side shelters (about 55m²), to accommodate 20 tables. According to the applicant, the operating hours of the OSA will be from 10:00 a.m. to 11:00 p.m. daily. A total of 28 parking spaces for private cars would be provided within the Site for use by its customers and staff only. The Site is accessible from Sam Mun Tsai Road via a village access road. The layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application Form received on 1.12.2021 (Appendix I)
- (b) Planning Statement (Appendix Ia)
- (c) Supplementary Information received on 3.12.2021 and 8.12.2021 (Appendix Ib)
- (d) FI received on 24.1.2022 revising the number of ancillary parking spaces to be provided within the Site and providing response to departmental comments
(accepted and not exempted from publication and recounting requirements) (Appendix Ic)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application as stated in the planning statement, supplementary information and FI at **Appendices Ia to Ic** are summarized as follows:

- (a) the proposed development is to support the operation of an existing restaurant, namely Royal China Aqua Garden, which has been operated for many years. As there are only a few local shops in Sam Mun Tsai San Tsuen and Luen Yick Fisherman Village, the proposed development could meet such demand in the area. Besides, the proposed development is compatible with the surrounding land uses; and
- (b) as the open-side shelters with a height of about 2.5m are lower than surrounding developments and only about 72 vehicular trips would be generated from the proposed development daily, no adverse visual and traffic impacts are expected. While the Site is being used for parking of vehicles, some of these vehicles are parked by others instead of customers of the existing restaurant. Besides, the proposed development would not involve any cooking activities and drainage facilities would be provided. Therefore, no adverse environmental impact is anticipated.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification Requirements under Sections 12A and 16 of the Town Planning Ordinance (the Ordinance) (TPB PG-No. 31A) by posting site notice and sending notice to Tai Po Rural Committee by local registered post. Detailed information would be deposited at the meeting for Members’ inspection. For government land, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The existing restaurant adjoining to the Site is governed under a Short Term Tenancy (STT) No. 307A granted by the Lands Department (LandsD) (**Plan A-2**). Since the restaurant use was in existence before the first publication of the draft Yim Tin Tsai and Ma Shi Chau Development Permission Area Plan No. DPA/NE-YTT/1 on 2.9.2011, the restaurant use can be considered as 'existing use' tolerated under the Town Planning Ordinance.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application within the same "R(D)" and "G/IC" zones on the OZP.

7. The Site and Its Surrounding Area (Plans A-1, A-2 and photos on Plan A-3, A-4a and A-4b)

7.1 The Site is:

- (a) hard paved and partly covered by a raised platform (about 470m² in area at the same level of the adjoining restaurant);
- (b) currently occupied by three converted containers for storage use and partly used for parking of vehicles and storage of restaurant furniture;
- (c) situated at the northern fringe of Sam Mun Tsai San Tsuen and Luen Yick Fishermen Village; and
- (d) accessible via a village access road leading to Sam Mun Tsai Road.

7.2 The surrounding areas are mainly occupied by domestic structures of Sam Mun Tsai San Tsuen and Luen Yick Fisherman Village to its west and south respectively. A residential development, namely Springdale Garden, and a church are located to its north and further north respectively. There are several grocery stores located in the vicinity of the Site.

8. Planning Intentions

8.1 The planning intention of the "R(D)" zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings.

- 8.2 The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community (GIC) facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organizations providing social services to meet community needs, and other institutional establishments.

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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) the Site comprises a piece of government land (GL) adjoining STT No. 307A and a portion of Lot 70 in D.D. 27 (the Lot) which is an Old Schedule Agricultural Lot held under the Block Government Lease containing restriction that no structure is allowed to be erected without prior approval from LandsD. No application for Short Term Waiver (STW) within the Site is being processed by his office. The applicant is required to remove any unauthorized structures within the Lot. Otherwise, lease enforcement action will be taken by his office as appropriate;
- (b) no permission has been given for occupation of the GL adjoining STT No. 307A. The applicant is required to cease occupying the said GL, unless they are covered by LandsD’s valid approval;
- (c) should the application be approved, the applicant needs to apply to his office for STT to regularize unlawful occupation of GL and for STW if any structure(s) is to be erected on the Lot, subject to no adverse comment/ objection from relevant departments or parties concerned. STT/STW application will be considered by LandsD 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 rent or fee, as may be imposed by LandsD;
- (d) the existing village access and footpath leading to the Site are on GL. There is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto; and
- (e) other comments are detailed in **Appendix II**.

