

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/323

<u>Applicant</u>	: Mr. Cheung Chi Yuen Danny represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lots 839 (Part) and 840 in D.D. 114 and Adjoining Government Land (GL), Pat Heung, Yuen Long
<u>Site Area</u>	: About 1,168m ² (including GL of about 250m ² or 21%)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	: “Residential (Group D)” (“R(D)”) <i>[Restricted to a maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]</i>
<u>Application</u>	: Proposed Temporary Eating Place 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 for a period of 3 years. The Site falls within an area zoned “R(D)” on the approved Shek Kong OZP (**Plan A-1**). According to the Notes of the OZP, ‘Eating Place’ is Column 2 use within “R(D)” zone and planning permission from the Town Planning Board (the Board) is required. The Site is currently vacant but occupied by some structures (**Plans A-2 and A-3**).
- 1.2 According to the applicant, the proposed development comprises two single-storey structures with a building height of not exceeding 4.5m and a total floor area of not more than 450m², which are proposed to be used for eating places and toilet (**Drawing A-1**). The eating places and toilet will be accommodated in the existing structures (in concrete) according to the proposal. The operation hours will be from 9:00a.m. to 9:00p.m. daily (including public holidays). Eight parking spaces for private cars will be provided on-site. The Site is accessible via a local access road branching off from Kam Sheung Road (**Plan A-2**). The layout plan and proposed vehicular access plan submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application Form with drainage proposal received on 3.12.2021 (Appendix I)
- (b) Further information (FI) received on 24.1.2022 (Appendix Ia) *(exempted from publication)*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ia**, and are briefly summarised as follows:

- (a) the proposed development is intended to serve the nearby neighbourhood in the “R(D)” zone and the “Village Type Development” (“V”) zone at opposite side of Kam Sheung Road;
- (b) there are similar eating place and shop and services uses nearby. The proposed development is therefore considered not incompatible with the surrounding environment. Being temporary in nature, the proposed development would not jeopardise the long-term planning intention of the “R(D)” zone; and
- (c) the proposed development would not create significant adverse environmental, noise, drainage, sewerage and traffic impacts.

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 Pat Heung Rural Committee by local registered post. Detailed information would be deposited at the meeting for Members’ inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The Site is not subject to any active planning enforcement action.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Application

- 6.1 There is one similar application (No. A/YL-SK/296) for temporary eating place and shop and services uses approved within the same “R(D)” zone on the OZP, which was approved by the Rural and New Town Planning Committee (the Committee) on 12.3.2021. Details of the application are summarised in **Appendix II** and the location is shown on **Plans A-1** and **A-2**.
- 6.2 Application No. A/YL-SK/296 for proposed temporary eating place and shop and services for a period of 3 years was approved with conditions by the Committee mainly on the considerations that the development would not frustrate the long-term planning intention of the “R(D)” zone; it was not incompatible with the surrounding areas; relevant government departments had no adverse comment on the application; and the technical concerns/requirements of the relevant government departments could be addressed by approval conditions.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plan A-4)

- 7.1 The Site is:
- (a) partly vacant and partly occupied by some structures; and
 - (b) accessible via a local access road branching off from Kam Sheung Road.
- 7.2 The surrounding areas are predominantly rural in character and intermixed with existing domestic dwellings/structures, shop and services, open storage yards and workshops, and vacant land (**Plan A-2**):
- (a) to its immediate north are an eating place and shop and services, two retail shops for selling vehicle spare parts and hardware groceries (approved under the Application Nos. A/YL-SK/296, 320 and 248 respectively), a real estate agency and a restaurant, and to its further north crossing Kam Sheung Road are some domestic dwellings/structures intermixed with a Buddha hall, a cropper wares manufacturing factory in the “V” zone;
 - (b) to its east are a few domestic dwellings/structures;
 - (c) to its south is a nullah, and to its further south are a few open storage yards and workshops, domestic dwellings/structures, and vacant land; and
 - (d) to its west are domestic dwellings/structures and a restaurant.

8. Planning Intention

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. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) the Site comprises GL and Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the government;
- (b) no permission is given for occupation of GL (about 250m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without government's prior approval is not allowed; and
- (c) should planning approval be given to the subject planning application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Furthermore, the applicant has to either exclude the GL from the Site or obtain a formal approval prior to the actual occupation of the GL. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor 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.

