

RNTPC Paper No. A/YL-ST/604A
For Consideration by
the Rural and New Town
Planning Committee
on 18.2.2022

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-ST/604

<u>Applicant</u>	: Sky Link Consultant Investment Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 153 (Part) and 154 S.A. (Part) in D.D. 102, Wing Ping Tsuen, San Tin, Yuen Long
<u>Site Area</u>	: About 575 m ²
<u>Lease</u>	: Block Government Lease (demised agricultural use)
<u>Plan</u>	: Approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Proposed Temporary Eating Place for a Period of 5 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 5 years (**Plan A-1a**). According to the Notes of “V” zone of the OZP, ‘Eating Place’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently paved and used as car park (**Plan A-2 and A-4**).
- 1.2 The Site in part is the subject of ten previous applications (No. A/YL-ST/16, 34, 41, 126, 135, 245, 315, 383, 481 and 541) (**Plan A-1b**). The last application (No. A/YL-ST/541) for temporary public car park (private cars and light good vehicles under 5.5 tonnes) with ancillary office was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 12.4.2019 for a period of 3 years until 12.4.2022. However, the planning permission was revoked on 12.3.2021 due to non-compliance with approval conditions.

- 1.3 According to the applicant, the proposed temporary eating place involves a single-storey structure (about 4m in height with a gross floor area of about 225m²), which is to serve the nearby locals (**Drawing A-1**). As shown in **Plan A-1a** and **Plan A-2**, the Site is accessible from Castle Peak Road – San Tin via a local track. Three private car parking spaces and one loading and unloading bay for light goods vehicle (LGV) are to be provided. The operation hours of the proposed use are from 9:00 a.m. to 10:00 p.m. daily, including public holidays. The estimated number of staff working at the Site is 5. The estimated number of visitors per day is about 30.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with appendix and plans received (b) **(Appendix I)**
on 11.11.2021
 - (b) Further information (FI) received on 3.1.2022 * (b) **(Appendix Ia)**
 - (c) Further information (FI) received on 8.2.2022 * (b) **(Appendix Ib)**
- Remarks: * accepted and exempted from publication and recounting requirements.
- 1.5 On 24.12.2021, the Committee of the Board decided to defer a decision on the application for a period of two months as requested by the applicant to allow time for the applicant to address departmental comments. The applicant subsequently submitted FI as detailed in paragraph 1.4 above. The application is scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form, appendix and plans at **Appendix I**. They can be summarized as follows:

- (a) The proposed use, which is intended to serve the nearby local, is on a temporary basis and will not jeopardise the long-term planning intention of the “V” zone.
- (b) No adverse or significant traffic, environmental, landscape and drainage impacts are anticipated. Adequate mitigation measures will be provided after planning approval has been granted from the Board.
- (c) The applicant will follow ‘Control of Oil Fume and Cooking Odour from Restaurant and Food Business’ issued by the Environmental Protection Department (EPD) to control oily fume and cooking odour emissions generated from the eating place during its operation. Adequate air pollution control equipment will be provided at the kitchen ventilation system for treating cooking fume emissions before discharge

to the outdoor environment, in order to fulfil the requirements of the Air Pollution Control Ordinance.

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

The applicant is not a “current land owner” but has complied with the requirement 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 posting site notice and sending notice to the San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Member’s inspection.

4. Town Planning Board Guidelines

4.1 According to the Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarised as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

4.2 The Town Planning Board Guidelines for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) (**Appendix II**) is relevant to this application. The relevant planning criteria are summarised as follows:

- (a) the eating place use should not create environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;

- (c) sympathetic consideration may be given if the eating place use would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a NTEH or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20 m of public roads constructed/maintained by the Highways Department or 15 m of other local public roads), sympathetic consideration may be given by the Board on individual merits; and
- (e) all other statutory or non-statutory requirements of relevant Government departments should be met.
- (f) even if a proposal is considered acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the Site and to cater for changing circumstances in future.

5. Background

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

6. Previous Application

- 6.1 The Site in part is the subject of ten previous applications (No. A/YL-ST/16, 34, 41, 126, 135, 245, 315, 383, 481 and 541) of which the first four were rejected by the Committee and the remaining six were approved with conditions. All previous applications cover a larger site area and are not relevant to the current application.
- 6.2 The last application (No. A/YL-ST/541) for temporary public car park (private cars and LGV under 5.5 tonnes) with ancillary office were approved by the Committee on 12.4.2019 for a period of 3 years until 12.4.2022 mainly on the considerations that the temporary approval would not frustrate the long term planning intention of the “V” zone; the applied use was not incompatible with the rural character of the surrounding area; the applied use could satisfy the parking demand for cross-boundary travellers; there was no objection to or no adverse comment from concerned government departments; relevant departmental concerns could be addressed by approval conditions and approval of the

application is in line with the previous decisions of the Committee. However, the planning permission was revoked on 12.3.2021 due to non-compliance with the approval conditions on the submission and implementation of drainage proposal and implementation of fire service installations proposal.

- 6.3 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1b**.

7. **Similar Applications**

- 7.1 During the past five years since 2017, there are two similar applications (No. A/YL-ST/499 and 565) for temporary eating place (Outside Seating Accommodation of a Restaurant) covering a same application site within the same “V” zone on the OZP which was approved by the Committee mainly on the consideration that the developments was considered not incompatible with the surrounding land uses, the eating place could meet some of the demand for eating place in the vicinity, and the applied use was generally in line with the TPB PG-No 12C and 15A
- 7.2 Details of the application are summarized at **Appendix IV**. Its location is shown on **Plan A-1a**.

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

- 8.1 The Site is:
- (a) accessible via a local access from Castle Peak Road – San Tin;
 - (b) hard paved and used for car park currently; and
 - (c) within the WBA of Deep Bay Area.
- 8.2 The surrounding areas are a mix of residential dwellings, vehicle parks and vacant land:
- (a) to the north are village houses, a storage yard and vacant land. To further north, northeast and northwest are village houses of Wing Ping Tsuen and vehicle parks (one approved under application No. A/YL-ST/555);
 - (b) to the east are vehicle parks and residential dwellings mixed with shops;
 - (c) to the south, southeast and southwest are vacant land, residential dwellings mixed with shops, vehicle parks, the San Tin Post Office, a public toilet and

a restaurant. To the further south and southeast is Castle Peak Road – San Tin; and

- (d) to the west are a storage yard, residential dwellings, vehicle parks and vacant land.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

- 10.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

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

- (a) The Site comprises Old Scheduled 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) According to his record, there is no Small House application being processed/approved at the Site.
- (c) Should planning approval be given to the application, the lot owner(s) will need to immediately apply to this office to permit the structures to be erected or regularise any irregularity 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. Applications for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application

will be approved. If such application 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

10.1.2. Comments of the Commissioner for Transport (C for T):

- (a) The Site is connected to Castle Peak Road – San Tin via a section of a local access which is not managed by Transport Department (TD). The land status of the local access should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) The applicant should seek the relevant land owner(s) on the right of using the vehicular access
- (c) Having considered the FI submitted by the applicant, he has no adverse comment on the application from the traffic engineering point of view.
- (d) No vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

10.1.3. Comments of the Chief Highway Engineer/New Territories West, Highway Department (CE/NTW, HyD):

- (a) The proposed access arrangement of the Site from Castle Peak Road – San Tin should be commented and approved by TD.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road – San Tin.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

10.1.4. Comments of the Director of Environmental Protection (DEP):

- (a) The applicant is advised to follow the environmental mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open

Storage Sites” (COP) issued by Environmental Protection Department (EPD).

- (b) To control the oily fume and cooking odour emissions from the proposed use, the applicant is advised to follow “Control of Oily Fume and Cooking Odour from Restaurant and Food Business”.
- (c) For sewage treatment, sewage should be discharged to nearby public sewer, or in case of unavailable public sewer, septic tank and soakaway system should be provided and its design and construction shall follow the requirements of EPD’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by Environmental Protection Department”. Also, all wastewater collected from the kitchen, including that from basins, sink and floor drains, should be discharged via a grease trap in accordance with this ProPECC PN 5/93.
- (d) There was no substantiated environmental complaint concerning the Site received by EPD in the past three years.

Landscape

10.1.5. Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

As the Site falls within “V” zone, which is a non-landscape sensitive zoning, no significant landscape impact arising from the development is anticipated.

Drainage

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

- (a) He has no objection in principle to the application from drainage operation and maintenance point of view.
- (b) The applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to the Site. A clear drainage plan showing full details of the existing drains and the proposed drains (e.g. cover & invert levels of pipes/catchpits/outfalls and ground levels justifying waterfowl etc.) with supporting design calculations & charts should be included. The

applicant is reminded that approval of the drainage proposal must be sought prior to the implementation of drainage works on the Site.

- (c) After completion of the required drainage works, the applicant shall provide DSD a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan for reference.
- (d) His detailed comments are at **Appendix VI**.