Traffic

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

- (a) having reviewed the FI submitted by the applicant, he has no in-principle objection to the application from traffic engineering viewpoint; and
- (b) the village access road connecting Sam Mun Tsai Road is not managed by the Transport Department. The land status, management and maintenance responsibilities of the village access should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

Licensing

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

- (a) no comment on the application;
- (b) proper licence/permit issued by Food and Environmental Hygiene Department (FEHD) is required if there is any catering service/ activities regulated under the Public Health and Municipal Services Ordinance (Cap.132) and other relevant legislation. The operating hours of OSA are generally confined to the period from 11 a.m. to 11 p.m., and operating hours outside such period will be considered by FEHD on individual basis;
- (c) other comments are detailed in **Appendix II**.

Environment

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

- (a) no objection to the application;
- (b) no environmental complaint has been received in relation to the Site in the past 3 years; and
- (c) the applicant is advised to carry out pollution abatement measures in relevant Guidelines, including “*General Environmental Guidelines for Outside Seating Accommodation and Control of Oily Fume and Cooking Odour from Restaurants and Food Business*” and to follow the relevant mitigation measures and requirements in the latest “*Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storages Sites*” to minimize any potential environmental nuisance. It is the obligation of the applicant to meet the statutory requirements under relevant pollution control

ordinances.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, a condition requiring the submission and implementation of drainage proposal should be included to ensure that the proposed development will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drain maintained by DSD in the vicinity of the Site. The proposed development should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from other areas surrounding the Site. Any existing flow path affected should be re-provided; and
- (d) the applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas, and is required to maintain the drainage system properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant should also be liable for and should indemnify claims and demands arising out of damage or nuisance caused by failure of the systems. For works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought.

Building Matters

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

- (a) no comment on the application under the Buildings Ordinance; and
- (b) other comments are detailed in **Appendix II**.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations being provided to his satisfaction; and
- (b) the applicant is advised to submit relevant layout plans

incorporated with the proposed fire service installations (FSIs) for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and the location of the proposed FSIs to be installed should be clearly marked on the layout plans; and

- (c) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

9.1.8 Comments of the District Officer/Tai Po, Home Affairs Department (DO/TP, HAD):

- his office has not received any objection to the application. However, there are local concerns on the insufficient capacity of Ting Kok Road and the traffic congestion and transportation issues in Shuen Wan area.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
and
- (b) Chief Engineer/Construction, Water Supplies Department.

10. Public Comments Received During Statutory Publication Period (Appendix III)

10.1 The application and its FI were published for public inspection. During the statutory public inspection periods, a total of 29 public comments were received, with 10 comments supporting and 19 objecting to the application.

Supporting Comments

10.2 The 10 supporting comments are submitted by the Tai Po Rural Committee, Resident Representative (RR) of Sam Mun Tsai San Tsuen, RR and Indigenous Inhabitant Representative of Shuen Wan Sha Lan, fishermen representatives of Luen Yick Fishermen Village and Sam Mun Tsai San Tsuen, and Hong Kong Kowloon Workers' Mutual Benevolent Corporation Limited, and their major views are summarized as follows:

- (a) the existing restaurant adjoining to the Site has been in operation for decades serving nearby residents and workers. Given the cycle track extension in Sam Mun Tsai will be completed by the end of 2022, more visitors are expected to visit Yim Tin Tsai. The proposed OSA could serve the demand for eating place from additional visitors; and
- (b) the proposed use would not cause adverse environmental and traffic impacts, and there is sufficient separation between the proposed OSA

and nearby residential development.

Objecting Comments

- 10.3 The 19 objecting comments are submitted by the Incorporated Owners of Springdale Garden and individuals. The major grounds of objection are summarized as follows:
- (a) the application is not in line with the planning intentions of the “R(D)” and “G/IC” zones. As the Site has been occupied by the adjoining restaurant for OSA and vehicle park uses, approval of the application would encourage illegal occupation of GL;
 - (b) there is usually illegal parking in the vicinity of the Site during weekends causing traffic congestion at the Sam Mun Tsai Road Roundabout. Despite the increase in number of parking spaces to 28 spaces, it cannot resolve the illegal parking problem arising from the operation of the existing restaurant. Approval of the application would aggravate the current situation; and
 - (c) the proposed development is not compatible with surrounding uses predominated by residential use and will destroy the tranquil countryside setting of the area. The operation of the adjoining restaurant and OSA has often caused noise nuisance and light pollution to nearby residents. Besides, food waste disposal at refuse collection point has generated odour and hygiene problems, and car parking at the Site would cause air pollution. The restaurant was also found discharging wastewater at the Site which flowed to the slope area on the opposite side leading to pollution to mangrove. Moreover, the proposed development would pose fire risk to surrounding areas.

11. Planning Considerations and Assessments

- 11.1 This application is for a proposed OSA and ancillary vehicle park with 28 parking spaces for private cars for a period of 3 years at the Site mainly zoned “R(D)” (about 89%) and partly zoned “G/IC” (about 11%) on the OZP. Although the proposed development is not entirely in line with the planning intentions of the “R(D)” and “G/IC” zones which are primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for the provision of GIC facilities respectively, there is no known development proposal within the Site. The approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intentions of the “R(D)” and “G/IC” zones.
- 11.2 The Site is located at the northern fringe of Sam Mun Tsai San Tsuen and Luen Yick Fishermen Village and is accessible from Sam Mun Tsai Road via a village access road. The proposed development serving as an extension to the adjoining restaurant is considered not incompatible with the surrounding areas which are predominantly rural in character intermixed with some domestic dwellings/structures, a church and unused land. According to the

applicant, the adjoining restaurant has been operated for many years. The proposed OSA could help to serve the increasing demand for eating place in this locality.

- 11.3 Relevant departments consulted, including DEP, CE/MN of DSD and D of FS have no objection to or no adverse comment on the application. To address the concern on illegal parking arising from the operation of the proposed development, the applicant proposes to provide 28 ancillary parking spaces for use by the customers and staff. C for T has no objection to the application. Significant adverse environmental, drainage, fire safety and traffic impacts on the surrounding areas are not anticipated. Should the application be approved, relevant approval conditions are recommended in paragraph 12.2 below to address technical requirements raised by relevant departments. Any non-compliance with approval conditions will result in revocation of the planning permission. Besides, the applicant will be advised to carry out pollution abatement measures in relevant Guidelines, including “*General Environmental Guidelines for Outside Seating Accommodation and Control of Oily Fume and Cooking Odour from Restaurants and Food Business*” and to follow relevant mitigation measures and requirements in the latest “*Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storages Sites*” to minimize any potential environmental nuisance.
- 11.4 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 10, government departments’ comments and the planning assessments above are relevant. As for the concerns on potential noise nuisance and light pollution generated by the operation of the proposed OSA, it is noted that the operating hours of the OSA would be controlled under relevant licence issued by DFEH.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the application.
- 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 18.3.2025. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission of a 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 18.9.2022;
- (b) in relation to (a) 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 18.12.2022;

- (c) 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 18.9.2022;
- (d) in relation to (c) 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 18.12.2022; and
- (e) if any of the above planning conditions (a), (b), (c) or (d) 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.

Advisory Clauses

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

- 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 intentions of the "Residential (Group D)" ("R(D)") and "Government, Institution or Community" ("G/IC") zones which are for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for the provision of government, institution or community facilities serving the needs of local residents and/or wider district, region or the territory respectively. There is no strong planning justification in the current submission for a departure from the planning intentions, 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 conditions and advisory clauses, 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 1.12.2021
Appendix Ia	Planning Statement
Appendix Ib	Supplementary Information received on 3.12.2021 and 8.12.2021
Appendix Ic	Further Information received on 24.1.2022
Appendix II	Detailed Departmental Comments
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a and A-4b	Site photos

**PLANNING DEPARTMENT
MARCH 2022**