

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/262

<u>Applicant:</u>	Miss LI Men San represented by Prosper Consultant Engineering Company Limited
<u>Site:</u>	Open Area in front of Shops 10A and 10B, G/F, 10 Po Tung Road, Lot 1827 (Part) in D.D. 221, Sai Kung, New Territories
<u>Site Area:</u>	About 8.31m ²
<u>Land Status:</u>	Private Lot - New Grant No. 6720 restricts the open area as 'non-building area'
<u>Plan:</u>	Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
<u>Zoning:</u>	Area shown as 'Road'
<u>Application:</u>	Temporary Eating Place (Outside Seating Accommodation of Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the open area in front of a ground floor eating place of a three-storey village house (the Site) for temporary eating place (outside seating accommodation (OSA) of restaurant) for a period of three years. The Site (**Plans A-1 and A-2**) falls within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is the subject of 5 previously approved applications (No. A/SK-PK/130, 172, 203, 228, and 248) for temporary OSA of restaurant. The last application (No. A/SK-PK/248) for renewal of planning approval for temporary eating place (OSA of restaurant) was approved by the Rural and New Town Planning Committee (the Committee) on 19.7.2019 for a period of 3 years until 16.8.2022. However, that planning permission was revoked on 17.8.2020 due to non-compliance with a time-limited approval condition on provision of fire service installations (FSIs).

- 1.3 The proposed OSA is about 8.31m² which comprises 2 areas of 2.3m² and 6.01m² respectively on the open area in front of a ground floor eating place of a 3-storey village house (**Drawing A-2**). The operation hours are from 11a.m. to 11p.m. No parking space is proposed and the Site is accessible via a footpath abutting Po Tung Road. Compared with the last application, the current application is the same with only a minor change in the operation hours. The Site is currently occupied by the applied use without valid planning permission.
- 1.4 In support of the application, the applicant has submitted the application form with plans dated 22.2.2021, 24.2.2021 and 1.3.2021 at **Appendix I**.

2. Justification from the Applicant

The justification put forth by the applicant in support of the application are detailed in part 7 of the application form at **Appendix I**. They can be summarised as follows:

a new application is submitted as the planning permission for application No. A/SK-PK/248 was revoked. The operation hours are from 11a.m. to 11p.m.

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 obtaining consent from the land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications (Plans A-1 and A-2)

- 4.1 The Site is the subject of five previously approved applications No. A/SK-PK/130, A/SK-PK/172, A/SK-PK/203, A/SK-PK/228, and A/SK-PK/248 for the same temporary use. They were approved mainly on the grounds that the proposed use would not frustrate the long-term planning intention of the area shown as ‘Road’; the proposal was not incompatible with surrounding uses and no adverse impacts on the surrounding areas were anticipated. Details of the previous applications are summarised at **Appendix II**.
- 4.2 The last application No. A/SK-PK/248 was revoked due to non-compliance with a time-limited approval condition on provision of FSIs. Upon the granting of planning permission of the said application, the applicant had submitted FSI plan with a view to comply with the approval condition. However, the applicant was unable to address the outstanding issues within the time limit for compliance of the condition satisfactorily.

5. Similar Applications (Plan A-1)

- 5.1 There are 23 similar applications involving 8 sites for temporary eating place for a period of 3 years in area shown as 'Road' on the OZP.
- 5.2 Among the applications, 22 were approved by the Committee mainly on the grounds that the proposed use would not frustrate the long-term planning intention of the area shown as 'Road'; the proposal was not incompatible with surrounding uses; and no adverse impacts on the surrounding areas were anticipated.
- 5.3 One application (No. A/SK-PK/237) for proposed 2-storey building for temporary shop and services and eating place for a period of 3 years was rejected by the Committee on 12.5.2017 on the grounds that the temporary nature of the proposed development could not be established; adverse landscape impact on the surrounding areas was anticipated; and there was insufficient information to demonstrate that the proposed filling of the existing berm would not have adverse impact on public safety.
- 5.4 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2**.