Traffic

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

- (a) having regard to the FI (**Appendix Ia**), he has no comment on the application from traffic engineering perspective;
- (b) the Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly; and
- (c) his detailed comments are at **Appendix IV**.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) he has no objection to the application;
- (b) the applicant is advised (i) to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimise any potential environmental nuisance; (ii) to provide adequate supporting infrastructure/facilities for proper collection, treatment and disposal of waste/wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of Environmental Protection Department’s (EPD) Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” including completion of percolation test and certification by Authorised Person; (iii) to control the oily fume and cooking odour emissions from the canteen, the applicant should follow “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” (https://www.epd.gov.hk/epd/sites/default/files/epd/english/environmentinhk/air/guide_ref/files/pamphlet_oilfume_eng.pdf) issued by EPD; and (iv) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances; and
- (c) there is no environmental complaint in relation to the Site received in the past three years.

Food and Environmental Hygiene

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

- (a) he has no adverse comment on the application;
- (b) proper licence/permit issued by his department is required if there is any food business/catering service/activities regulated by him

under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. The operation of any eating place should be under a food licence issued by the Food and Environmental Hygiene Department; and

- (c) his detailed comments are at **Appendix IV**.

Drainage

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

- (a) having regard to the FI (**Appendix Ia**), he has no objection in-principle to the proposed development from public drainage point of view and no adverse comment on the submitted revised drainage proposal;
- (b) should the Board consider that the application is acceptable from the planning point of view, conditions should be stipulated in the approval letter requiring the applicant to implement and maintain the agreed drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board; and
- (c) his detailed comments are at **Appendix IV**.

Building Matters

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

- (a) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Buildings Authority should be obtained, otherwise they are unauthorised building works (UBW). An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (b) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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; and
- (c) his detailed comments are at **Appendix IV**.

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 subject to fire service installations (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans. Licensing requirements, if any, shall be formulated upon receipt of formal application via the Licensing Authority.

District Officer's Comments

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

he has not received any comments from locals upon close of consultation and he has no particular comment on the application.

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

- (a) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (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 Comments Received During Statutory Publication Period

On 10.12.2021, the application was published for public inspection. During the first three-week statutory publication period, a total of 27 public comments were received, 25 of which are in the form of standard letter from Indigenous Inhabitant Representatives, Resident Representative of Sheung Tsuen as well as local residents (**Appendix III-a**), 1 comment is from a Yuen Long District Council Member (**Appendix III-b**), and 1 comment is from an individual (**Appendix III-c**). All public comments object to the application mainly on the grounds that the proposed development would worsen the traffic condition, road safety and congestion issue in Kam Sheung Road and the vicinity; and it

would lead to environmental pollution, fire safety hazard and adversely affect the safety and quality of living of the villagers.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary eating place at the Site for a period of 3 years (**Plan A-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. While the proposed ‘eating place’ use is not entirely in line with the planning intention of the “R(D)” zone, approval of the application for 3 years on a temporary basis would not frustrate the long-term planning intention of “R(D)” zone.
- 11.2 According to the applicant, the proposed development is intended to serve the needs of the residents of the surrounding neighbourhood in Shek Kong area. The proposed development comprising two single-storey structures with a total floor area of not more than 450m² is considered not incompatible with the surrounding areas which are intermixed with existing domestic dwellings/structures, shop and services, open storage yards and vacant land (**Plan A-2**).
- 11.3 Relevant government departments consulted, including C for T, DEP, CE/MN of DSD, CTP/UD&L of PlanD, D of FS and DFEH have no adverse comment on/no objection to the application, and it is anticipated that the proposed development would not have significant adverse traffic, environmental, drainage, landscape, fire safety and public hygiene impacts on the surrounding areas. The technical requirements of CE/MN of DSD and D of FS could be addressed by appropriate approval conditions in paragraph 12.2 (a) to (d) below. Besides, to address possible environmental nuisances, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” and “Control of Oily Fume and Cooking Odour from Restaurant and Food Business”.
- 11.4 There is one similar application for temporary eating place and shop and services approved within the same “R(D)” zone, which was approved by the Committee in 2021. The Committee’s considerations on the application as stated in paragraph 6 above are generally applicable to the current application, and approval of this application is in line with the previous decision of the Committee.
- 11.5 Regarding the 27 public comments received during the statutory publication period, the departmental comments and planning considerations and assessments 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 comments 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 28.1.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the implementation of the accepted 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 28.10.2022;
- (b) in relation to (b) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (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 28.7.2022;
- (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 28.10.2022;
- (e) if the above planning condition (b) 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; and
- (f) if any of the above planning conditions (a), (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 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 intention of the "R(D)" zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form with Drainage Proposal received on 3.12.2021
Appendix Ia	FI received on 24.1.2022
Appendix II	Similar Application
Appendices III-a to III-c	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos