

This document is received on 31 OCT 2022
The Town Planning Board will formally acknowledge
the date of receipt of the application only upon receipt
of all the required information and documents.

Form No. S16-I
表格第 S16-I 號

**APPLICATION FOR PERMISSION
UNDER SECTION 16 OF
THE TOWN PLANNING ORDINANCE
(CAP.131)**

根據《城市規劃條例》(第131章)
第16條遞交的許可申請

Applicable to proposals not involving or not only involving:
適用於建議不涉及或不祇涉及:

- (i) **Construction of “New Territories Exempted House(s)”;**
興建「新界豁免管制屋宇」;
- (ii) **Temporary use/development of land and/or building not exceeding 3 years in rural areas; and**
位於鄉郊地區土地上及/或建築物內進行為期不超過三年的臨時用途/發展;及
- (iii) **Renewal of permission for temporary use or development in rural areas**
位於鄉郊地區的臨時用途或發展的許可續期

Applicant who would like to publish the notice of application in local newspapers to meet one of the Town Planning Board's requirements of taking reasonable steps to obtain consent of or give notification to the current land owner, please refer to the following link regarding publishing the notice in the designated newspapers:
https://www.info.gov.hk/tpb/en/plan_application/apply.html

申請人如欲在本地報章刊登申請通知,以採取城市規劃委員會就取得現行土地擁有人的同意或通知現行土地擁有人所指定的其中一項合理步驟,請瀏覽以下網址有關在指定的報章刊登通知:
https://www.info.gov.hk/tpb/tc/plan_application/apply.html

General Note and Annotation for the Form
填寫表格的一般指引及註解

“Current land owner” means any person whose name is registered in the Land Registry as that of an owner of the land to which the application relates, as at 6 weeks before the application is made
「現行土地擁有人」指在提出申請前六星期,其姓名或名稱已在土地註冊處註冊為該申請所關乎的土地的擁有人的人

& Please attach documentary proof 請夾附證明文件

^ Please insert number where appropriate 請在適當地方註明編號

Please fill “NA” for inapplicable item 請在不適用的項目填寫「不適用」

Please use separate sheets if the space provided is insufficient 如所提供的空間不足,請另頁說明

Please insert a 「✓」 at the appropriate box 請在適當的方格內上加上「✓」號

2202748

27/10

by hand

Form No. S16-I 表格第 S16-I 號

For Official Use Only 請勿填寫此欄	Application No. 申請編號	A14C/297
	Date Received 收到日期	31 OCT 2022

- The completed form and supporting documents (if any) should be sent to the Secretary, Town Planning Board (the Board), 15/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong.
申請人須把填妥的申請表格及其他支持申請的文件 (倘有), 送交香港北角渣華道 333 號北角政府合署 15 樓城市規劃委員會 (下稱「委員會」) 秘書收。
- Please read the "Guidance Notes" carefully before you fill in this form. The document can be downloaded from the Board's website at <http://www.info.gov.hk/tpb/>. It can also be obtained from the Secretariat of the Board at 15/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong (Tel: 2231 4810 or 2231 4835), and the Planning Enquiry Counters of the Planning Department (Hotline: 2231 5000) (17/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong and 14/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories).
請先細閱《申請須知》的資料單張, 然後填寫此表格。該份文件可從委員會的網頁下載 (網址: <http://www.info.gov.hk/tpb/>), 亦可向委員會秘書處 (香港北角渣華道 333 號北角政府合署 15 樓 - 電話: 2231 4810 或 2231 4835) 及規劃署的規劃資料查詢處 (熱線: 2231 5000) (香港北角渣華道 333 號北角政府合署 17 樓及新界沙田上禾輦路 1 號沙田政府合署 14 樓) 索取。
- This form can be downloaded from the Board's website, and obtained from the Secretariat of the Board and the Planning Enquiry Counters of the Planning Department. The form should be typed or completed in block letters. The processing of the application may be refused if the required information or the required copies are incomplete.
此表格可從委員會的網頁下載, 亦可向委員會秘書處及規劃署的規劃資料查詢處索取。申請人須以打印方式或以正楷填寫表格。如果申請人所提交的資料或文件副本不齊全, 委員會可拒絕處理有關申請。

1. Name of Applicant 申請人姓名/名稱	
(<input type="checkbox"/> Mr. 先生 / <input type="checkbox"/> Mrs. 夫人 / <input type="checkbox"/> Miss 小姐 / <input type="checkbox"/> Ms. 女士 / <input checked="" type="checkbox"/> Company 公司 / <input type="checkbox"/> Organisation 機構)	
The Vine Church Limited	
2. Name of Authorised Agent (if applicable) 獲授權代理人姓名/名稱 (如適用)	
(<input type="checkbox"/> Mr. 先生 / <input type="checkbox"/> Mrs. 夫人 / <input type="checkbox"/> Miss 小姐 / <input type="checkbox"/> Ms. 女士 / <input checked="" type="checkbox"/> Company 公司 / <input type="checkbox"/> Organisation 機構)	
DeSPACE (International) Limited	
3. Application Site 申請地點	
(a) Full address / location / demarcation district and lot number (if applicable) 詳細地址/地點/丈量約份及地段號碼 (如適用)	Portion of New Shop B and Portion of Office Unit No.1A, 1/F and Portion of G/F, Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories
(b) Site area and/or gross floor area involved 涉及的地盤面積及/或總樓面面積	<input type="checkbox"/> Site area 地盤面積 sq.m 平方米 <input type="checkbox"/> About 約 <input checked="" type="checkbox"/> Gross floor area 總樓面面積 627.75 sq.m 平方米 <input checked="" type="checkbox"/> About 約
(c) Area of Government land included (if any) 所包括的政府土地面積 (倘有)	..... sq.m 平方米 <input type="checkbox"/> About 約

(d) Name and number of the related statutory plan(s) 有關法定圖則的名稱及編號	Approved Yuen Long Outline Zoning Plan No. S/YL/25
(e) Land use zone(s) involved 涉及的土地用途地帶	"Residential (Group A)"
(f) Current use(s) 現時用途	Currently Vacant (If there are any Government, institution or community facilities, please illustrate on plan and specify the use and gross floor area) (如有任何政府、機構或社區設施，請在圖則上顯示，並註明用途及總樓面面積)

4. "Current Land Owner" of Application Site 申請地點的「現行土地擁有人」

The applicant 申請人 -

- ☐ is the sole "current land owner"^{#&} (please proceed to Part 6 and attach documentary proof of ownership).
是唯一的「現行土地擁有人」^{#&} (請繼續填寫第 6 部分，並夾附業權證明文件)。
- ☐ is one of the "current land owners"^{#&} (please attach documentary proof of ownership).
是其中一名「現行土地擁有人」^{#&} (請夾附業權證明文件)。
- ☒ is not a "current land owner"[#].
並不是「現行土地擁有人」[#]。

- ☐ The application site is entirely on Government land (please proceed to Part 6).
申請地點完全位於政府土地上 (請繼續填寫第 6 部分)。

5. Statement on Owner's Consent/Notification

就土地擁有人的同意/通知土地擁有人的陳述

- (a) According to the record(s) of the Land Registry as at 18/10/2022 (DD/MM/YYYY), this application involves a total of 1 "current land owner(s)"[#].
根據土地註冊處截至 2022 年 10 月 18 日的記錄，這宗申請共牽涉 1 名「現行土地擁有人」[#]。

(b) The applicant 申請人 -

- ☒ has obtained consent(s) of 1 "current land owner(s)"[#].
已取得 1 名「現行土地擁有人」[#]的同意。

Details of consent of "current land owner(s)" [#] obtained 取得「現行土地擁有人」 [#] 同意的詳情		
No. of 'Current Land Owner(s)' 「現行土地擁有人」數目	Lot number/address of premises as shown in the record of the Land Registry where consent(s) has/have been obtained 根據土地註冊處記錄已獲得同意的地段號碼/處所地址	Date of consent obtained (DD/MM/YYYY) 取得同意的日期 (日/月/年)
1	G/F, FOYER & STAIR (FOR CINEMA USE), CINMEA AND OFFICE UNIT NO.1 ON 1/F, HO SHUN LEE BUILDING, 9 FUNG YAU STREET SOUTH, YUEN LONG, NEW TERRITORIES	26/10/2022

(Please use separate sheets if the space of any box above is insufficient. 如上列任何方格的空間不足，請另頁說明)

- ☐ has notified "current land owner(s)"[#]
已通知 名「現行土地擁有人」[#]。

Details of the "current land owner(s)" [#] notified 已獲通知「現行土地擁有人」 [#] 的詳細資料		
No. of 'Current Land Owner(s)' 「現行土地擁有人」數目	Lot number/address of premises as shown in the record of the Land Registry where notification(s) has/have been given 根據土地註冊處記錄已發出通知的地段號碼／處所地址	Date of notification given (DD/MM/YYYY) 通知日期(日/月/年)

(Please use separate sheets if the space of any box above is insufficient. 如上列任何方格的空間不足，請另頁說明)

- ☐ has taken reasonable steps to obtain consent of or give notification to owner(s):
已採取合理步驟以取得土地擁有人的同意或向該人發給通知。詳情如下：

Reasonable Steps to Obtain Consent of Owner(s) 取得土地擁有人的同意所採取的合理步驟

- ☐ sent request for consent to the "current land owner(s)" on _____ (DD/MM/YYYY)^{#&}
於 _____ (日/月/年)向每一名「現行土地擁有人」[#]郵遞要求同意書[&]

Reasonable Steps to Give Notification to Owner(s) 向土地擁有人發出通知所採取的合理步驟

- ☐ published notices in local newspapers on _____ (DD/MM/YYYY)[&]
於 _____ (日/月/年)在指定報章就申請刊登一次通知[&]
- ☐ posted notice in a prominent position on or near application site/premises on _____ (DD/MM/YYYY)[&]
於 _____ (日/月/年)在申請地點／申請處所或附近的顯明位置貼出關於該申請的通知[&]
- ☐ sent notice to relevant owners' corporation(s)/owners' committee(s)/mutual aid committee(s)/management office(s) or rural committee on _____ (DD/MM/YYYY)[&]
於 _____ (日/月/年)把通知寄往相關的業主立案法團／業主委員會／互助委員會或管理處，或有關的鄉事委員會[&]

Others 其他

- ☐ others (please specify)
其他（請指明）

Note: May insert more than one 「✓」.

Information should be provided on the basis of each and every lot (if applicable) and premises (if any) in respect of the application.

註：可在多於一個方格內加上「✓」號

申請人須就申請涉及的每一地段（倘適用）及處所（倘有）分別提供資料

6. Type(s) of Application 申請類別

- ☒ Type (i) Change of use within existing building or part thereof
第(i)類 更改現有建築物或其部分內的用途
- ☐ Type (ii) Diversion of stream / excavation of land / filling of land / filling of pond as required under Notes of Statutory Plan(s)
第(ii)類 根據法定圖則《註釋》內所要求的河道改道／挖土／填土／填塘工程
- ☐ Type (iii) Public utility installation / Utility installation for private project
第(iii)類 公用事業設施裝置／私人發展計劃的公用設施裝置
- ☐ Type (iv) Minor relaxation of stated development restriction(s) as provided under Notes of Statutory Plan(s)
第(iv)類 略為放寬於法定圖則《註釋》內列明的發展限制
- ☐ Type (v) Use / development other than (i) to (iii) above
第(v)類 上述的(i)至(iii)項以外的用途／發展

Note 1: May insert more than one 「✓」.

註1：可在多於一個方格內加上「✓」號

Note 2: For Development involving columbarium use, please complete the table in the Appendix.

註2：如發展涉及靈灰安置所用處，請填妥於附件的表格。

(i) For Type (i) application 供第(i)類申請

(a) Total floor area involved 涉及的總樓面面積	627.75 sq.m 平方米		
(b) Proposed use(s)/development 擬議用途/發展	Proposed Religious Institution with ancillary Shop and Services, Eating Place and Office (If there are any Government, institution or community facilities, please illustrate on plan and specify the use and gross floor area) (如有任何政府、機構或社區設施，請在圖則上顯示，並註明用途及總樓面面積)		
(c) Number of storeys involved 涉及層數	2	Number of units involved 涉及單位數目	2
(d) Proposed floor area 擬議樓面面積	Domestic part 住用部分 sq.m 平方米 <input type="checkbox"/> About 約		
	Non-domestic part 非住用部分 627.75 sq.m 平方米 <input checked="" type="checkbox"/> About 約		
	Total 總計 627.75 sq.m 平方米 <input checked="" type="checkbox"/> About 約		
(e) Proposed uses of different floors (if applicable) 不同樓層的擬議用途(如適用) (Please use separate sheets if the space provided is insufficient) (如所提供的空間不足，請另頁說明)	Floor(s) 樓層	Current use(s) 現時用途	Proposed use(s) 擬議用途
	G/F(Part) & 1/F (Part)	Vacant	Proposed Religious Institution with ancillary Shop and Services, Eating Place and Office

(ii) For Type (ii) application 供第(ii)類申請

(a) Operation involved 涉及工程	<input type="checkbox"/> Diversion of stream 河道改道		
	<input type="checkbox"/> Filling of pond 填塘		
	Area of filling 填塘面積	sq.m 平方米	<input type="checkbox"/> About 約
	Depth of filling 填塘深度	m 米	<input type="checkbox"/> About 約
	<input type="checkbox"/> Filling of land 填土		
	Area of filling 填土面積	sq.m 平方米	<input type="checkbox"/> About 約
	Depth of filling 填土厚度	m 米	<input type="checkbox"/> About 約
	<input type="checkbox"/> Excavation of land 挖土		
	Area of excavation 挖土面積	sq.m 平方米	<input type="checkbox"/> About 約
	Depth of excavation 挖土深度	m 米	<input type="checkbox"/> About 約
(Please indicate on site plan the boundary of concerned land/pond(s), and particulars of stream diversion, the extent of filling of land/pond(s) and/or excavation of land) (請用圖則顯示有關土地/池塘界線, 以及河道改道、填塘、填土及/或挖土的細節及/或範圍))			
(b) Intended use/development 有意進行的用途/發展			

(iii) For Type (iii) application 供第(iii)類申請

(a) Nature and scale 性質及規模	<input type="checkbox"/> Public utility installation 公用事業設施裝置													
	<input type="checkbox"/> Utility installation for private project 私人發展計劃的公用設施裝置													
	Please specify the type and number of utility to be provided as well as the dimensions of each building/structure, where appropriate 請註明有關裝置的性質及數量, 包括每座建築物/構築物(倘有)的長度、高度和闊度													
	<table border="1"> <thead> <tr> <th>Name/type of installation 裝置名稱/種類</th> <th>Number of provision 數量</th> <th>Dimension of each installation /building/structure (m) (LxWxH) 每個裝置/建築物/構築物的尺寸 (米) (長 x 闊 x 高)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Name/type of installation 裝置名稱/種類	Number of provision 數量	Dimension of each installation /building/structure (m) (LxWxH) 每個裝置/建築物/構築物的尺寸 (米) (長 x 闊 x 高)										
	Name/type of installation 裝置名稱/種類	Number of provision 數量	Dimension of each installation /building/structure (m) (LxWxH) 每個裝置/建築物/構築物的尺寸 (米) (長 x 闊 x 高)											
(Please illustrate on plan the layout of the installation 請用圖則顯示裝置的布局)														

