

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/358

<u>Applicant</u>	: Google Company Limited represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lots 839 (Part) and 840 in D.D. 114 and Adjoining Government Land, Pat Heung, Yuen Long, New Territories
<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)”)
<u>Application</u>	: Proposed Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary eating place for a period of 3 years at the application site (the Site). The Site falls within an area zoned “R(D)” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use within the “R(D)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant, occupied by some structures and hard-paved (**Plans A-3 to A-4b**).
- 1.2 According to the applicant, the site area is about 1,168m² and three single-storey structures (with building height of not more than 4.5m) with a total non-domestic floor area of not more than 550m² will be erected within the Site for eating place, ancillary toilet and kitchen uses (**Drawing A-1**). The proposed operation hours will be from 9:00a.m. to 9:00p.m. Mondays to Sundays including public holidays. The Site is accessible via a local access road branching off from Kam Sheung Road (**Plans A-2 and A-3**). Eight private car parking spaces will be provided on-site. The layout plan and 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 attachments received on **(Appendix I)**

9.1.2024

- (b) Further Information (FIs) received on 19.2.2024 and 22.2.2024* **(Appendix Ia)**

** accepted and exempted from publication and recounting requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I to Ia** and summarized below:

- (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 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;
- (c) the proposed development would not create significant adverse environmental, noise, drainage, sewerage and traffic impacts; and
- (d) the proposed development would help to meet the planning intention of the “R(D)” zone because it would provide benefit to the surrounding residents so that it would help to upgrading the existing temporary structures to permanent developments.

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

The applicant is not the “current land owner” of the Site but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) 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.31B are not applicable.

4. Background

The Site was paved before the first publication in the Gazette of the notice of the Shek Kong Interim Development Permission Area Plan (i.e. 5.10.1990). The Site is currently not subject to any active planning enforcement action.

5. Previous Application

The Site was subject to a previous application (No. A/YL-SK/323) for the same applied use approved by the Rural and New Town Planning Committee (the Committee) on 28.1.2022 for a period of 3 years on the considerations that the development would not

jeopardise the long-term planning intention of “R(D)” zone; it was not incompatible with the surrounding environment; government departments consulted generally had no adverse comment on the application; and relevant departmental concerns could be addressed by approval conditions. The previous application was not submitted by the applicant of the current application. The planning permission was subsequently revoked on 28.7.2022 due to non-compliance with the approval conditions on the submission of a fire service installations proposal and the implementation of the accepted drainage proposal and fire service installations proposal. Details of this application are summarized at **Appendix II** and the location is shown on **Plan A-1**.

6. Similar Application

There is one similar application (No. A/YL-SK/296) for temporary eating place and shop and services uses within the same “R(D)” zone on the OZP (**Plan A-1**), which was approved with conditions by the Committee on 12.3.2021 on similar considerations as stated in paragraph 5. Details of the similar application are summarized at **Appendix II** and the location is shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4b)

7.1 The Site is:

- (a) partly vacant, partly occupied by some structures and hard-paved; 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 (**Plans A-2 and A-3**).

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 Apart from the government department as set out in paragraphs 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III and IV** respectively.

9.2 The following government department has adverse comments on the application:

Land Administration

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

- (a) the Site comprises GL and Old Schedule Agricultural Lot 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 as mentioned in the application form) included in the application site. Any occupation of GL without Government's prior approval is an offence under Cap.28; and
- (c) LandsD has reservation on the planning application given that there are unauthorised structures within the said private lot(s) covered by the planning application which are already subject to lease enforcement actions according to case priority. The lot owner(s) should rectify/apply for regularisation on the lease breaches as demanded by LandsD.

10. Public Comment Received During the Statutory Publication Period

The application was published for public inspection on 16.1.2024. During the statutory public inspection period, 10 public comments from individuals were received (**Appendices V-1 to V-10**). They raise objection to/concerns about the application mainly on the grounds that there are unauthorised occupation of GL and unauthorised structures in the application site; the proposed development would worsen the traffic condition and road safety in Kam Sheung Road and the vicinity; and it would lead to environmental pollution which would disrupt the ecology in Kam Tin River, create flooding and 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 for a period of 3 years at the Site zoned "R(D)" (**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, and for low-rise, low-density residential developments subject to planning permission from the Board. While the proposed 'eating place' use is not in line with the planning intention of the "R(D)" zone, it is intended to serve the needs of the nearby residents and there is no known proposal for permanent development at the Site. It is considered that approval of the application on a temporary basis would not frustrate the long-term planning intention of the "R(D)" zone.
- 11.2 The proposed use is considered not incompatible with the surrounding land uses which are intermixed with existing domestic dwellings/ structures, shop and services, open storage yards and workshops, and vacant land (**Plan A-2**).

- 11.3 Relevant departments consulted, including Commissioner for Transport, Director of Fire Services (D of FS), Chief Engineer/ Mainland North of Drainage Services Department (CE/MN of DSD), Director of Environmental Protection (DEP) and Director of Food and Environmental Hygiene have no objection to or no adverse comment on the application. It is anticipated that the proposed use would not have significant adverse traffic, fire safety, drainage, environmental and public hygiene impacts on the surrounding areas. The technical requirements of D of FS and CE/MN of DSD could be addressed by appropriate approval conditions as set out in paragraph 12.2 below. Besides, the applicant will also be advised to follow the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”; the Practice Note for Professional Person PN 1/23 on “Drainage Plans subject to Comment by EPD” including retention time for grease trap and minimum clearance distance, percolation test and certification by Authorised Person for septic tank and soakaway system; and “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” issued by EPD in order to minimise any potential environmental nuisances.
- 11.4 Although DLO/YL of LandsD has concern on the application in view of the existing unauthorised structures and unauthorised occupation of GL on the subject lots, the applicant states that application for Short Term Waiver (STW) and Short Term Tenancy (STT) will be made to LandsD and the existing unauthorised structures would be demolished. Besides, the applicant will also be advised to follow the relevant requirements of LandsD as set out in the recommended advisory clauses.
- 11.5 The Site is the subject of a previous approved application (No. A/YL-SK/323) for the same applied use as the current application and the planning permission was revoked due to non-compliance with approval conditions on the submission of a fire service installations proposal and the implementation of the accepted drainage proposal and fire service installations proposal. In this regard, the applicant has submitted drainage and FSIs proposals to support the current application and relevant departments has no objection to the application subject to relevant approval conditions. Should the Committee decide to approve the application, the applicant will be advised that should he fail to comply with any of the approval conditions resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.6 There is one similar application for temporary eating place and shop and services within the same “R(D)” zone (No. A/YL-SK/296), which was approved with conditions by the Committee on 12.3.2021. 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.
- 11.7 Regarding the public comments objecting to the application as stated in paragraph 10 above, 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 mentioned in paragraph 10 above, 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 1.3.2027. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 9:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) the submission of a 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 **1.9.2024**;
- (c) in relation to (b) 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 **1.12.2024**;
- (d) in relation to (c) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (e) the submission of a revised 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 **1.9.2024**;
- (f) in relation to (e) 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 **1.12.2024**;
- (g) if any of the above planning condition (a) or (d) 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
- (h) if any of the above planning condition (b), (c), (e) and (f) 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 use 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 for 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 attachments received on 9.1.2024
Appendix Ia	FIs received on 19.2.2024 and 22.2.2024
Appendix II	Previous and similar applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendices V-1 to V-10	Public Comments
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
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2024**