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

- 6.1 The Site is:
 - (a) paved and located outside a restaurant on the ground floor of a 3-storey village house abutting Po Tung Road; and
 - (b) currently partly fenced and occupied by the applied use without valid planning permission.
- 6.2 The surrounding areas have the following characteristics:
 - (a) the existing developments in the vicinity of the Site are predominantly 2 to 3-storey village houses. For the houses fronting Po Tung Road, the ground floors are mostly occupied by shops and restaurants, while the upper floors are for domestic uses; and
 - (b) two open metered car parks are located about 50 metres northwest and 20 metres southeast of the Site and are accessible via Po Tung Road and Hiram's Highway.

7. Planning Intention

The Site falls within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei OZP No. S/SK-PK/11, and forms part of the land area reserved for the future widening and junction improvement of Hiram's Highway.

8. Comments from Relevant Government Departments

8.1 The following government departments have been consulted and their views are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD):

- (a) the Site falls within the non-building area (NBA) of Lot 1827 in D.D. 221 ("the Lot") and no government land is involved;
- (b) Special Condition No. (7) of the New Grant No. 6270 under which the Lot is held restricts the ground floor of any buildings erected thereon to non-industrial use whereas the upper floors to residential use. Special Condition No. (8)(f) further stipulates that no structure other than boundary walls and fences shall be erected or constructed within the NBA except with the written approval of DLO/SK; and
- (c) provided that the proposed OSAs are wholly within the Lot boundary and that, except boundary walls and fences, no other structure is erected within the NBA, the proposed OSAs would not contravene the lease conditions and he has no objection to the application from lease point of view.

Traffic

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

no in-principle objection to the application from traffic engineering viewpoint.

8.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

no comment on the application, given that the Site falls outside of the site boundary of Hiram's Highway Improvement Stage 2 Project.

Environment

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

- (a) the Site falls within the Consultation Zone of Pak Kong Water Treatment Works. He has no objection to the application from chlorine risk perspective;
- (b) no environmental complaint nor prosecution on the Site has been recorded in the past three years; and

- (c) the applicant is advised to follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses” issued by the DEP.

Drainage

- 8.1.5 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

no in-principle objection to the application from drainage maintenance viewpoint, provided that necessary stormwater drainage facilities would be provided in association with the proposed temporary eating place and not cause adverse drainage impact to the areas in the vicinity.

Food and Environmental Hygiene

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

- (a) no objection to the application;
- (b) the premises with address “Shop A & B, G/F, and the OSA at shop front, 10 Po Tung Road, Sai Kung, New Territories” are covered with a valid General Restaurant licence for the period 23.9.2020 to 22.9.2021;
- (c) the area of the approved OSA (8.31 m²) shown on the approved plan is in line with the proposed area shown in the planning application. After the planning permission was revoked on 17.8.2020, the licensee submitted application for deleting the OSA from the licensed area with application for other alterations in the premises. The application is still under processing;
- (d) the applicant is advised on the following:
 - (i) proper licence / 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. When a restaurant licensee/licence applicant wishes to use any OSA outside the restaurant premises for alfresco dining, he/she should take notice of the main licensing criteria for OSA, covering matters such as legal right to use the land concerned, planning, building safety, fire safety, and traffic requirements, etc. as well as to obtain approval from the DFEH before commencement. Restaurateurs operating OSA business without approval may be subject to prosecution pursuant to the Food Business Regulation (Cap. 132X). Repeated convictions may lead to suspension or cancellation of their licences;
 - (ii) no FEHD’s facilities will be affected; and

- (iii) the operation of the eating place must not cause any environmental nuisance to the surrounding. The refuse generated by the proposed eating place are regarded as trade refuse. The management or owner of the site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.

