

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/267

<u>Applicant:</u>	Mr. CHOI Ming Wa represented by Ber Lin Consultancy Services Ltd.
<u>Premises:</u>	G/F, 11A Po Tung Road, Lot 1813 (Part) in D.D. 221, Sai Kung, New Territories
<u>Floor Area:</u>	About 40.82m ²
<u>Land Status:</u>	Private Lot - New Grant No. 6321 restricts the lot for non-industrial purposes
<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>	Proposed Temporary Eating Place (Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the ground floor of an existing three-storey village house (the Premises) for temporary eating place (restaurant) for a period of three years. The Premises (**Plans A-1 and A-2**) fall 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 covering Notes of the OZP, the applied use requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises are currently occupied by the applied use without valid planning permission. The Premises are the subject of two previously approved applications (No. A/SK-PK/194 and 259) for the same temporary use. The last application (No. A/SK-PK/259), which was submitted by the same applicant as the current application, was approved by the Rural and New Town Planning Committee (the Committee) on 9.10.2020 for a period of 3 years until 9.10.2023. However, that planning permission was revoked on 9.4.2021 as the applicant failed to comply with a time-limited approval condition requiring provision of fire service installations (FSIs).
- 1.3 The proposed temporary eating place is about 40.82m² located on the ground floor of a 3-storey village house and is accessible via Po Tung Road (**Plan A-4a**).

The current application is the same as the last application.

- 1.4 The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.5 In support of the application, the applicant has submitted an application form with plans dated 4.8.2021 and attached the Fire Services Certificate issued by the Fire Services Department (FSD) on 29.4.2021 (**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 summarized as follows:

planning permission (Application No. A/SK-PK/259) was previously granted for the Premises for the same temporary use. Subsequently, the applicant obtained a fire services certificate from the FSD for compliance with the fire services requirements for the licensing of the restaurant. The applicant misinterpreted that the granting of fire services certificate would have fulfilled the planning condition on provision of FSIs, and had not made a submission to comply with the planning condition by the compliance date. Therefore, the planning permission was revoked. In order to conform to the planning requirements, the applicant resubmitted the current application for approval.

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 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 Premises are the subject of two previously approved applications No. A/SK-PK/194 and 259 (the latter submitted by the same applicant as the current application) for the same temporary use. They were approved with conditions by the Committee on 16.3.2012 and 9.10.2020 respectively mainly on the grounds that the long-term planning intention of the area shown as ‘Road’ would not be frustrated; the proposed use was considered not incompatible with the existing retail shops and restaurants on the ground level of the nearby village houses; and no adverse impacts on the surrounding areas were anticipated. Details of the applications are summarized in **Appendix II**.
- 4.2 The latest planning permission under A/SK-PK/259 was revoked on 9.4.2021 as the applicant failed to comply with a time-limited approval condition requiring provision of FSIs.

5. Similar Applications (Plan A-1)

- 5.1 There are 10 similar applications for temporary eating place for a period of 3 years in area shown as 'Road' on the OZP.
- 5.2 Nine of the applications were approved by the Committee mainly on the grounds that the planning intention of area shown as 'Road' would not be jeopardised; compatible with existing commercial uses on the ground level of nearby houses; and no adverse impacts on the surrounding areas were anticipated.
- 5.3 Application No. A/SK-PK/237 for temporary shop and services and eating place within a proposed 2-storey building for a period of 3 years was rejected by the Committee on 12.5.2017 on the grounds that the temporary nature of the application could not be established; adverse landscape impact on the surrounding areas was anticipated; and the proposed filling of the existing berm would 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 Premises and the Surrounding Areas (Plans A-1 to A-4b)

- 6.1 The Premises are:
 - (a) located on the ground floor of a 3-storey village house;
 - (b) accessible via Po Tung Road; and
 - (c) currently 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 Premises are predominantly 2 to 3-storey village houses. For the houses fronting Po Tung Road, the ground floor are mostly occupied by shops and restaurants, while the upper floors are mainly for domestic uses; and
 - (b) two open metered car parks are located about 50 metres northwest and 20 metres southeast of the Premises and are accessible via Po Tung Road and Hiram's Highway.

7. Planning Intention

The Premises fall within an area shown as 'Road' on the approved Pak Kong and Sha Kok Mei OZP No. S/SK-PK/11, and form part of land area reserved for 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 Premises fall within Lot 1813 in D.D. 221 ("the Lot"). The Lot has a site area of 261.1m² and is held under New Grant No. 6321 dated 28.12.1979. Pursuant to SC No. (10) of the said New Grant, the Lot or building erected thereon shall not be used for any purpose other than non-industrial purposes. The proposed restaurant use is considered not in breach of the lease condition; and
- (b) no objection to the application from the 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):

- (a) no comment on the application; and
- (b) the site falls outside of the Hiram's Highway Improvement Project Stage 2.

Fire Safety

- 8.1.4 Comments of the Director of Fire Services (D of FS):

- (a) in consideration of the design/nature of the proposal, fire service installations (FSIs) are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to Fire Services 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; and

- (b) however, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123) or licence is required for the subject eating place, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Environment

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

- (a) the site is located within the Consultation Zone of Pak Kong Water Treatment Works. He has no objection to the application from chlorine risk perspective; and
- (b) there is no environmental complaint record concerning the Premises in the past three years.

Drainage

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

no in-principle objection to the application from a drainage maintenance viewpoint provided that necessary stormwater drainage facilities would be provided in association with the proposed temporary eating place without causing adverse drainage impact to the areas in the vicinity.

Food and Environmental Hygiene

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

- (a) no adverse comment on the application;
- (b) a Provisional Light Refreshment Restaurant Licence was issued regarding the eating place (validity: 27.1.2021 – 26.7.2021, i.e. the licence validity has not been extended) and the proposed area specified in the licence is in line with the Premises; and
- (c) detailed comments are at **Appendix IV**.

Water Supply

8.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) no objection to the application; and
- (b) for provision of water supply to the development, the applicant

may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matters (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Building Matters

8.1.9 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 building at the 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;
- (c) the existing building is a 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;
- (d) the applicant's attention is drawn to the following point:
 - (i) for unauthorised building works (UBW), if any, erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with this 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, if any, on the site under the Buildings Ordinance; and
 - (ii) the applicant should be reminded that the Premises intended to be used for temporary eating place (restaurant) is required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

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

- (a) Chief Engineer (Works), Home Affairs Department (HAD); and
- (b) District Officer/Sai Kung, HAD.

9. Public Comments Received During Statutory Publication Period

On 13.8.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 3.9.2021, one public comment was received from an individual raising concerns on the issue of public

safety that the restaurant has been in operation for many years, however, the condition on fire services is still not complied with. The commenter also questions whether the concerned condition is too strenuous for small operation.

10. Planning Considerations and Assessments

- 10.1 The application is for temporary eating place (restaurant) at the Premises for a period of three years. The Premises fall 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 eating place, and as advised by CHE/NTE, HyD, the site falls outside the boundary of Hiram's Highway Improvement Stage 2 Project, the long-term planning intention of the area shown as 'Road' would not be frustrated. C for T and CHE/NTE, HyD have no in-principle objection to/no comment on the application.
- 10.2 The proposed temporary eating place is located at the fringe of Sai Kung Town. It 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 eating place is in small scale and is accommodated within an existing building, it would unlikely cause adverse traffic, drainage and environmental impacts on the surrounding areas. Relevant government departments consulted have no adverse comment on/ objection to the application.
- 10.3 The Premises are the subject of two previously approved applications No. A/SK-PK/194 and 259 for the same temporary use. The last application (No. A/SK-PK/259) was submitted by the same applicant, and the permission of which was revoked as the applicant failed to comply with the approval condition requiring provision of FSIs within the required time frame. According to the applicant, a fire services certificate from FSD was obtained for compliance with the fire services requirements for the licensing of the restaurant. The applicant misinterpreted that the granting of fire services certificate would have fulfilled the planning condition on provision of FSIs, and had not made a submission to comply with the planning condition by the compliance date. D of FS has no objection to the current application and advises that approval conditions related to fire safety are required.
- 10.4 In view of the above, sympathetic consideration may be given to this application. Since the last approval (Application No. A/SK-PK/259) was revoked due to non-compliance with the approval condition, shorter compliance periods are proposed to monitor the progress of compliance should the Committee decide to approve the application. Moreover, the applicant would be advised that should the applicant fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application. Given that a number of similar applications for temporary eating place have been approved in the vicinity of the Premises (**Plans A-1 and A-2**), approval of the current application is generally in line with the Committee's previous decisions.

- 10.5 Regarding the public comment concerning public safety issue arising from the non-compliance of planning condition on fire services, the assessments in paragraph 10.3 to 10.4 above are relevant. In addition, the proposed use is required to conform to any other relevant legislation and Government requirements as may be applicable, including the obtaining of license for the restaurant.

11. Planning Department's Views

- 11.1 Based on the assessments made in paragraph 10 and having taking into account the public comment in paragraph 9, the Planning Department considers that the temporary eating place (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 24.9.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of 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 24.12.2021;
- (b) in relation to (a) above, the implementation of the fire service installations 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 24.3.2022; and
- (c) if the above planning condition (a) or (b) 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**.

- 11.3 There is no strong reason to recommend rejection of the application.

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 reason(s) for rejection should be given to the applicant.

13. Attachments

Appendix I	Application Form received on 4.8.2021
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Detailed Comments of DFEH
Appendix V	Advisory Clauses
Drawing A-1	Proposed 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 A4-b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2021**