Fire Safety

10.1.7. Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the application 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 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; and
 - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if any proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Others

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

- (a) He has no adverse comments on the subject planning application.
- (b) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected.

- (c) Proper licence/permit issued by FEHD is required if there is any food business/catering service/activities regulated by the DFEH 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 FEHD. If the operator intends to operate a restaurant business in the territory, a restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). For the operation of other types of food business, relevant food licences should also be obtained from FEHD in accordance with Cap. 132. Under the Food Business Regulation, Cap. 132X, a Food Factory Licence should be obtained from this department for food business which involves the preparation of food for sale for human consumption off the premises before commencement of such business. The application for food business licences under Cap. 132, if acceptable by FEHD, will be referred to relevant government departments for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.
- (d) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses. Please also remind the applicant that the operation of the food business 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.

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

- (a) Director of Agriculture, Fisheries and Conservation;
- (b) Chief Building Surveyor/New Territories West, Buildings Department
- (c) Project Manager (West), West Development Office, Civil Engineering and Development Department;
- (d) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department;
- (e) District Officer (Yuen Long), Home Affairs Department.
- (f) Commissioner of Police; and
- (g) Chief Engineer/Construction, Water Supplies Department.

11. Public Comment Received During Statutory Publication Period

On 23.11.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.12.2021, three comments from individuals were received (**Appendix V**) raising objection in that the proposed use will exacerbate the risk of fire hazard and will cause environmental pollution and degradation of the nearby living environment, as well as non-compliance of approval conditions in the previous application.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary eating place for a period of 5 years. The Site falls within “V” zone which is intended to designate both existing recognised villages and areas of land considered suitable for village expansion. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. Although the temporary eating place is not entirely in line with the planning intention of the “V” zone, DLO/YL of LandsD advises that there is no Small House application being processed at the Site. The proposed use could also serve the adjacent villages and meet the local demand for eating place in the vicinity. In this regard, it is considered that the approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “V” zone.
- 12.2 Given the small scale (total floor area of about 225m²) and the nature of the proposed use, it is considered not incompatible with the surrounding land uses, which are rural in character comprising mainly residential dwellings, open storage yards, vehicle parks and vacant land (**Plan A-2**).
- 12.3 Although the Site falls within the WBA of the TPB PG-No. 12C, the guidelines also specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC has no comment on the application.
- 12.4 The application is generally in line with TPB PG-No. 15A in that the proposed use is located at the fringe of Wing Ping Tsuen and is accessible from Castle Peak Road – San Tin. In view of the scale of the eating place, it would unlikely generate significant adverse traffic, environmental and sewerage impacts on the surrounding areas. Concerned Government departments including DFEH, DEP, C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS have no adverse comments on food environment and hygiene, environmental, traffic, landscape,

drainage and fire safety aspects respectively, and their technical concerns/requirements could be addressed by approval conditions as recommended in paragraph 13.2 below. Sympathetic consideration could be given to the application. Nevertheless, in accordance with TPB PG-No. 15A (**Appendix II**), a shorter approval period of three years instead of five years sought, is recommended so as to retain planning control on the development at the Site and to cater for changing circumstances in future.

- 12.5 Since 2017, the Committee has approved two similar applications for temporary eating place use within the same “V” zone. Approval of the current application is therefore in line with the previous decisions of the Committee.
- 12.6 There were three public comments raising objection/concerns on the application as detailed in paragraph 11. The planning considerations and departmental comments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taking into account the public comment in paragraph 11, the Planning Department has no objection to the application.
- 13.2 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 up to 18.2.2025. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 10:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the Site at all times during the planning approval period;
- (c) the submission of 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 18.8.2022;
- (d) in relation to (c) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Service or of the Town Planning Board by 18.11.2022;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;

- (f) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 18.8.2022;
- (g) in relation to (f) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 18.11.2022;
- (h) if any of the above planning condition (a), (b) or (e) 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;
- (i) if any of the above planning condition (c), (d), (f) or (g) 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 VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the temporary development is not in line with the planning intention of the "V" zone which is primarily intended for development of NTEHs/Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

15. Attachments

Appendix I	Application form with appendix and plans received on 11.11.2021
Appendix Ia	FI received on 3.1.2022
Appendix Ib	FI received on 8.2.2022
Appendix II	Relevant Extract of TPB PG-No. 15A
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Public comments received during the statutory publication period
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Swept Path Analysis
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
FEBUARY 2022**