Fire Safety

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

- (a) no in-principle objection to the application subject to FSIs being provided to the satisfaction of the D of FS;
- (b) the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to Fire Services Department for approval. In addition, the applicant is 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; 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;

Building Matters

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

- (a) no comment on the application;
- (b) there is no record of approval by the Building Authority (BA) in respect of the existing buildings at the application site and his department is not in a position to offer comments on the suitability of the premises for the proposed use under the application; and
- (c) as the existing building is NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121 or the previous Cap. 322), DLO/SK, LandsD should be in a better position to comment on the application.

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

- (a) Chief Engineer (Works), Home Affairs Department;
- (b) District Officer/Sai Kung, Home Affairs Department;
- (c) Director of Agriculture, Fisheries and Conservation; and

(d) Chief Engineer/Construction, Water Supplies Department.

9. Public Comments Received During Statutory Publication Period

On 2.3.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 23.3.2021, two public comments from individuals were received (**Appendix IV**). The two commenters object to the application on the grounds that the proposed use has been operated without valid permission for a period of time; approval of the application would encourage similar practices of occupying space prior to obtaining approvals; and objection to use any outdoor area for businesses.

10. Planning Considerations and Assessments

- 10.1 The application is for temporary eating place (OSA of restaurant) at the Site for a period of 3 years. The Site falls within an area shown as 'Road' on the OZP which is intended to reserve area for the future widening and junction improvement of Hiram's Highway. Although the proposed use is not in line with the planning intention of the area shown as 'Road', given the temporary nature of the temporary OSA, the long-term planning intention of the area shown as 'Road' would not be frustrated. As advised by CHE/NTE, HyD, the Site falls outside the site boundary of Hiram's Highway Improvement Stage 2 Project. C for T and CHE/NTE, HyD have no in-principle objection to/no comment on the application.
- 10.2 The Site is located at the fringe of Sai Kung Town. The proposed use is considered not incompatible with the surrounding uses which are mainly occupied by village houses with retail shops and restaurants on the ground floors. The proposed OSA with a total area of about 8.31m² is small in scale and would unlikely cause adverse traffic, drainage and environmental impacts on the surrounding areas. Relevant government departments consulted including C for T, CE/MS of DSD, and DEP have no adverse comment on/objection to the application.
- 10.3 The Site is the subject of five previously approved applications for the same use. The latest application No. A/SK-PK/248 was submitted by the same applicant. The planning permission of the approved application was revoked due to non-compliance with the approval condition on provision of FSIs within the required time frame. The applicant had submitted relevant documents including FSI plan to comply with the approval condition upon granting of the planning permission, but was unable to address the outstanding issues within the time limit for compliance of the condition satisfactorily. D of FS has no objection to the current application and advises that approval conditions on submission of FSIs proposals and provision of FSIs are required.
- 10.4 Given that a number of similar applications for OSA have been approved in the vicinity of the Site (**Plans A-1 and A-2**), approval of the current application is generally in line with the Committee's previous decisions.

- 10.5 There was two public comments received during the statutory publication period as summarised in paragraph 9 above. The planning consideration and assessments in paragraphs 10.1 to 10.4 above are relevant.

11. Planning Department's Views

- 11.1 Based on the assessments made in paragraph 10 and having taken into account the public comments mentioned in paragraph 9, the Planning Department considers that the temporary eating place (OSA of restaurant) could be tolerated for a period of 3 years.
- 11.2 Should the Committee decide to approve the application, it is suggested that the planning permission shall be valid on a temporary basis for a period of 3 years until 16.4.2024. 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 11:00 a.m., as proposed by the applicant, is allowed on the application site during the planning approval period;
- (b) the submission of fire service installations proposals within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the TPB by 16.10.2021;
- (c) in relation to (b) above, the provision of fire service installations within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the TPB by 16.1.2022;
- (d) if the above planning condition (a) is not complied with at any time during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (e) if the above planning condition (b) or (c) is not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

Advisory Clauses

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

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 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.

12.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

13. Attachments

Appendix I	Application Form received on 22.2.2021, 24.2.2021 and 1.3.2021
Appendix II	Summary of Previous Applications
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Location Plan submitted by the applicant
Drawing A-2	Layout Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
APRIL 2021**