(iv) For Type (iv) application 供第(iv)類申請

(a) Please specify the proposed minor relaxation of stated development restriction(s) and **also fill in the proposed use/development and development particulars in part (v) below** –

請列明擬議略為放寬的發展限制並填妥於第(v)部分的擬議用途/發展及發展細節 –

- ☐ Plot ratio restriction From 由 to 至
地積比率限制
- ☐ Gross floor area restriction From 由sq. m 平方米 to 至sq. m 平方米
總樓面面積限制
- ☐ Site coverage restriction From 由% to 至 %
上蓋面積限制
- ☐ Building height restriction From 由m 米 to 至 m 米
建築物高度限制
From 由 mPD 米 (主水平基準上) to 至mPD 米 (主水平基準上)
From 由 storeys 層 to 至 storeys 層
- ☐ Non-building area restriction From 由m to 至 m
非建築用地限制
- ☐ Others (please specify)
其他 (請註明)

(v) For Type (v) application 供第(v)類申請

(a) Proposed use(s)/development
擬議用途/發展

(Please illustrate the details of the proposal on a layout plan 請用平面圖說明建議詳情)

(b) Development Schedule 發展細節表

- Proposed gross floor area (GFA) 擬議總樓面面積 sq.m 平方米 ☐ About 約
- Proposed plot ratio 擬議地積比率 ☐ About 約
- Proposed site coverage 擬議上蓋面積 % ☐ About 約
- Proposed no. of blocks 擬議座數
- Proposed no. of storeys of each block 每座建築物的擬議層數 storeys 層
☐ include 包括 storeys of basements 層地庫
☐ exclude 不包括 storeys of basements 層地庫
- Proposed building height of each block 每座建築物的擬議高度 mPD 米(主水平基準上) ☐ About 約
..... m 米 ☐ About 約

<input type="checkbox"/> Domestic part 住用部分		
GFA 總樓面面積	..... sq. m 平方米	<input type="checkbox"/> About 約
number of Units 單位數目	.....
average unit size 單位平均面積	.....sq. m 平方米	<input type="checkbox"/> About 約
estimated number of residents 估計住客數目	.....
<input type="checkbox"/> Non-domestic part 非住用部分		
<u>GFA 總樓面面積</u>		
<input type="checkbox"/> eating place 食肆	..... sq. m 平方米	<input type="checkbox"/> About 約
<input type="checkbox"/> hotel 酒店	..... sq. m 平方米	<input type="checkbox"/> About 約
(please specify the number of rooms 請註明房間數目)		
<input type="checkbox"/> office 辦公室	..... sq. m 平方米	<input type="checkbox"/> About 約
<input type="checkbox"/> shop and services 商店及服務行業	..... sq. m 平方米	<input type="checkbox"/> About 約
<input type="checkbox"/> Government, institution or community facilities 政府、機構或社區設施	(please specify the use(s) and concerned land area(s)/GFA(s) 請註明用途及有關的地面面積／總樓面面積)	
.....		
.....		
.....		
<input type="checkbox"/> other(s) 其他	(please specify the use(s) and concerned land area(s)/GFA(s) 請註明用途及有關的地面面積／總樓面面積)	
.....		
.....		
.....		
<input type="checkbox"/> Open space 休憩用地	(please specify land area(s) 請註明地面面積)	
<input type="checkbox"/> private open space 私人休憩用地	..... sq. m 平方米	<input type="checkbox"/> Not less than 不少於
<input type="checkbox"/> public open space 公眾休憩用地	..... sq. m 平方米	<input type="checkbox"/> Not less than 不少於
(c) Use(s) of different floors (if applicable) 各樓層的用途 (如適用)		
[Block number] [座數]	[Floor(s)] [層數]	[Proposed use(s)] [擬議用途]
.....
.....
.....
.....
.....
(d) Proposed use(s) of uncovered area (if any) 露天地方 (倘有) 的擬議用途		
.....		
.....		
.....		
.....		
.....		

7. Anticipated Completion Time of the Development Proposal**擬議發展計劃的預計完成時間**

Anticipated completion time (in month and year) of the development proposal (by phase (if any)) (e.g. June 2023)

擬議發展計劃預期完成的年份及月份 (分期 (倘有)) (例: 2023 年 6 月)

(Separate anticipated completion times (in month and year) should be provided for the proposed public open space and Government, institution or community facilities (if any))

(申請人須就擬議的公眾休憩用地及政府、機構或社區設施 (倘有) 提供個別擬議完成的年份及月份)

Q2 2023

8. Vehicular Access Arrangement of the Development Proposal**擬議發展計劃的行車通道安排**

Any vehicular access to the site/subject building? 是否有車路通往地盤／有關建築物？	Yes 是 No 否	<input checked="" type="checkbox"/> There is an existing access. (please indicate the street name, where appropriate) 有一條現有車路。(請註明車路名稱(如適用)) .....Fung Yau Street South..... <input type="checkbox"/> There is a proposed access. (please illustrate on plan and specify the width) 有一條擬議車路。(請在圖則顯示，並註明車路的闊度) <input type="checkbox"/>
Any provision of parking space for the proposed use(s)? 是否有為擬議用途提供停車位？	Yes 是 No 否	<input type="checkbox"/> (Please specify type(s) and number(s) and illustrate on plan) 請註明種類及數目並於圖則上顯示) Private Car Parking Spaces 私家車車位 _____ Motorcycle Parking Spaces 電單車車位 _____ Light Goods Vehicle Parking Spaces 輕型貨車泊車位 _____ Medium Goods Vehicle Parking Spaces 中型貨車泊車位 _____ Heavy Goods Vehicle Parking Spaces 重型貨車泊車位 _____ Others (Please Specify) 其他 (請列明) _____ _____ _____ <input checked="" type="checkbox"/>
Any provision of loading/unloading space for the proposed use(s)? 是否有為擬議用途提供上落客貨車位？	Yes 是 No 否	<input type="checkbox"/> (Please specify type(s) and number(s) and illustrate on plan) 請註明種類及數目並於圖則上顯示) Taxi Spaces 的士車位 _____ Coach Spaces 旅遊巴車位 _____ Light Goods Vehicle Spaces 輕型貨車車位 _____ Medium Goods Vehicle Spaces 中型貨車車位 _____ Heavy Goods Vehicle Spaces 重型貨車車位 _____ Others (Please Specify) 其他 (請列明) _____ _____ _____ <input checked="" type="checkbox"/>

9. Impacts of Development Proposal 擬議發展計劃的影響

If necessary, please use separate sheets to indicate the proposed measures to minimise possible adverse impacts or give justifications/reasons for not providing such measures.

如需要的話，請另頁註明可盡量減少可能出現不良影響的措施，否則請提供理據/理由。

<p>Does the development proposal involve alteration of existing building? 擬議發展計劃是否包括現有建築物的改動?</p>	<p>Yes 是 No 否</p>	<p><input type="checkbox"/> Please provide details 請提供詳情</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p><input checked="" type="checkbox"/></p>																																				
<p>Does the development proposal involve the operation on the right? 擬議發展是否涉及右列的工程? (Note: where Type (ii) application is the subject of application, please skip this section. 註：如申請涉及第(ii)類申請，請跳至下一條問題。)</p>	<p>Yes 是 No 否</p>	<p><input type="checkbox"/> (Please indicate on site plan the boundary of concerned land/pond(s), and particulars of stream diversion, the extent of filling of land/pond(s) and/or excavation of land) (請用地盤平面圖顯示有關土地/池塘界線，以及河道改道、填塘、填土及/或挖土的細節及/或範圍)</p> <p><input type="checkbox"/> Diversion of stream 河道改道</p> <p><input type="checkbox"/> Filling of pond 填塘 Area of filling 填塘面積 sq.m 平方米 <input type="checkbox"/> About 約 Depth of filling 填塘深度 m 米 <input type="checkbox"/> About 約</p> <p><input type="checkbox"/> Filling of land 填土 Area of filling 填土面積 sq.m 平方米 <input type="checkbox"/> About 約 Depth of filling 填土厚度 m 米 <input type="checkbox"/> About 約</p> <p><input type="checkbox"/> Excavation of land 挖土 Area of excavation 挖土面積 sq.m 平方米 <input type="checkbox"/> About 約 Depth of excavation 挖土深度 m 米 <input type="checkbox"/> About 約</p> <p><input checked="" type="checkbox"/></p>																																				
<p>Would the development proposal cause any adverse impacts? 擬議發展計劃會否造成不良影響?</p>	<p>On environment 對環境 On traffic 對交通 On water supply 對供水 On drainage 對排水 On slopes 對斜坡 Affected by slopes 受斜坡影響 Landscape Impact 構成景觀影響 Tree Felling 砍伐樹木 Visual Impact 構成視覺影響 Others (Please Specify) 其他 (請列明)</p> <p>.....</p> <p>.....</p>	<table border="0"> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Yes 會</td> <td><input type="checkbox"/></td> <td>No 不會</td> <td><input type="checkbox"/></td> </tr> </table>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input checked="" type="checkbox"/>	Yes 會	<input type="checkbox"/>	No 不會	<input type="checkbox"/>
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<p>Please state measure(s) to minimise the impact(s). For tree felling, please state the number, diameter at breast height and species of the affected trees (if possible) 請註明盡量減少影響的措施。如涉及砍伐樹木，請說明受影響樹木的數目、及胸高度的樹幹直徑及品種(倘可)</p> <p>N.A.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>																																						

10. Justifications 理由

The applicant is invited to provide justifications in support of the application. Use separate sheets if necessary.
現請申請人提供申請理由及支持其申請的資料。如有需要，請另頁說明。

Please refer to the Planning Statement.

11. Declaration 聲明

I hereby declare that the particulars given in this application are correct and true to the best of my knowledge and belief.
本人謹此聲明，本人就這宗申請提交的資料，據本人所知及所信，均屬真實無誤。

I hereby grant a permission to the Board to copy all the materials submitted in this application and/or to upload such materials to the Board's website for browsing and downloading by the public free-of-charge at the Board's discretion. 本人現准許委員會酌情將本人就此申請所提交的所有資料複製及/或上載至委員會網站，供公眾免費瀏覽或下載。

Signature
簽署



☐ Applicant 申請人 / ☒ Authorised Agent 獲授權代理人

Gregory K.C. Lam

Director

Name in Block Letters
姓名（請以正楷填寫）

Position (if applicable)
職位（如適用）

Professional Qualification(s)
專業資格

☒ Member 會員 / ☐ Fellow of 資深會員

☒ HKIP 香港規劃師學會 / ☐ HKIA 香港建築師學會 /

☐ HKIS 香港測量師學會 / ☐ HKIE 香港工程師學會 /

☐ HKILA 香港園境師學會 / ☐ HKIUD 香港城市設計學會

☒ RPP 註冊專業規劃師 (RPP No. 267)

Others 其他

on behalf of
代表

DeSPACE (International) Limited



☒ Company 公司 / ☐ Organisation Name and Chop (if applicable) 機構名稱及蓋章（如適用）

Date 日期

26/10/2022

(DD/MM/YYYY 日/月/年)

Remark 備註

The materials submitted in this application and the Board's decision on the application would be disclosed to the public. Such materials would also be uploaded to the Board's website for browsing and free downloading by the public where the Board considers appropriate.

委員會會向公眾披露申請人所遞交的申請資料和委員會對申請所作的決定。在委員會認為合適的情況下，有關申請資料亦會上載至委員會網頁供公眾免費瀏覽及下載。

Warning 警告

Any person who knowingly or wilfully makes any statement or furnish any information in connection with this application, which is false in any material particular, shall be liable to an offence under the Crimes Ordinance.

任何人在明知或故意的情況下，就這宗申請提出在任何要項上是虛假的陳述或資料，即屬違反《刑事罪行條例》。

Statement on Personal Data 個人資料的聲明

1. The personal data submitted to the Board in this application will be used by the Secretary of the Board and Government departments for the following purposes:

委員會就這宗申請所收到的個人資料會交給委員會秘書及政府部門，以根據《城市規劃條例》及相關的城市規劃委員會規劃指引的規定作以下用途：

(a) the processing of this application which includes making available the name of the applicant for public inspection when making available this application for public inspection; and

處理這宗申請，包括公布這宗申請供公眾查閱，同時公布申請人的姓名供公眾查閱；以及

(b) facilitating communication between the applicant and the Secretary of the Board/Government departments.

方便申請人與委員會秘書及政府部門之間進行聯絡。

2. The personal data provided by the applicant in this application may also be disclosed to other persons for the purposes mentioned in paragraph 1 above.

申請人就這宗申請提供的個人資料，或亦會向其他人士披露，以作上述第 1 段提及的用途。

3. An applicant has a right of access and correction with respect to his/her personal data as provided under the Personal Data (Privacy) Ordinance (Cap. 486). Request for personal data access and correction should be addressed to the Secretary of the Board at 15/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong.

根據《個人資料(私隱)條例》(第 486 章)的規定，申請人有權查閱及更正其個人資料。如欲查閱及更正個人資料，應向委員會秘書提出有關要求，其地址為香港北角渣華道 333 號北角政府合署 15 樓。

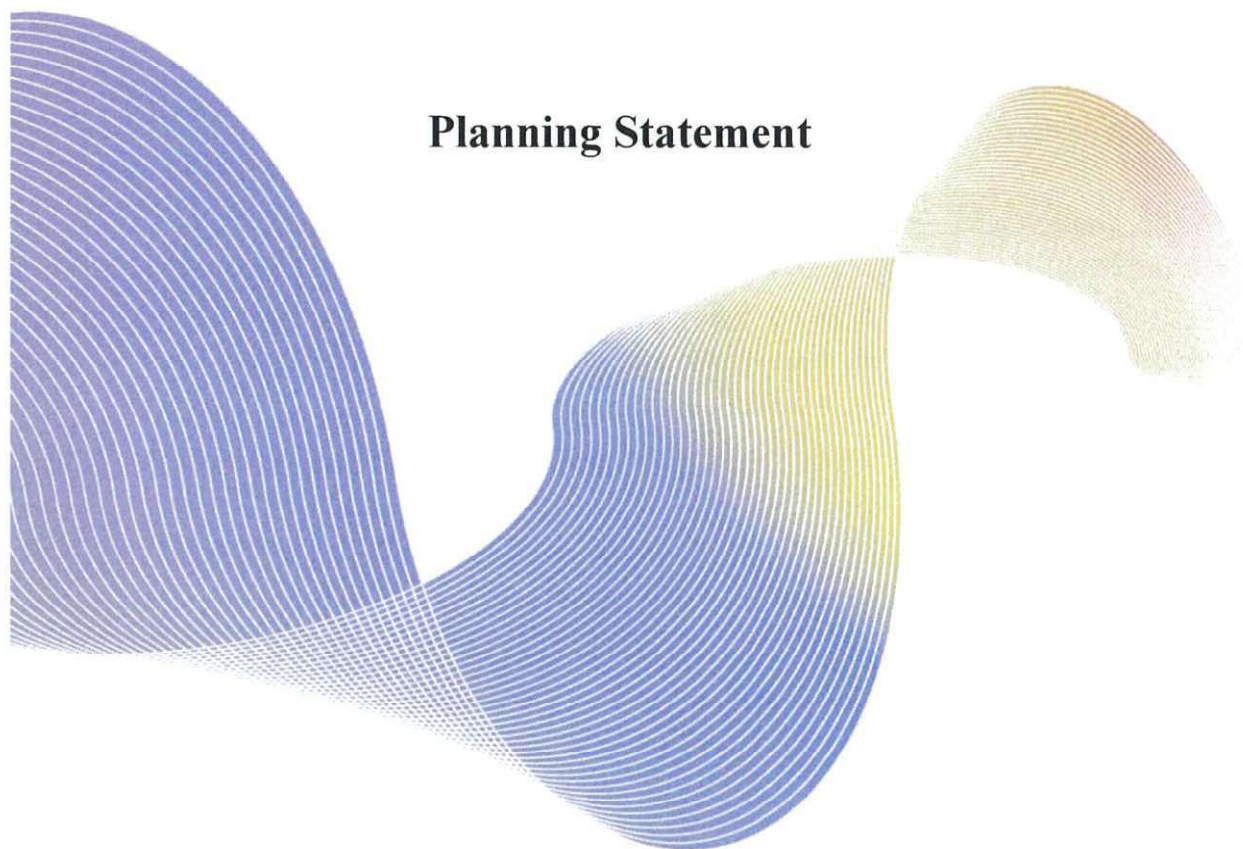


DeSPACE (International) Limited

Section 16 Planning Application

Proposed Religious Institution with Permitted Shop and
Services, Eating Place (Cafeteria) and Office

Planning Statement



Address: Portion of Cinema (also known as New Shop B) and Portion of Office Unit No.1 (also known as Office Unit No.1A), 1/F, with exclusive right to use the hydraulic lifting platform and the passage on the G/F, Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories

Date: Oct 2022

Applicant: *The Vine Church Limited*
Town Planning Consultant: *DeSPACE (International)*

Project Manager: *ZEV Limited*
Architect: *THEO Texture*



DeSPACE (International) Limited

構 建 (國 際)

Appendix Ib of RNTPC
Paper No. A/YL/297

Date: 5th December 2022



BY HAND

Pages: 1 + 11 pages

Secretary, Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point, Hong Kong

Dear Sir/Madam,

**SECTION 16 APPLICATION
TOWN PLANNING ORDINANCE (CHAPTER 131)**

**FOR PROPOSED RELIGIOUS INSTITUTION WITH ANCILLARY SHOP AND SERVICES,
EATING PLACE AND OFFICE IN "RESIDENTIAL (GROUP A)", PORTION OF NEW SHOP B
AND PORTION OF OFFICE UNIT NO.1A, 1/F AND PORTION OF G/F, HO SHUN LEE
BUILDING, 9 FUNG YAU STREET SOUTH, YUEN LONG, NEW TERRITORIES**

Town Planning Application No. A/YL/297 - Submission of Further Information (1) (FI (1))

References are made to the emails between 9 November 2022 to 1 December 2022 from the Planning Department. In order to address the departmental comments and the opposing public comments regarding the captioned application, attached please find the table of response-to-comments (R to C) for your consideration.

The tentative date of meeting is scheduled on 23 December 2022. The FI(1) is served to provide technical clarification/responses to comments of relevant government departments and public comments without changing the scheme. It is very much appreciated that if the Town Planning Board could accept the further information and exempt it from the publication and recounting requirements.

Should you have any queries, please feel free to contact Mr. Victor Ho at 2493 3626 or the undersigned at 3590 6333.

Yours faithfully,
FOR AND ON BEHALF OF
DeSPACE (INTERNATIONAL) LIMITED



Greg Lam

Town Planning Application No. A/YL/297

Response-to-Comment Table (Departmental Comments)

<i>Departmental Comments</i>	<i>Response</i>
Director of Environmental Protection, Environmental Protection Department received on 9.11.2022, 25.11.2022 and 1.12.2022 by email from PlanD (Contact person: Mr. Chris TSUI; Tel.: 2835 2164)	
1. If the Application Premises will be equipped with central air conditioning and, if yes, please advise the location of the air intake as well as the separation from the nearest road.	Please note that outdoor units of the air conditioning system will mainly be provided along Fung Yau Street South, which is an unclassified road. The major source of air pollutants is vehicle exhausts, but the traffic condition is considered not very intense. Several low-rise schools with setback to the street are in the opposite of the premises and hence the possibility of air pollutants being trapped is considered very minimal. HEPA filters will be used for respective fresh air intake to ensure the air quality to the users of the subject premises.
2. The applicant should supplement all the necessary information in the planning statement to evaluate the air quality impacts associated with the proposed development during the operational stage in order to demonstrate the environmental acceptability of the project. The requirements of air quality impact assessment (AQIA) are summarized below: a) <u>Industrial and chimney emission</u> From the preliminary desktop review, there is no chimney within 200 m assessment area. Nevertheless, the applicant shall carry out a site survey to confirm the HKPSG's buffer distance requirement for chimneys is fulfilled. The applicant should also clarify if there is any air and odour emission sources in the vicinity which will impose any potential air quality impact or nuisance on the proposed religious institution.	Noted with thanks. Please be informed that there is no Industrial and chimney emission within 200m. Please see the attached Plan-1 about a location map highlighting the assessment area of 200mm for your easy reference and record. Please also refer to the attached letter signed and confirmed by an Authorized Person (AP) (Attachment 1).

<i>Departmental Comments</i>	<i>Response</i>
<p>b) <u>Vehicular emission</u></p> <p>The applicant should seek TD's endorsement or refer to the latest TD's traffic census for the road type of all nearby access roads including Fung Yau Street South and Fung Yau Street East and evaluate if sufficient buffers are allowed for any air-sensitive uses within the proposed development by showing their buffer zones in a location map with the proposed religious institution.</p> <p>According to TD's 2021 traffic census, Fung Yau Street South and Fung Yau Street East are unclassified roads. The recommended buffer distance from unclassified road is 5 m. Based on the preliminary assessment result provided from your side, the southern part of the project site boundary does not meet the 5 m buffer distance requirement from Fung Yau Street South. It is necessary to avoid any air-sensitive uses (including openable window and fresh air intake of A/C or ventilation system) of the proposed religious uses within the buffer zone. Otherwise, a quantitative AQIA may be required to demonstrate the acceptability of the air quality impact.</p>	<p>Well noted that Fung Yau Street South and Fung Yau Street East are unclassified roads as stipulated in the TD's 2021 traffic census.</p> <p>The Applicant has great concern about the health of their church's members. HEPA filters will be used for respective fresh air intake to ensure the air quality of the users in the subject premises.</p>
<p>c) <u>Air quality impact from the eating place of the proposed religious institution</u></p> <p>In addition, the applicant should also address if there is any oily fumes and cooking odour from the proposed eating place and any mitigation measures will be in place to alleviate the potential air quality impact on the nearby ASRs. The mitigation measures and good practice as recommended in the Control of Oily Fume and Cooking Odour from Restaurants and Food Business shall be followed to minimize any air nuisance from the exhaust of the eating place.</p>	<p>Well noted. Please note that as stated in the planning statement, the Applicant has proposed an eating place (cafeteria) in the current application, which is used for consuming light food meal or refreshment such as café and sandwiches. It is intended to only reheat food and drinks and no cooking fumes and odour are anticipated.</p> <p>In addition, emission of air pollution from the subject premises will be controlled and regulated by the mechanism of food licensing from FEHD. The Applicant will follow the mitigation measures and good practice as recommended in the Control of Oily Fume and Cooking Odour from Restaurants and Food Business to minimize any air nuisance from the exhaust of the potential eating place.</p>

Section 16 Planning Application for Proposed Religious Institution with Ancillary Shop and Services, Eating Place and Office at G/F (Part) and 1/F (Part), Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories

<i>Departmental Comments</i>	<i>Response</i>
3. Place of public worship shall be considered as NSRs. Please clarify if the noise sensitive uses within the proposed religious institution will not rely on openable window for ventilation, such as provided with central air-conditioning system connecting to the proposed religious institution. Otherwise, the applicant should quantitatively assess the noise impact to the proposed religious institution.	Please note that the proposed religious institution will not rely on openable window for ventilation.
4. To prevent noise leakage through opened windows, please be reminded that windows within the proposed religious institution should be closed during worship activities. Please spell it out in the statement for the proper record.	
5. From noise planning point of view, we would have no adverse comment on the such application as long as the operation of the eating place, shop and services would meet the noise criteria of the Noise Control Ordinance (NCO).	Well noted with thanks. The operation of the eating place, shop and services would meet the noise criteria of the NCO.
Chief Engineer/Mainland North, Drainage Services Department received by 29.11.2022 in email from PlanD (Contact Person: Mr. Jeff TSE; 2300 1627)	
6. I have no objection in principle to the proposed development from the public drainage point of view. Should the Town Planning Board consider that the application is acceptable from the planning point of view, conditions should be stipulated in the approval letter requiring the applicant (i) the submission of a Sewerage Impact Assessment (SIA) Report; and (ii) the implementation and maintenance of the drainage/sewerage facilities for the development to the satisfaction of the Director of Drainage Services or of the Town Planning Board.	Noted with thanks.
Director of Food and Environmental Hygiene, Food and Environmental Hygiene Department received by 29.11.2022 in email from PlanD (Contact Person: Mr. Raymond CHAN; 3141 1231)	
7. She has no adverse comment on the subject planning application. Her advisory comments are provided as follows: a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected.	Well noted with thanks.
b) Proper licence / permit issued by this Department is required if there is any food business / catering service / activities regulated by the Director of Food	Well noted with thanks.

<i>Departmental Comments</i>	<i>Response</i>
<p>and Environmental Hygiene (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.</p>	
<p>c) 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.</p>	<p>Well noted with thanks.</p>
<p>d) Proper licence issued by this Department is required if related place of entertainment is involved. Any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building,</p>	<p>Well noted with thanks.</p>

<i>Departmental Comments</i>	<i>Response</i>
<p>erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public entertainment (PPE) Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement, a Place of Public Entertainment Licence (or Temporary Place of Public Entertainment Licence) should be obtained from FEHD whatever the general public is admitted with or without payment.</p>	
<p>Director of Building, Buildings Department received by 29.11.2022 in email from PlanD (Contact Person: Ms Yumi NG; 2626 1435)</p>	
<p>8. It was noted that an Occupation Permit for 2 blocks of apartment/ commercial building at Yuen Long on Y.L.T.L. 333 in respect of the above was issued on 3 July 1984.</p>	<p>Well noted with thanks.</p>
<p>9. Based on the limited information provided, the applicant's attention is drawn to the following points</p> <ul style="list-style-type: none"> a) if the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the application site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority; b) provision of prescribed windows for habitation or as an office to comply with Regulations 30, 31 and 32 of the Building (Planning) Regulations (B(P)R); c) provision of windows for rooms containing soil fitments to comply with Regulation 36 of the B(F)R; d) provision of barrier free access and accessible toilet to comply with Regulation 72 of the B(P)R; 	<p>Well noted with thanks.</p>

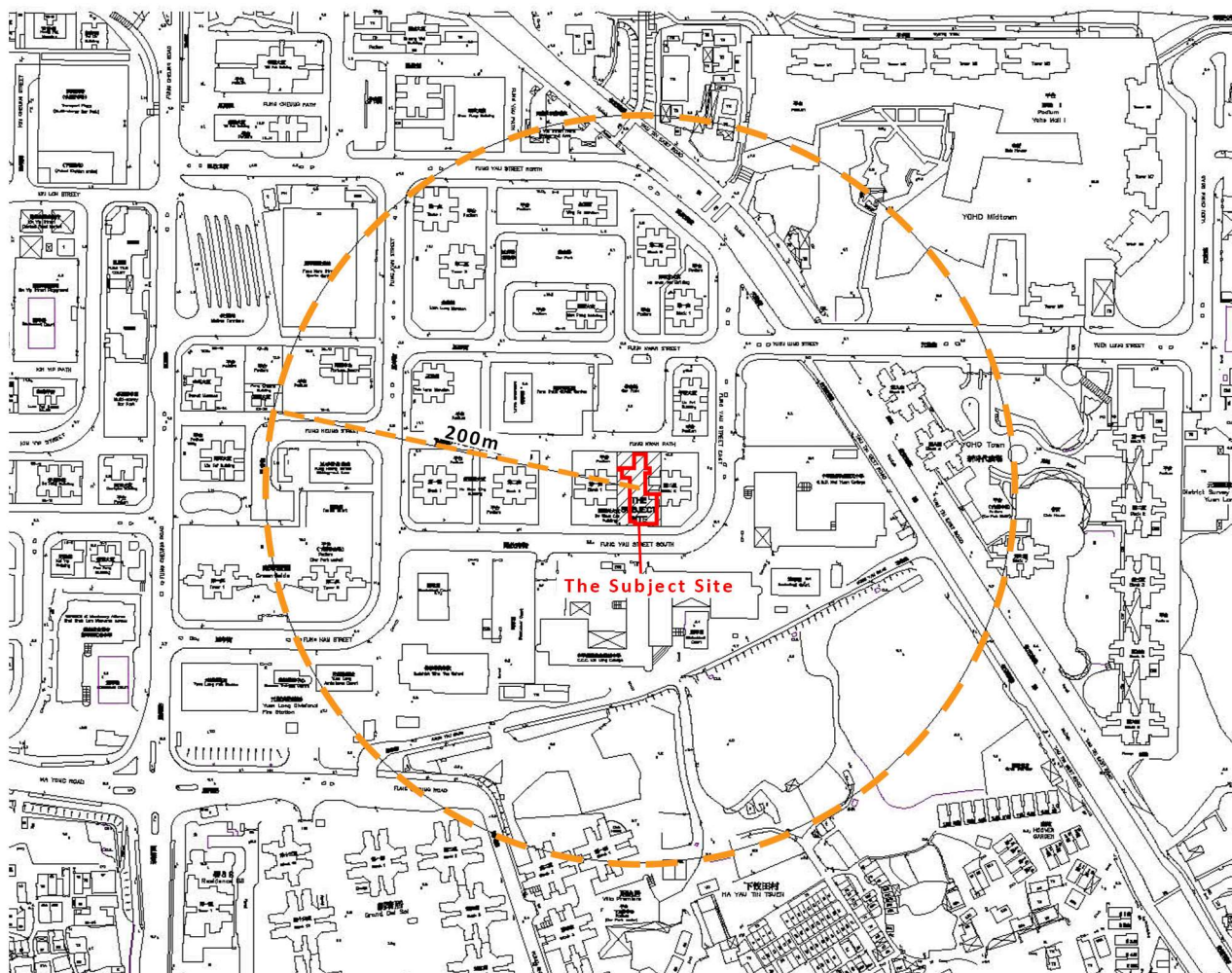
Section 16 Planning Application for Proposed Religious Institution with Ancillary Shop and Services, Eating Place and Office at G/F (Part) and 1/F (Part), Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories



<i>Departmental Comments</i>	<i>Response</i>
<p>e) the numbers of sanitary fitments required should comply with Building (Standards of sanitary fitments, plumbing, drainage works and latrines) Regulations; and</p> <p>f) if any proposal involve non-exempted alterations and additions works and/or material change in use of a building, detailed checking will be carried out during building plan submission stage.</p>	
District Lands Officer/Yuen Long, Lands Department received by 29.11.2022 in email from PlanD (Contact Person: Mr Chris NG; 2443 3075)	
<p>10. The Premises fall within Yuen Long Town Lot No. 333 ("the Lot") which is held under New Grant No. 2976 dated 3.12.1980 (hereinafter referred to as "the New Grant"). According to the New Grant, it contains, inter alia, the following restrictions: "The Lot shall not be used for any purpose other than non-industrial purposes, and in particular any building or part of any building erected shall not be used for any purpose other than the ground and first floors for non-industrial purposes."</p>	Well noted with thanks.
<p>11. In this regard, I have no comment from land administration point of view on the proposed uses of the Premises.</p>	Well noted with thanks.
<p>12. The applicant should be reminded to ensure that the proposed uses of the Premises would be in compliance with the prevailing ordinances and regulations including but not limited to fire services and building requirements.</p>	Well noted with thanks.

Town Planning Application No. A/YL/297

Response-to-Comment Table (Public Comments)

<i>Public Comments</i>	<i>Response to Public Comment</i>
<p>好順利大廈業主立案法團</p> <p>1. 本人為好順利大廈業主立案法團聘任的物業管理公司「威訊物業管理有限公司」代表，奉法團之命就有關城市規劃申請 A/YL/297 擬將大廈部份地舖連同一樓部份及原戲院位置改建為宗教機構連附屬商店及服務行業、食肆及辦公室作出反對。原因是如按照上述規劃申請將會出現大量外來人流，而由於通往一樓的位置如使用升降機必須經過好順利大廈的住宅大堂入口，而且一樓位置有通道可以直達住宅各樓層，此舉會出現嚴重的保安問題，而且升降機亦有嚴重的負荷。另外，出入的樓梯亦屬於大廈的公眾範圍，有關位置的樓梯範圍於近年亦涉及法律訴訟事件，最終由法庭判決釐訂為屬於大廈公共地方由法團管轄範圍。</p>	<p>As stated in the Planning Statement section 5.2 and 5.7, the nuisance to the residents is considered very minimal, because i) the usage pattern usually on Saturday and Sunday in specific times only, which is not excessively intense, and ii) there are two isolated staircase and a lifting platform at Fung Kwan Path and Fung Yau Street South.</p> <p>According to the Assignment Plans of the subject Premises (Attachments 2 and 3), we maintain that these staircases and lifting platform have exclusive access to the subject Premises only and are entirely separated from the lift lobby of the resident portion of Ho Shun Lee Building. The future church's members are unable to trespass the residential portion of the subject building by means of these entrances. Hence, it will not create additional loading on residential lifts/staircases nor security problems to the residents.</p>



Legend  Application Site		Location G/F (Part) and 1/F (Part), Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories			
Figure No.	Figure Title	Date	Scale	Prepared by	
Plan-1	200m Assessment Area	Dec 2022	1:4000 @A4	 DeSPACE (International) Limited	

ZEV

Our Ref: 20221202-2206-04PM-L001

02 December 2022

By Email & Post

Tuen Mun & Yuen Long West District Planning Office
New Territories District Planning Office
Planning Department
14/F, Sha Tin Government Offices
1 Sheung Wo Che Road
Sha Tin, Hong Kong

Attn.: Mr. AU Hei Fan, Raymond (DPO/TM&YLW) rhfau@pland.gov.hk
Ms. KAN Ka Lo, Carol (STP/SD) kkan@pland.gov.hk
Ms. CHEUNG Ka Kan, Carmen (TP/YL6) ckkcheung@pland.gov.hk

Dear Mr. Au, Ms. Kan and Ms. Cheung,

**RE: Application for permission under Section 16 of the Town Planning Ordinance (CAP.131)
for Proposed Religious Institution with Permitted Shop and Services, Eating Place (Cafeteria)
and Office in “Residential (Group A)”, Portion of Cinema (also known as New Shop B) and
Portion of Office Unit 1 (also known as Office Unit No.1A), 1/F, with Exclusive Right to use
the Hydraulic Lifting Platform and the Passage on the G/F, Ho Shun Lee Building,
9 Fung Yau Street South, Yuen Long, New Territories**

Letter of Undertaking in Relation to Industrial Chimney Survey and Land Contamination

I, TEOH Chaing Kuon Zena, being the Authorized Person of the above-mentioned application, hereby agree to undertake full responsibility in relation to industrial chimney survey as shown in the application.

It is confirmed that there is no industrial and chimney emission within 200m in the vicinity of the captioned premises.

Should you have any queries, please feel free to contact myself.

Yours sincerely,
For and on behalf of ZEV Limited



TEOH Chaing Kuon Zena
Authorized Person [AP(A) 70/95]

Attachment 2



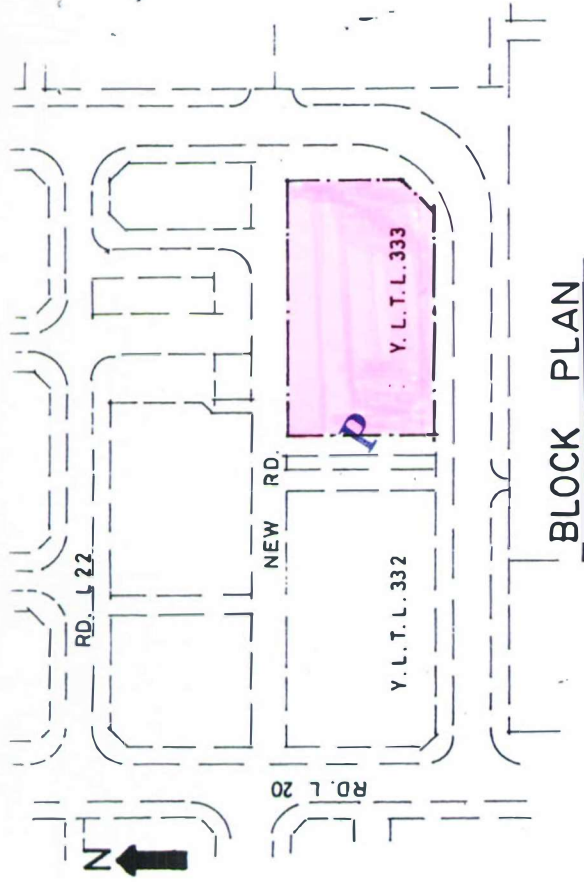
註冊樓宇編號 MN: 10123101070076 A4C

Y.L.T.L. 333

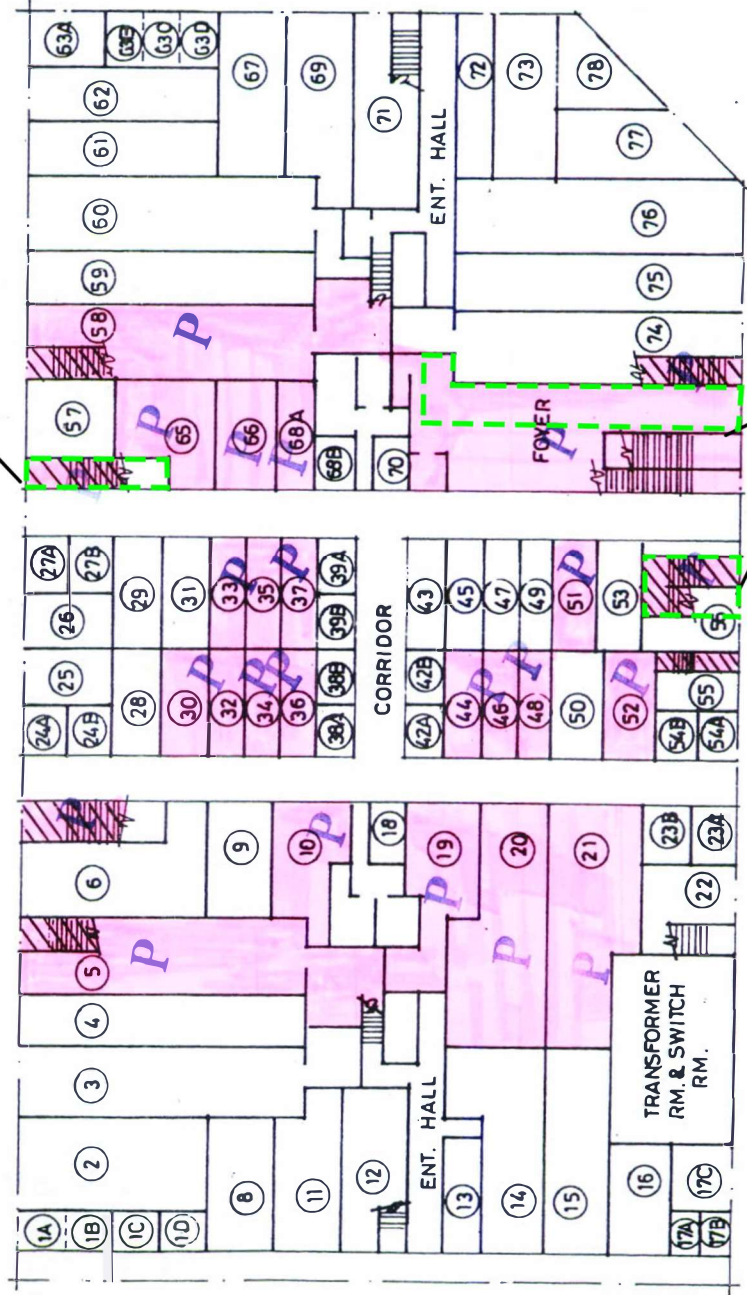
YUEN LONG N.T.

SITE AREA : 2682.00 M²

ANNUAL RENTAL : \$ 300.00



The Subject Site



The Subject Site

Lam Ching Wah

LAM CHING WAH
B.ARCH HKIA
AUTHORISED PERSON ARCHITECT

Attachment 3



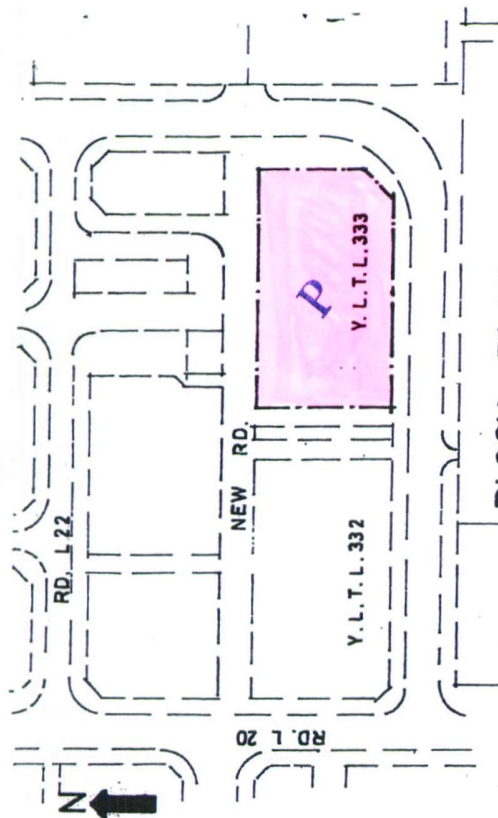
註冊摘要編號 MN: 10123101070076 A4C

Y.L.T.L. 333

YUEN LONG N.T.

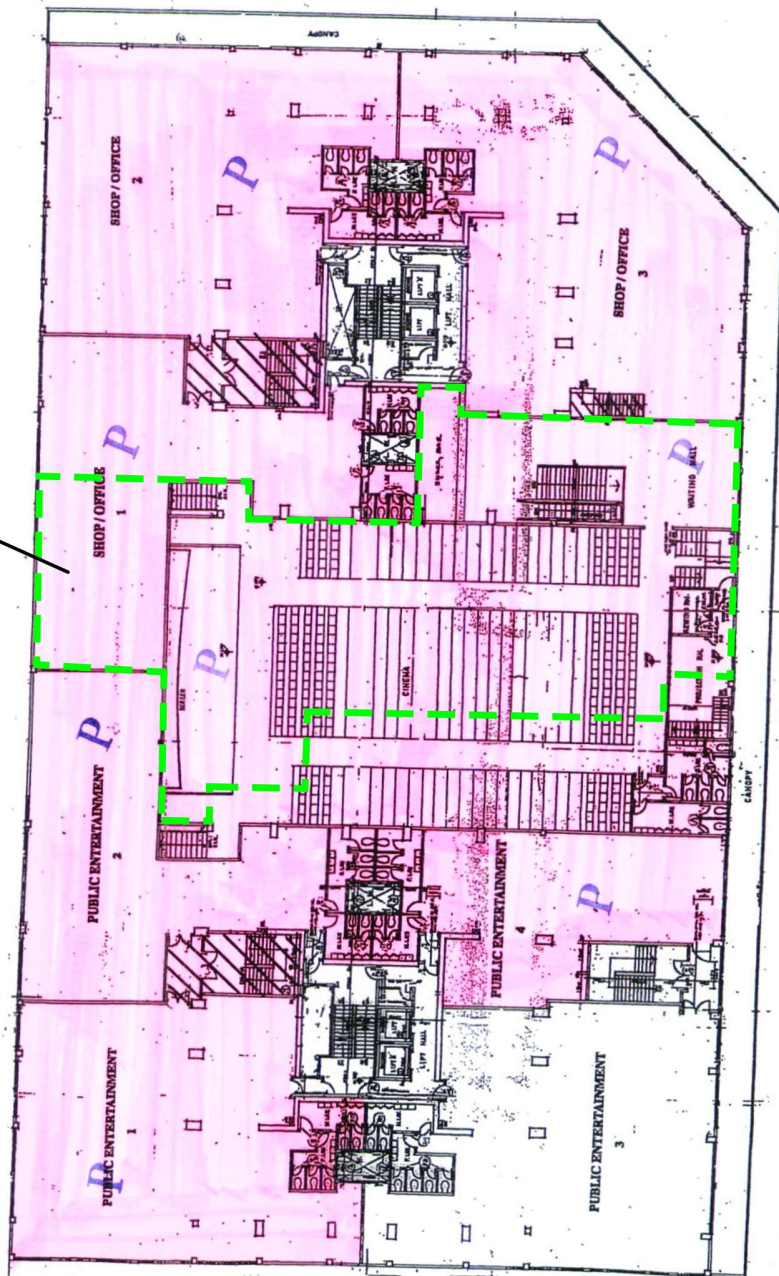
SITE AREA : 2682.00 M²

ANNUAL RENTAL : \$ 300.⁰⁰



BLOCK PLAN

The Subject Site



1ST FLOOR PLAN



KCH
LAM CHING WAH
ARCHITECT
HONG KONG
AUTHORISED PERSON ARCHITECT



DeSPACE (International) Limited

Date: 13th December 2022

BY HAND

Pages: 1 + 47 pages

Secretary, Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point, Hong Kong

Dear Sir/Madam,

**SECTION 16 APPLICATION
TOWN PLANNING ORDINANCE (CHAPTER 131)**

**FOR PROPOSED RELIGIOUS INSTITUTION WITH ANCILLARY SHOP AND SERVICES,
EATING PLACE AND OFFICE IN "RESIDENTIAL (GROUP A)", PORTION OF NEW SHOP B
AND PORTION OF OFFICE UNIT NO.1A, 1/F AND PORTION OF G/F, HO SHUN LEE
BUILDING, 9 FUNG YAU STREET SOUTH, YUEN LONG, NEW TERRITORIES**

Town Planning Application No. A/YL/297 - Submission of Further Information (2) (FI (2))

References are made to the email on 13 November 2022 from the Planning Department. In order to address the departmental comments and the opposing public comments regarding the captioned application, attached please find the table of response-to-comments (R to C) for your consideration.

The tentative date of meeting is scheduled on 23 December 2022. The FI(2) is served to provide technical clarification/responses to comments of relevant government departments and public comments without changing the scheme. It is very much appreciated that if the Town Planning Board could accept the further information and exempt it from the publication and recounting requirements.

Should you have any queries, please feel free to contact Mr. Victor Ho at 2493 3626 or the undersigned at 3590 6333.

Yours faithfully,
FOR AND ON BEHALF OF
DeSPACE (INTERNATIONAL) LIMITED

Greg Lam

Town Planning Application No. A/YL/297

Response-to-Comment Table (Departmental Comments)

<i>Departmental Comments</i>	<i>Response</i>
Director of Environmental Protection, Environmental Protection Department received on 12.12.2022 by email from PlanD (Contact person: Mr. Chris TSUI; Tel.: 2835 2164)	
<p><u>Air Quality</u></p> <p>1. R-t-C 2(a) - Other than industrial and chimney emission source, please clarify if any odour source in the vicinity of the proposed development was identified during site survey. The applicant is reminded that it should be the responsibility of the applicant and their consultants to ensure the validity of the chimney data by their own site surveys. Should the information of industrial chimneys be subsequently found to be incorrect, the assessment result as presented in the application would be invalidated.</p>	<p>Please be informed that there is no odour source within 200m. Please see the attached Plan-1 about a location map highlighting the assessment area of 200m for your easy reference and record. Please also refer to the undertaking letter confirmed by our Authorized Person (AP) (Attachment 1).</p>
<p>2. R-t-C 2(b) –</p> <p>a. The applicant has not yet addressed our comment. Please seek TD's endorsement for the road type of all nearby access roads including Fung Yau Street South and Fung Yau Street East and evaluate if sufficient buffers in accordance with the HKPSG's requirements are allowed for any air-sensitive uses of the proposed development by showing their buffer zones in a location map with the proposed religious institution. Please also indicate the locations of openable window and fresh air intake of A/C or ventilation system of the proposed religious institution in the location map.</p>	<p>Due to time constraints that the TPB meeting has been scheduled on 23.12.2022, the Applicant are welcome to impose an approval condition for conducting quantitative air quality impact assessment (AQIA), which will submitted together with the TD's endorsement about the road types of the concerned roads, after the captioned application being considered by the Town Planning Board (TPB) for your review.</p>

<i>Departmental Comments</i>	<i>Response</i>
<p>b. Please note that the installation of the particulate filter at the fresh air intake of the A/C system is not sufficient to demonstrate the acceptability of air quality impact on the proposed development. If buffer distance requirement could not be met for any air-sensitive uses (including openable window and fresh air intake of A/C or ventilation system) of the proposed religious institution, quantitative impact assessment shall be carried out to demonstrate the acceptability of the air quality impact on the proposed development.</p>	<p>Unlike new building works requiring to consider a statutory buffer distance of a proposed building at an earlier stage, there is no difference to put the AQIA for an existing building before and after the consideration of the application by the TPB. Nonetheless, conducting AQIA before the meeting will prolong the application period and will leave valuable land resources vacancy by more than 2 months, resulting an undesirable and non-financially viable option for the Applicant, who are only a non-profit religious organisation registered under section 88 of Inland Revenue Ordinance. However, if the AQIA is discharged as an approval condition of the application, it will provide flexibility for the Applicant to carry out detailed design of the building works, the AQIA and the sewerage impact assessment in tandem. The Applicant can further mitigate and minimize the air impact as appropriate. The finalised AQIA will incorporate the finalized detailed design including the situation of fresh air intake of A/C or ventilation system and specifications of any dust filtering devise (if necessary) for EPD's approval. A few months required for the preparation of statutory building plan submissions will allow adequate time for the discharge of such approval condition.</p> <p>As requested, please see the preliminary location of the openable windows and fresh air intake of A/C or ventilation system of the proposed religious institution for your information and record (Attachment II). Subject to detailed design at a later stage, the exact location will be provided when submitting the AQIA.</p>

Response-to-Comment Table (Public Comments)

<i>Public Comments</i>	<i>Response to Public Comment</i>
<p>好順利大廈業主立案法團</p> <p>1. 本人為好順利大廈業主立案法團聘任的物業管理公司「威訊物業管理有限公司」代表，奉法團之命就有關城市規劃申請 A/YL/297 擬將大廈部份地舖連同一樓部份及原戲院位置改建為宗教機構連附屬商店及服務行業、食肆及辦公室作出反對。原因是如按照上述規劃申請將會出現大量外來人流，而由於通往一樓的位置如使用升降機必須經過好順利大廈的住宅大堂入口，而且一樓位置有通道可以直達住宅各樓層，此舉會出現嚴重的保安問題，而且升降機亦有嚴重的負荷。另外，出入的樓梯亦屬於大廈的公眾範圍，有關位置的樓梯範圍於近年亦涉及法律訴訟事件，最終由法庭判決釐訂為屬於大廈公共地方由法團管轄範圍。</p>	<p>Further to the FI submitted on 5.12.2022 to the TPB, we would like to provide additional information as below:</p> <p>The owner of our Application Premises (namely the Wealth Gear Limited), owning several units on the G/F and 1/F of the Ho Shun Lee Building (the subject building), involved 4 court cases and its relevant appeal cases with the incorporated owners (IO) of the subject building in 2018 and 2020 respectively (<i>Wealth Gear Limited with its respective tenants against 好順利大廈業主立案法團 (LDBM 220-222 & 226/2014) and (CACV 292-295/2018)</i>).</p> <p>The cases were related to the owner and its respective tenants (not involving our Applicant) erected various signboards on the exterior walls of the subject building. According to the land registry and DMC, the exterior walls with other places were allocated 1 out of the 991 undivided shares. The share was first owned by the developer and subsequently Oriental Shine Ltd, which was dissolved later. The main arguments in the cases were whether erection of signboards had been violated the clauses of DMC and whether the IO had locus standi to lodge a proceeding against a property owner, considering that the exterior walls were not a public property but a part of a private property.</p> <p>The Judge in the Land Tribunal concluded that it was in breach of the provisions of the DMC that any person had to obtain a written consent of the manager of the building before erecting structures on the exterior walls. And eventually, the court of appeals rejected all the grounds of appeal and dismissed it.</p>

Section 16 Planning Application for Proposed Religious Institution with Ancillary Shop and Services, Eating Place and Office at G/F (Part) and 1/F (Part), Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories

<i>Public Comments</i>	<i>Response to Public Comment</i>
	<p>Having regard to the above, all the above-mentioned cases were about the arguments of the signboards and the exterior walls of the subject building (please see the relevant court cases in the Attachment III and IV for your further reference). Any staircases relevant to the owner's properties had <u>not</u> been argued in the legal proceedings. As shown in the assignment plan in our further information dated 5.12.2022 (Attachment V), it is clear that the coloured Pink including the staircases and the lifting platform in the application premises are owned by the owner with the sole and exclusive right and privilege to hold use occupy and enjoy it. As for the remaining staircases in the subject building such as the staircase for the residential portion, it is believed that we are not in a good position to comment it.</p> <p>Please also see the photographic record regarding the ingress and egress of the application premises (Attachment VI). The Applicant has already endeavored to liaise with the representative of the IO to clarify any possible misunderstanding towards the subject premises.</p>

Our Ref: 20221213-2206-04PM-L002

13 December 2022

By Email & Post

Tuen Mun & Yuen Long West District Planning Office
New Territories District Planning Office
Planning Department
14/F, Sha Tin Government Offices
1 Sheung Wo Che Road
Sha Tin, Hong Kong

Attn.: Mr. AU Hei Fan, Raymond (DPO/TM&YLW) rhfau@pland.gov.hk
Ms. KAN Ka Lo, Carol (STP/SD) klkan@pland.gov.hk
Ms. CHEUNG Ka Kan, Carmen (TP/YL6) ckkcheung@pland.gov.hk

Dear Mr. Au, Ms. Kan and Ms. Cheung,

RE: Application for permission under Section 16 of the Town Planning Ordinance (CAP.131) for Proposed Religious Institution with Permitted Shop and Services, Eating Place (Cafeteria) and Office in “Residential (Group A)”, Portion of Cinema (also known as New Shop B) and Portion of Office Unit 1 (also known as Office Unit No.1A), 1/F, with Exclusive Right to use the Hydraulic Lifting Platform and the Passage on the G/F, Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, New Territories

Letter of Undertaking in Relation to Odour Source in the Vicinity

I, TEOH Chaing Kuon Zena, being the Authorized Person of the above-mentioned application, hereby agree to undertake full responsibility in relation to the Odour Source Survey in the vicinity as shown in the application.

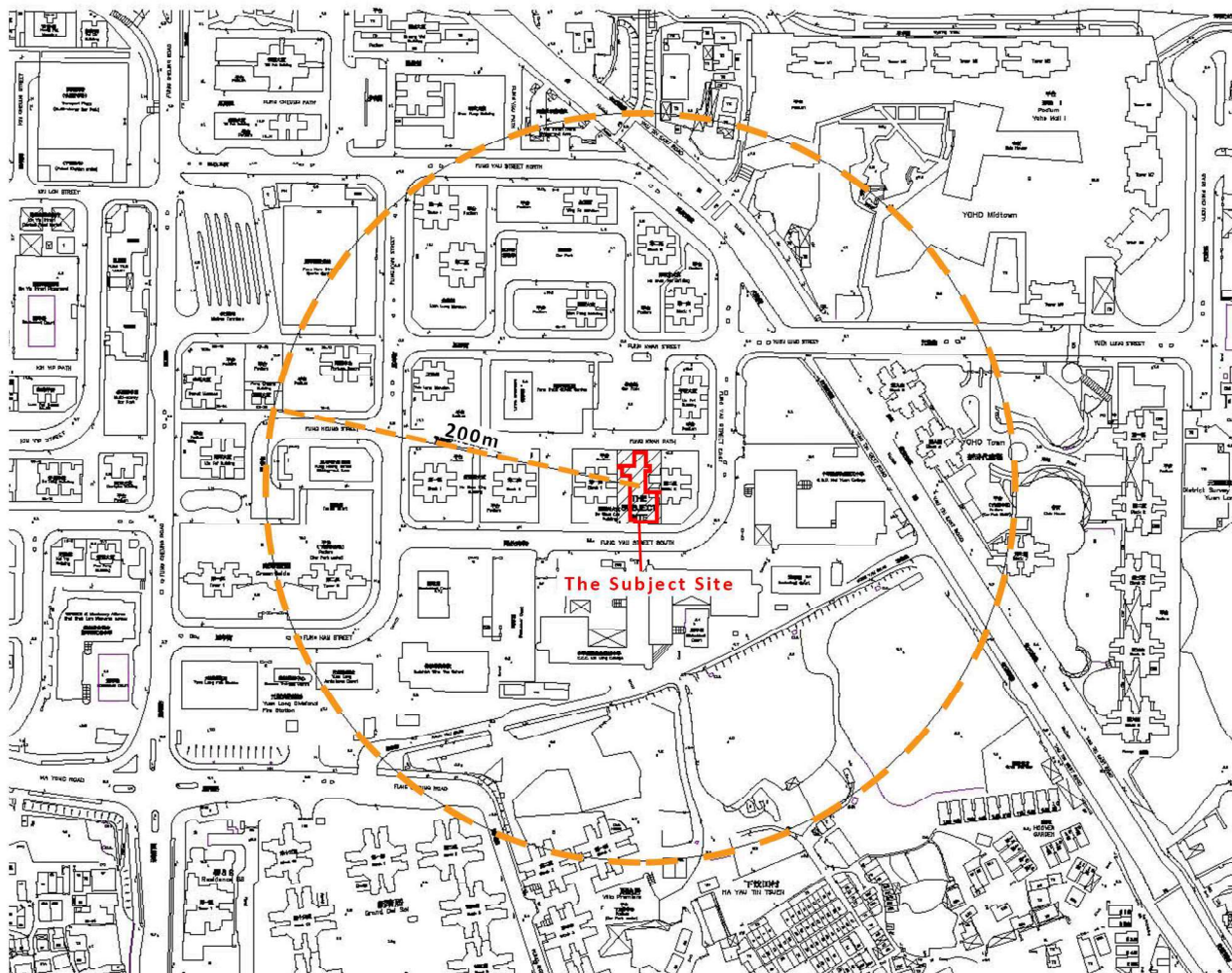
It is confirmed that there are no crematoria, livestock yards, stock wagon washing areas nor wholesale fish and poultry markets within 200m in the vicinity of the captioned premises.

Should you have any queries, please feel free to contact myself.

Yours sincerely,
For and on behalf of ZEV Limited



TEOH Chaing Kuon Zena
Authorized Person [AP(A) 70/95]



Legend



Application Site

Location

G/F (Part) and 1/F (Part), Ho Shun Lee Building,
9 Fung Yau Street South, Yuen Long, New Territories

Figure No.

Figure Title

Date

Scale

Prepared by

Plan-1

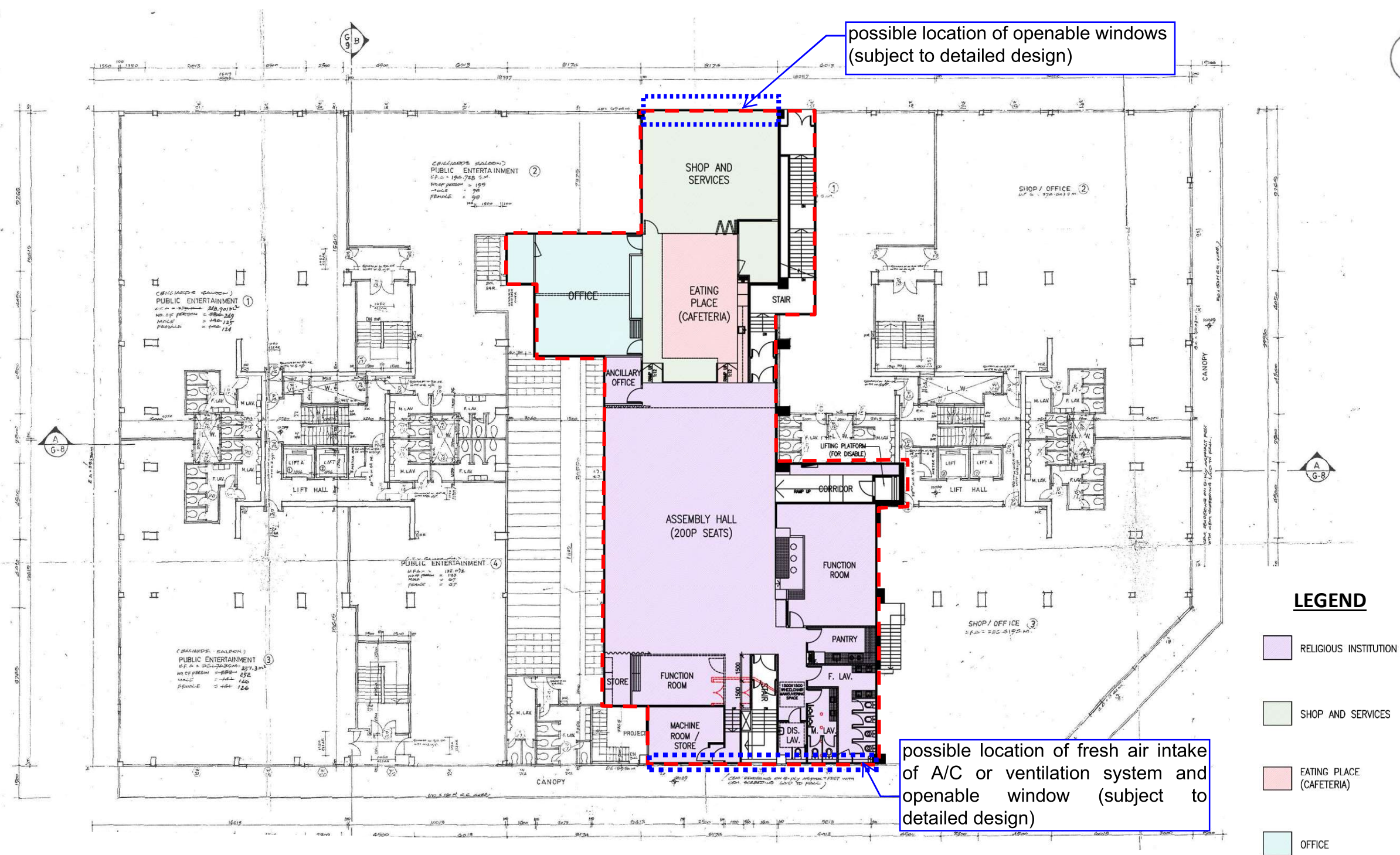
200m Assessment Area

Dec 2022

1:4000
@A4



DeSPACE (International) Limited



Legend

----- Application Premises

Address

1/F, Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long, N.T.

Drawing No.

A-3

Figure Title

First Floor Plan

Date

Oct 2022

Scale

N.T.S @ A3

Prepared by



A	LDBM 220-222 & 226/2014 (一併聆訊)		A
B	[2018] HKLdT 19		B
C	LDBM 220/2014		C
D	香港特別行政區		D
E	土地審裁處		E
F	建築物管理申請編號 2014 年第 220 宗		F
G	<hr/>		G
H	好順利大廈業主立案法團	申請人	H
I	及		I
J	WEALTH GEAR LIMITED	第一答辯人	J
K	優豪方火鍋料理有限公司所經營	第二答辯人	K
L	優豪方火鍋料理		L
M	<hr/>		M
N	LDBM 221/2014		N
O	香港特別行政區		O
P	土地審裁處		P
Q	建築物管理申請編號 2014 年第 221 宗		Q
R	<hr/>		R
S	好順利大廈業主立案法團	申請人	S
T	及		T
U	WEALTH GEAR LIMITED	第一答辯人	U
V	敘亨軒(元朗)海鮮火鍋有限公司所經營	第二答辯人	V
	敘亨軒海鮮火鍋		
	<hr/>		

LDBM 222/2014

香港特別行政區

土地審裁處

建築物管理申請編號 2014 年第 222 宗

好順利大廈業主立案法團

申請人

及

WEALTH GEAR LIMITED

第一答辯人

達人企業有限公司所經營

第二答辯人

權發海鮮酒家

LDBM 226/2014

香港特別行政區

土地審裁處

建築物管理申請編號 2014 年第 226 宗

好順利大廈業主立案法團

申請人

及

WEALTH GEAR LIMITED

第一答辯人

張耀發、布志洪、梁柏基、蔡康慶及

第二答辯人

黃梓揚所經營 GENIAL HAIR GROUP

(一併聆訊)

主審法官：土地審裁處雷健文區域法院暫委法官

審訊日期：2017 年 9 月 26 日及 9 月 29 日

判案書日期：2018 年 3 月 21 日

判案書

爭議

1. 審裁處在本審訊中需要同時處理4宗訴訟申請，包括：- LDBM 220/2014 (“220 案”)、LDBM 221/2014 (“221 案”)、LDBM 222/2014 (“222案”)及 LDBM 226/2014 (“226案”)。而在四項訴訟申請中，所有申請人都是好順利大廈的業主立案法團，而所有訴訟申請中的第一答辯人Wealth Gear Limited是該大廈地下及一樓多間商業單位及戲院的業主，而每一項訴訟申請中的第二答辯人是第一答辯人的租客，他們分別租用1字樓部分商業單位及該大廈內的戲院單位。

2. 在 4 項訴訟中，牽涉的爭議包括 4 組分別用金屬支架安裝在該大廈北面及西面外牆上的招牌。申請人在多項申請中，認為這 4 組在大廈外牆不同位置的招牌違反多項公契條款，所以，提出 4 項訴訟申請，要求審裁處頒令拆除有關招牌、其金屬支架、其射燈照明系統及修補有關因安裝招牌而招致的破壞。但在審訊前，在 220 案中的 1 組招牌及在 4 宗訴訟申請中所有的射燈照明系統已經拆除。所以在本審訊中，剩餘的爭議是拆除關於 221 案、222 案及 226 案中的 3 組招牌及其金屬支架和 4 宗訴訟申請中修補有關因安裝招牌而招致的破壞及損害。

外牆業主

3. 另外，在本審訊中，各方不爭的事實是，在 4 項訴訟中的

第一答辯人並非外牆業主，大廈外牆業主是Oriental Shine Limited，它於2006年8月14日簽訂轉讓契約從該大廈的發展商及第一業主 Yau Fook Hong Company Limited (“第一業主”) 購入該外牆物業，而該外牆業主並非牽涉在本 4 項訴訟申請中。該轉讓契約內列明的物業範圍包括如下:-

“THE EXTERIOR WALLS, THE TRANSFORMER ROOM, THE SWITCH ROOM, THE SPACES UNDERNEATH STAIRCASE, OPEN YARD COMMON PART, THE LIFT HALL, THE MACHINE ROOM, CORRIDOR AND PRIVATE LAND, WATER TANK AND PUMP ROOM,”

4. 換句話說，各方同意有關 4 組招牌所安裝的位置並非大廈的公用部分，而是Oriental Shine Limited的私人物業。

申請人的理據

5. 申請人倚賴該大廈公契 4(m), 10(a)(i), 10(a)(iii) 及 10(d) 條作為 4 宗訴訟申請的理據，有關條款為： -

(1) 第 4(m) 條： -

“4. Each owner shall be bound by and shall observe and perform the following covenants provisions and restrictions:

.....

(m) No owner shall without the consent in writing of the Manager do or cause or permit to be done any of the following:

(i) Repaint redecorate or alter the appearance of the exterior of the said Building or any part thereof.

(ii) Erect or affix any signboard sunshade bracket structures fitting or thing to the exterior of the said Building or to the roof or flatted roof or any part or parts thereof or to the common areas within the said Building or any part thereof.

(iii) Hand up clothing or laundry outside the said Building or in the common areas within the said building or any part thereof.”

(2) 第10(a)(i), (iii) 及第10(d) 條: -

“10. Each party hereto hereby covenants with the others as follows:

(a) (i) Not to make any alterations to the walls or structure or façade of the Building or to the said premises of which it or they is/are entitled to the sole and exclusive use, occupation and enjoyment;

..... (iii) Not to cut or damage any of the main walls or beams or floors of the Building.

..... (d) Not to affix or exhibit or paint on any part of the exterior walls, the common entrance hall, staircase, landings, lifts or passages of and in the Building any trade profession or business notice or advertisement whatsoever save and except only in the space at the entrance on the ground floor of the Building as the Manager of the Building shall designate for the purpose of affixing or exhibiting the trade or firm name of the tenant or occupier of such premises.”

6. 申請人認為在該大廈外牆用金屬支架安裝招牌，違反上述大廈公契 4(m), 10(a)(i), 10(a)(iii) 及 10(d) 條，及以業主身份容許其租客在該大廈外牆用金屬支架安裝招牌，違反上述大廈公契 4(m) 條。

7. 所有答辯人沒有爭議，大廈公契 4(m), 10(a)(i), 10(a)(iii) 及 10(d) 條全是限制性契諾，而根據《物業轉易及財產條例》第 41 條，公契內的限制性契諾對物業的租客及佔用人同等有約束力。另外，在 4 項訴訟申請中，身為第二答辯人的業主，即使招牌並非第一答辯人安裝及使用，第一答辯人仍然需要為其租客所安裝的招牌負上責任，因為第一答辯人身為業主是知道所有第二答辯人所安裝的招牌，並且從來沒有提出過任何反對意見。所以無論該招牌是由業主或租客所安裝，審裁處認為在這 4 項訴訟申請中並非重要。

答辯人的反對理據

8. 多位答辯人提出多項反對理據包括: -

- (1) 所有答辯人認為申請人是一個大廈的立案法團，而涉案大廈外牆並非公用部分，而屬於私人擁有，所以，申請人並沒有「提出訴訟的權利」 (locus standi)；
- (2) 答辯人亦認為有關 4 組招牌並沒有違反任何公契條款；
- (3) 所有答辯人可以依賴公契第 17 條內的權利，安裝有關 4 組招牌；及
- (4) 最後，所有答辯人認為即使申請人有「提出訴訟的權利」，而答辯人所安裝的 4 組招牌有違反公契有關條款，及答辯人未能依賴公契的第 17 條的權利安裝該 4 組招牌，答辯人亦認為審裁處在行使酌情權時，要求多位答辯人拆除有關招牌並不公平。

提出訴訟的權利

9. 首先，審裁處需要處理，申請人是否有合法身份「提出訴訟的權利」。

10. 答辯人大律師提出，有關涉案大廈外牆並非大廈的公用部分，而是屬於私人擁有的，所以這只是關於外牆業主與第一及第二答辯人之間的問題，而申請人身為一個業主立案法團，根據德昌大廈業主立案法團(炮台街)訴唐偉德及另一人 [1999] 1 HKC 238一案，申請人如果要提出訴訟，大前提必須是業主的共同權益受損下，才有合法身份提出訴訟。答辯人大律師認為，由於有關涉案大廈的外牆是私人擁

有的，完全沒有牽涉業主共同權益。

11. 另外，答辯人大律師認為所有答辯人可依賴公契第 17 條，因為公契第 17 條內所指定批准或允許使用外牆的人，並非大廈業主立案法團 (即本案的申請人)，所以答辯人強調在處理有關外牆安裝招牌一事，申請人並沒有任何權利干涉。有關公契第 17 條是這樣的： -

“Notwithstanding anything to the contrary hereinbefore contained, it is hereby mutually agreed and declared that the First Owner (so designated in the First Schedule hereto) shall have the full and free right for itself and its licensees and permittees to affix fit up and attach signs, signboards and/or advertisements whether illuminated or otherwise to such part or parts of the exterior walls of the said Building and/or to affix fit up and erect one or more chimney at the exterior walls of the said building Provided that such affixture or erections shall not unreasonably interfere with the enjoyment comfort and well-being of the co-owners or affect the structural safety of the building PROVIDED ALWAYS that the First Owner or its assigns, licensees permittees and all persons authorised by it shall at all times observe and comply with all the laws and regulations relating to erecting maintaining and dismantling the said signs or signboards (whether illuminated or otherwise) for advertisement purposes or the chimney or chimneys and shall solely be responsible for the repair maintenance upkeep renewal and removal of any such signs or signboards chimney or chimneys and the repairs, maintenance, upkeep and renewal of such part or parts of the external walls of the said Building upon which and/or to which such signs or signboards chimney or chimneys shall be affixed PROVIDED FURTHER that the First Owner and/or its assigns licensees permittees and all persons authorised by it will at all times indemnify and keep indemnified the co-owners and occupiers for the time being of the said Building against all loss damage injury costs expenses actions claims and demands arising out of or on account of or resulting from the installation repair renewal removal maintenance and upkeep of such signs or signboards chimney or chimneys of the repair, maintenance, upkeep and renewal of those parts of the external walls of the said Building affected by signs signboards and chimney or chimneys or any defect therein or any failure to maintain the same in proper repair and conditions.”

12. 但另一方面，申請人律師認為在《建築物管理條例》第 18(1)(c) 條內提及，申請人身為業主立案法團是有權採取一切合理及必須的措施執行公契。

13. 《建築物管理條例》第18(1)(c) 條是這樣的： -

「法團須採取一切合理必需的措施，以執行公契(如有的話)載明有關建築物的控制、管理、行政事宜的責任。」

14. 申請人亦倚賴案例 *The Incorporated Owners of Yee Fung Garden v Basic Tech Limited & Anor* HCA 6622/1998 (未經報導，2003年1月23日)。而該案的主審法官對於《建築物管理條例》第 18(1)(c) 條作出以下分析： -

“68. It is clear that the jurisdiction of the IO is not confined to the management of the common parts of the building. When there is a breach of the DMC, it is both the right and the duty of the IO to enforce the DMC (see *Incorporated Owners of Hoi Luen Industrial Centre v. Ohashi Chemical Industrial Industries (HK) Ltd* [1995] 2 HKC 11, 13 per Godfrey JA).”

15. 根據申請人律師的陳詞，該案後來上訴到上訴庭亦遭駁回，案件編號 CACV 40/2003，在2005年4月20日頒下判詞，亦沒有提出以上的法律原則有錯。

16. 申請人認為該案與本案的事件十分接近，而該案的主審法官亦同意，有關申請人的論點，即使外牆是私人擁有的地方，立案法團仍然可以提出訴訟，尤其是牽涉違反大廈公契事宜。

17. 另外，審裁處亦考慮到 *Wing Ming Garment Factory Ltd v Wing Ming Industrial Centre (IO)* [2014] 4 HKLRD 52一案在 274 段的判詞，同意在執行《建築物管理條例》第 18(1)(c) 條時，申請人不會受制於外牆是否私人物業。該案第 274 段的判詞指出：

“In my view, s.18(1)(c) provides the necessary basis for the IO’s standing to sue in relation to the kind of provisions in the DMC under discussion.

.....

(3) Section 18(1)(c) relates to obligations contained in the DMC for the control, management and administration of the building and is not confined to the common parts. This is to be contrasted with s.18(1)(a) and (b), both of which concern only the common parts. This deliberate choice of words in s.18(1)(c) suggests that the duty placed on an owners’ corporation extends to the enforcement of provisions in the DMC as regards the building generally and not just the common parts.”

18. 審裁處完全同意申請人的論點。申請人提出 4 項訴訟申請的理據，全部牽涉關於違反有關大廈公契。《建築物管理條例》第 18(1)(c) 條清晰表示，立案法團是主要的公契執行人，而立案法團的權力，並不限於只是管理公用部分，簡單來說，如有業主在自己私人擁有部分，進行一些違反公契事宜，甚至非法行為，立案法團不單止有權力，而且有責任執行有關公契，提出適當行動。

19. 在本案中，所牽涉的外牆，雖然是屬於私人擁有，但明顯地大廈外牆是大廈重要的結構，而大廈外牆並非只影響該外牆內所保護的有關單位，大廈外牆是整棟大廈的一個保護外殼，任何其中一部分受損、破壞或受不當影響，不單止會對於該部分所牽涉的單位有所影響，亦會影響整棟大廈的安全。審裁處認為這必定是業主共同權益的事務。

20. 另外，關於答辯人提出大廈公契第 17 條的論點，審裁處亦不認同，即使答辯人倚賴公契第 17 條內所提供的權利，申請人仍然有權管理大廈外牆，因為這等同管理任何大廈內私人地方的使用限制一樣，沒有分別，答辯人提出的說法並不合常理。

21. 審裁處認為申請人在4項訴訟中是有合法身份「提出訴訟的權利」，所有答辯人所提出的反對論點並不成立。申請人身為立案法團，是有責任及權利去執行有關涉嫌違反公契的行為。

是否有違反任何公契條款

22. 第二，審裁處須要對答辯人安裝招牌的行為是否違反申請人所指稱的多項公契條款作裁決。

23. 答辯人首先提出，大廈公契 4(m)及10(d) 條對限制改動大廈外觀及在外牆安裝廣告招牌事宜，並無意義，亦不適用，因為公契第 17 條所賦予第一業主的權利，允許第一業主有權在外牆懸掛或安裝招牌，所以公契 4(m)及10(d) 條並沒有任何作用。

24. 審裁處對於答辯人這個論點，並不十分理解。似乎答辯人誤解有關大廈公契草擬的目的。很明顯大廈公契在草擬時，其中一項最主要的目的是定出每一位業主的權利與義務和關於大廈管理事宜的制度，由公契草擬的結構看出，公契條款 4(m)及10(d) 條清楚表示有關草擬公契的人希望限制有關外牆改動，尤其是牽涉安裝招牌廣告的時候，而草擬的目的是明顯賦予管理人或後來成立的業主立案法團權利及義務去管理大廈共同關心的事宜。正如審裁處所說大廈外牆是大廈重要的一部分，所以才定出有關條款。審裁處完全不能同意這些條款是沒有意義的。

25. 答辯人亦提出，由於公契第 17 條與公契 4(m) 及10(d) 條有衝突，所以公契 4(m) 及10(d) 條並沒有意義。公契第 17 條是純粹第一

業主保留其本人及其允許者或批准者在外牆安裝及展示廣告的權力，這明顯並不代表任何其他人可以進行違反有關公契條款的行為。因為公契第 17 條有凌駕性，即使公契第 17 條與公契 4(m) 及10(d) 條有衝突，審裁處亦不同意會把公契 4(m) 及10(d) 條變成沒有意義。審裁處認為對於有關公契條款的一個合理的演繹方式是，除第一業主其本人及其允許者及批准者外，其他人士（包括大廈的其他業主及租客）均不能在外牆安裝及展示廣告，除非得到申請人書面同意。

26. 另外，答辯人認為公契 10(a)(i)及(iii) 條只針對大廈結構安全考慮。因為基於單一共聘專家的意見，確認所有有關招牌並不構成對大廈外牆結構上的負面影響，所以申請人未能證明所安裝的招牌有違反以上的公契條款。

27. 審裁處並不同意答辯人對於公契內所提及「結構性改動」(structural alteration) 的演繹。根據案例 *Incorporated Owners of Elite Garden v Profit More Co Ltd* [2002] 2 HKLRD 518 一案，在上訴庭的判詞中，清楚對公契演繹有關「結構性改動」字眼，提出重要的法律原則。上訴庭認為有關「結構性改動」字眼最重要的字為「改動」(alteration)，而「改動」的意思，是包括改動有關型式(form)及結構(structure)，上訴庭認為有關「結構性」(structural)並非技術用詞，所以須以一個普通方式演繹有關字眼，即使不影響結構安全，這不代表沒有「結構性改動」。大廈外牆無可置疑是大廈重要的一部分，亦是大廈結構的一部分，而在大廈外牆上作出「型式」的改動或「外觀」的改動，已是違反有關條款。審裁處完全同意上訴庭對於該案中公契的演繹，有關演繹的法律原則完全適用於本案。所以用金屬支架安裝招牌在大廈外牆上，明顯是對大廈結構型式及外觀改動。基於以上理由，

審裁處並不接納有關答辯人大律師作出的陳詞。

28. 總括而言，審裁處認為在 4 項訴訟申請中，所安裝的招牌(包括 220 案中已拆除的招牌)明顯對大廈外牆部分進行了結構性的改動，及由於招牌的金屬架是以螺絲鑽入外牆作為穩固之用，事實上亦明顯是損害大廈主要牆身。訴訟各方對於答辯人所安裝的招牌，從來未得到申請人的同意，是沒有爭議的。所以在外牆安裝招牌，明顯是違反申請人所指出多項公契的條款。審裁處同意申請人對公契的解釋。根據大廈公契 4(m) 條的規定，業主及租客在未獲申請人書面同意前，不能改動大廈外觀及不能安裝或懸掛廣告招牌在大廈外牆上。另外，根據大廈公契 10(a)(i)及(iii) 條，業主及租客亦不能改動大廈外牆及其結構，亦不能損害大廈主要牆身及橫樑。最後，根據大廈公契 10(d) 條，除了在申請人的指定地方外，業主及租客亦不能在大廈外牆展示廣告及商號名稱。而很明顯，在審裁處面前的證據清楚顯示，有關 4 組分別用金屬支架安裝在該大廈北面及西面外牆上的招牌，完全違反以上有關大廈公契的條款。

公契第 17 條

29. 第三，審裁處須要對答辯人倚賴公契第 17 條的權利作裁決。

30. 審裁處在閱讀公契第 17 條的時候，留意幾項在編寫公契時的目的，簽署公契的雙方都同樣重視對公契在管理整棟大廈外牆的重要性，但很明顯，第一業主希望保留有關在大廈外牆安裝廣告的權利，所以草擬公契時保留該特權。而在第 17 條內，用字亦非常清晰及準確，有關權利是保留給第一業主其本人及其允許者及批准者，而提及第一業主時，亦清楚表示是在公契第一附表內指稱的第一業主，並未

包括第一業主的承讓人 (assign)或任何業權繼承人(successor-in-title)。這似乎清晰表示，有關第 17 條所保留的特權，只是由第一業主獨有的個人權利。而一個不爭的事實是，第一業主已經將外牆業權轉讓給一位第三者Oriental Shine Limited，而多位答辯人從來沒有得到第一業主的允許或批准在外牆安裝招牌，基於這個事實，審裁處認為答辯人並不能以第17條作為辯護理由。

31. 由於第一業主及後來的承讓人並非本案任何一方，審裁處認為，對於該公契第 17 條進一步的演繹是否包括承讓人亦有權根據第 17 條發出允許及批准呢？審裁處認為這可能要留待將來有適當的訴訟或爭議時才作決定，但在本 4 項訴訟申請中，所有答辯人都承認他們是沒有第一業主或任何承讓人的允許或批准，這其實已經足夠審裁處處理有關答辯人依賴公契第 17 條的論點。

32. 總括而言，審裁處雖然同意公契第 17 條有凌駕性，即是說第 17 條所保留的權利，的確在與公契內其他條款有衝突時，第 17 條是的確有凌駕性，但該凌駕性的特權只屬於第一業主，而由於多位答辯人並非第一業主或其允許者或批准者，所以第 17 條對答辯人並無幫助。

33. 由於審裁處認為答辯人並非符合第 17 條賦予權力的人士，所以對於單一共聘專家的意見，關於在不同訴訟申請中招牌的合法性，或是否根據屋宇署小型工程監管制度或指定豁免工程，與本 4 項訴訟申請並沒關係。換句話說，答辯人所安裝招牌是否符合有關政府規定，是一個行使公契第 17 條特權時的條件，但由於審裁處已經裁定多位答辯人，並未能依賴公契第 17 條作為抗辯理據，所以審裁處亦無

須為是否符合第 17 條內的條件作裁決。

行使酌情權頒下禁制令有否不公平

34. 第四，審裁處須要考慮在 4 項訴訟申請中，發出禁制令是否對答辯人有不公平的地方，答辯人指出在 4 項訴訟申請中，不同招牌分別在 2012 年至 2014 年時已經安裝在大廈外牆上，一直以來，從來沒有對任何人造成傷害，或對業主造成損失，更無證據顯示任何招牌會造成危險或任何人的不便。而在 222 案中的招牌，根據有關證據，已經符合有關法例安裝，而答辯人亦承諾會將所有招牌根據有關法例要求建造，所以即使答辯人違反公契，而且沒有公契第 17 條賦予的權利懸掛有關招牌，審裁處發出有關禁制令要求拆除多項招牌，對答辯人並不公平。

35. 審裁處認為行使有關酌情權最重要的考慮是申請人在大廈管理上，是扮演一個重要的角色，而且大廈外牆是重要的一部分，如果容許答辯人違反有關公契，而無需拆除有關招牌，這對所有其他大廈業主並不公平。答辯人所承諾會根據有關法例(例如《建築物條例》)建造或安裝招牌只是基本要求，但符合法例並不等於符合大廈公契，而公契清晰訂明有關行為除非得到申請人書面批准，否則並不能進行，這是清晰對大廈每一位業主公平的要求及規定。

36. 另外，審裁處亦在考慮所有證據之後，並未發現有任何默許或其他衡平法的原則導致發出禁制令不公平。

37. 審裁處看不到答辯人分別身為大廈業主及租客，有任何理由不需要跟從大廈公契條款，所以沒有任何對答辯人不公平的情況。

至於，雖然第一答辯人並非安裝所有招牌的人，但正如審裁處所說，無論該招牌是由第一答辯人或第二答辯人所安裝，審裁處認為有關禁制令必須要求第一答辯人及所有第二答辯人同樣遵守。

禁制令

38. 審裁處接受有關 221 案、222 案、226 案 3 項訴訟申請，頒下禁制令，命令每項訴訟申請中的第一及第二答辯人須清拆餘下用金屬支架安裝在該大廈外牆上的招牌及還原受損害的牆身。另外，雖然在 220 案中的招牌已經拆除，但因安裝該招牌而受損害的牆身還未修補，所以於 220 案中，亦頒下禁制令，命令第一及第二答辯人須還原受損害的牆身。

訟費

39. 最後，審裁處沒有理由要背離訟費應隨訴訟結果而定的規則，所以審裁處亦頒下臨時訟費命令，所有答辯人(包括第一及第二答辯人)在 4 項訴訟申請中須要向申請人支付訟費，如雙方未能就訟費數額議定，則依區域法院基準作評定，除非訴訟任何一方在本命令發出 14 天內提出申請修改或取消本訟費命令，本訟費命令將成為最終訟費命令。

雷健文區域法院暫委法官
土地審裁處

申請人(LDBM 220-222 & 226/2014): 由林錫光,陳啟鴻律師行陳俊華律師代表。

第一及至第二答辯人(LDBM 220-222 & 226/2014): 由張達成葉祺智

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CACV 292-295/2018
[2020] HKCA 1086

CACV 292/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL**

CIVIL APPEAL NO 292 OF 2018
(ON APPEAL FROM LDBM NO 220 OF 2014)

BETWEEN

好順利大廈業主立案法團

Applicant
(Respondent)

and

WEALTH GEAR LIMITED

1st Respondent
(Appellant)

優豪方火鍋料理有限公司
所經營優豪方火鍋料理

2nd Respondent

and

CACV 293/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL**

CIVIL APPEAL NO 293 OF 2018
(ON APPEAL FROM LDBM NO 221 OF 2014)

BETWEEN

好順利大廈業主立案法團

Applicant
(Respondent)

and

WEALTH GEAR LIMITED

1st Respondent
(Appellant)

敘亨軒 (元朗) 海鮮火鍋有限公司
所經營敘亨軒海鮮火鍋

2nd Respondent

and

CACV 294/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
CIVIL APPEAL NO 294 OF 2018
(ON APPEAL FROM LDBM NO 222 OF 2014)**

BETWEEN

好順利大廈業主立案法團

Applicant
(Respondent)

and

WEALTH GEAR LIMITED

1st Respondent
(Appellant)

達人企業有限公司所經營權發海鮮酒家 2nd Respondent

and

CACV 295/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
CIVIL APPEAL NO 295 OF 2018
(ON APPEAL FROM LDBM NO 226 OF 2014)**

BETWEEN

好順利大廈業主立案法團

Applicant
(Respondent)

and

WEALTH GEAR LIMITED

1st Respondent
(Appellant)

張耀發、布志洪、梁柏基、蔡康慶 2nd Respondent
及黃梓揚所經營 GENIAL HAIR GROUP

(heard together)

Before: Hon Lam VP, Yuen and Au JJA in Court

Date of Hearing: 31 October 2019

Date of Judgment: 31 October 2019

Date of Reasons for Judgment: 31 December 2020

REASONS FOR JUDGMENT

Hon Au JA (giving the reasons for judgment of the court):

A. INTRODUCTION

1. The applicant in these proceedings is the incorporated owners (“the IO”) of Ho Shun Lee Building (“the Building”). The 1st respondent is the registered owner of several units situated on the G/F and 1/F of the Building, and the respective 2nd respondents are the tenants of the 1st respondent.

2. It is common ground that the 1st respondent and its respective tenants have erected various signboards (including metal frames, signage and lighting system) (“the Signboards”) on the northern side and western side of the exterior walls of the Building. It is the IO’s case that the installations of the Signboards are in breach of clauses 4(m), 10(a)(i), 10(a)(iii) and 10(d) of the Building’s deed of mutual covenant (“the DMC”) dated 13 July 1984 as they were done without the written consent of the manager of the Building as required under these provisions. For convenience, I would refer to these clauses as “the Subject Clauses”.

3. The IO therefore brought these proceedings in the Lands Tribunal seeking, amongst other reliefs, injunctions against the respondents for the removal of the Signboards and restoration of the damaged surface of the exterior walls.

4. After trial, by way of his judgment in Chinese dated 21 March 2018 (“the Judgment”), Deputy District Judge Lui (“the Judge”) found in favour of the IO and granted the injunctions as sought¹. He also ordered costs against the respondents.

5. Upon the 1st respondent’s applications, on 27 June 2018, the Judge granted it leave to appeal to this Court against the Judgment. The 1st respondent thereafter filed the respective Notices of Appeal, while the IO filed the respective Respondent’s Notices on 20 July 2018.

6. At the end of the hearing, we dismissed the 1st respondent’s appeals and indicated that we would hand down our reasons later. This is what we do now.

B. RELEVANT BACKGROUND

7. The background leading to the dispute is not controversial and can be briefly stated as follows.

B1. The Building, the exterior walls and the erection of the Signboards

8. The Building was erected some time in 1984, and consists of a commercial portion at the G/F and 1/F, a Roof Garden in Block 2 and two blocks of residential flats from 3/F to 20/F.

9. Under the DMC, the exterior walls with other places in the Building were allocated 1 out of the 991 undivided shares. They were

¹ It is noted that the 2nd respondent in LDBM 220/2014 already removed the signboards outside its property before the hearing. Nothing turns on this in these appeals.

owned by the developer, Yau Fook Hong Co Ltd (“YFH”), which is defined in the DMC as the “First Owner”.

10. By an assignment dated 14 August 2006, YFH assigned the exterior walls to Oriental Shine Ltd (“Oriental Shine”), a BVI company. It is the IO’s case that Oriental Shine was dissolved on 31 December 2010², although a search report³ indicates that it was deemed dissolved on 31 October 2015. However, this inconsistency is immaterial to the issues on appeal.

11. Between 4 May 2012 and 3 October 2014, the 1st or the 2nd respondents erected the Signboards at the exterior walls. There is no dispute that they did so without obtaining any consent from the manager of the Building, YFH or Oriental Shine.

B2. The IO’s claim and the respondents’ opposition in the Lands Tribunal

12. As mentioned above, in support of its applications in the Lands Tribunal, it is the IO’s case that the Signboards were erected by the respondents in breach of the Subject Clauses. They provide relevantly as follows:

“4. Each owner shall be bound by and shall observe and perform the following covenants provisions and restrictions:

...

(m) No owner shall without the consent in writing of the Manager do or cause or permit to be done any of the following:

² See the Notice of Application, paragraph 13.
³ [A/158].

(i) Repaint redecorate or alter the appearance of the exterior of the said Building or any part thereof.

(ii) Erect or affix any signboard sunshade bracket structures fitting or thing to the exterior of the said Building or to the roof or flatted roof or any part or parts thereof or to the common areas within the said Building or any part thereof.

(iii) Hang up clothing or laundry outside the said Building or in the common areas within the said building or any part thereof.

...

10. Each party hereto hereby covenants with the others as follows:

(a) (i) Not to make any alterations to the walls or structure or façade of the Building or to the said premises of which it or they is/are entitled to the sole and exclusive use, occupation and enjoyment;

...

(iii) Not to cut or damage any of the main walls or beams or floors of the Building.

...

(d) Not to affix or exhibit or paint on any part of the exterior walls, the common entrance hall, staircase, landings, lifts or passages of and in the Building any trade profession or business notice or advertisement whatsoever save and except only in the space at the entrance on the ground floor of the Building as the Manager of the Building shall designate for the purpose of affixing or exhibiting the trade or firm name of the tenant or occupier of such premises.” (emphasis added)

13. On the other hand, the respondents opposed the applications on the following grounds:

(1) The IO had no *locus standi* to bring the proceedings against them (“the Locus Ground”);

- (2) They were not in breach of the Subject Clauses (“the No Breach Ground”);
- (3) They had the right to erect the Signboards under clause 17 of the DMC (“Clause 17”) (“the Clause 17 Ground”); and
- (4) In any event, the Tribunal should not exercise its discretion to grant the injunctions sought as it would be unfair and inequitable to do so in light of all the circumstances as the Signboards (a) had been erected for many years; (b) had caused no damage or harm to any of the other owners or anyone; (c) had not caused any risks of danger or inconvenience to anyone; and (d) they were erected in compliance with the relevant regulations (“the Discretion Ground”).

14. In this respect, Clause 17 provides:

“Notwithstanding anything to the contrary hereinbefore contained, it is hereby mutually agreed and declared that the First Owner (so designated in the First Schedule hereto) shall have the full and free right for itself and its licensees and permittees to affix fit up and attach signs, signboards and/or advertisements whether illuminated or otherwise to such part or parts of the exterior walls of the said Building and/or to affix fit up and erect one or more chimney at the exterior walls of the said building Provided that such affixture or erections shall not unreasonably interfere with the enjoyment comfort and well-being of the co-owners or affect the structural safety of the building PROVIDED ALWAYS that the First Owner or its assigns, licensees permittees and all persons authorised by it shall at all times observe and comply with all the laws and regulations relating to erecting maintaining and dismantling the said signs or signboards (whether illuminated or otherwise) for advertisement purposes or the chimney or chimneys and shall solely be responsible for the repair maintenance upkeep renewal and removal of any such signs or signboards chimney or chimneys and the repairs, maintenance, upkeep and renewal of such part or parts of the external walls of the said Building upon which and/or to which such signs or signboards chimney or chimneys shall be affixed PROVIDED FURTHER that the First Owner and/or its

assigns licensees permittees and all persons authorised by it will at all times indemnify and keep indemnified the co-owners and occupiers for the time being of the said Building against all loss damage injury costs expenses actions claims and demands arising out of or on account of or resulting from the installation repair renewal removal maintenance and upkeep of such signs or signboards chimney or chimneys of the repair, maintenance, upkeep and renewal of those parts of the external walls of the said Building affected by signs signboards and chimney or chimneys or any defect therein or any failure to maintain the same in proper repair and conditions.” (emphasis added)

C. THE JUDGMENT

15. In allowing the applications, the Judge in the Judgment rejected the respondents’ grounds of opposition for the following reasons.

16. The Judge rejected the Locus Ground as he concluded that the IO had the necessary *locus* under section 18(1)(c) of the Building Management Ordinance (Cap 344) (“the BMO”) to bring these applications against the respondents in seeking to enforce provisions in the DMC. This is so as section 18(1)(c) expressly provides that the incorporated owners shall “*do all things reasonably necessary for the enforcement of the obligations contained in the deed of mutual covenant (if any) for the control, management and administration of the building*”. In coming to this conclusion, the Judge cited in support the authorities of *The Incorporated Owners of Yee Fung Garden v Basic Tech Ltd* (HCA 6622/1998, 23 January 2003) at [68] and *Wing Ming Garment Factory Ltd v Wing Ming Industrial Centre (IO)* [2014] 4 HKLRD 52 at [274] *per* G Lam J. See [9] - [18] of the Judgment.

17. The Judge rejected the No Breach Ground for the following reasons:

(1) He did not accept the respondents' contention that clauses 4(m) and 10(d) of the DMC served no useful or valid purposes as Clause 17 had an overriding effect over these clauses. The Judge was of the view that Clause 17 only gave the First Owner and its permittees and licensees the right to erect structures on the exterior walls. In the premises, on a proper construction in the context of Clause 17, clauses 4(m) and 10(d) were intended to govern the other owners of the Building, in that they had to obtain the written consent of the manager before they could erect structures on the exterior walls. See: [22] - [26] of the Judgment.

(2) The Judge also disagreed with the respondents' argument that they were not in breach of clauses 10(a)(i) and (iii) of the DMC as the Signboards did not cause any structural safety concerns to the Building. Relying on *Incorporated Owners of Elite Garden v Profit More Co Ltd* [2002] 2 HKLRD 518 (CA), the Judge concluded that, on a proper construction, these provisions did not require the alterations to have caused structural safety risks to the Building for them to be prohibited. See: [26] - [27] of the Judgment.

(3) In the premises, the Judge concluded that erection of the Signboards without the consent of the manager was clearly in breach of these provisions of the DMC. See [28] of the Judgment.

18. Third, the Judge also dismissed the Clause 17 Ground as:

(1) Even if Clause 17 had an overriding effect over the other provisions in the DMC, it was plain from the words that the rights provided under Clause 17 were only given to the First

Owner (ie, YFH) and its permittees and licensees to erect structures on the exterior walls. As the respondents had never obtained any permission from the First Owner to erect the Signboards, they could not rely on Clause 17 to oppose the applications. See [30] and [32] of the Judgment.

- (2) Further, as the First Owner and Oriental Shine were not parties to these proceedings, the Tribunal would not adjudicate as to whether on a proper construction, a successor in title to the First Owner was also able to give the necessary permission or licence under Clause 17. In any event, given that all the respondents admitted that they had not obtained any permission from the First Owner or any successor in title to erect the Signboards, this alone would have been sufficient to dispose of the Clause 17 argument. See [31] and [32] of the Judgment.

19. Finally, the Judge also dismissed the Discretion Ground as it was not unfair in all the circumstances to grant the injunctions. See [34] - [37] of the Judgment.

D. THIS APPEAL

20. In this appeal, the 1st respondent in summary raised the following grounds of appeal⁴:

- (1) The Judge erred in law in holding that the IO has the *locus standi* to take legal actions against the 1st respondent (“Grounds 1 and 2”); and

⁴ See the Notice of Appeal and the 1st respondent’s skeleton submissions.

- (2) The Judge erred in law in deciding that the 1st respondent had breached the DMC (“Ground 3”).

21. On the other hand, by way of the Respondent’s Notice, the IO sought to affirm the Judgment on additional bases. As it will become apparent later in this Judgment, it is unnecessary for the Court to set out these additional bases as we do not find it necessary to deal with them.

22. We will now turn to consider the grounds of appeal.

D1. Grounds 1 and 2

23. Under Grounds 1 and 2, Mr CY Li SC (leading Mr Chan and Mr Lau) advanced the following submissions in support⁵:

- (1) First, in relation to finding that the IO had *locus* to sue under section 18(2)(g) of the BMO, the Judge erred in concluding at [19] of the Judgment that the co-owners of the Building had a “common interest” in the exterior walls;
- (2) Second, the Judge also erred in the construction of section 18(1)(c) of the BMO to conclude that the IO had *locus* to bring these proceedings against the respondents to enforce the Subject Clauses.

24. As Yuen JA indicated at the hearing, it was unnecessary to consider the contentions raised in relation to section 18(2)(g) as we were of the view that the IO clearly had *locus* to bring these actions under

⁵ See E1 and E2 of the 1st respondent’s written submissions.

section 18(1)(c). We will therefore only deal with the arguments raised by Mr Li in relation to section 18(1)(c) below.

25. Section 18(1)(c) provides that “*The Corporation shall... do all things reasonably necessary for the enforcement of the obligations contained in the deed of mutual covenant (if any) for the control, management and administration of the building*”.

26. There is no dispute that doing “*all things reasonably necessary*” includes bringing legal proceedings.

27. However, Mr Li submitted that on a proper construction, the words “the obligations” provided in this provision refer *only* to the positive obligations in the relevant deed of mutual covenant, and do not include negative obligations such as those now provided under the Subject Clauses. This is so, Mr Li continued, as the natural and ordinary meaning of the word “obligation” is “to do something” instead of “not to do something”.

28. We are unable to agree.

29. First, the ordinary meaning of the word “obligation” refers to committing or constraining oneself by way of promise or contract to a course of action⁶. This natural meaning does not limit it to refer only to committing oneself to positively do something. It is equally applicable to committing oneself *not* to do something.

⁶ See for example, The New Shorter Oxford English Dictionary.

30. Second, objectively, there are simply no reasons in principle why the legislature would have intended to give the incorporated owners powers to enforce *only* the positive obligations but not the negative obligations imposed on the owners under the deed of mutual covenant.

31. Third, as pointed out by Mr Lam SC (together with Ms Jacqueline Law) for the IO, a number of authorities both at the Court of Appeal and first instance levels have upheld the incorporated owners' actions brought under section 18(1)(c) to enforce various restrictive covenants provided in the relevant deed of mutual covenants:

(1) In *Cheng Chi v Chan Hok Man* [1984] HKC 35 (CA), the Court of Appeal held that section 18(1)(c) of the Multi-storeyed Building Management Ordinance (Cap 344)⁷ imposed on the owners' corporation the duty to enforce the provisions in the deed of mutual covenant which prohibited the posting of notices by owners in the common areas (ie, a negative obligation provided in the deed of mutual covenant). See: p 39A-E *per* Roberts CJ.

(2) In *Hoi Luen Industrial Centre (IO) v Ohashi Industries* [1995] 2 HKC 11 (CA), Godfrey JA held at 13A-H that the incorporated owners were entitled under section 18(1)(c) to commence proceedings seeking an injunction against the owner defendant to "*secure compliance ... with the negative covenants contained in the [deed of mutual covenant]*".

(3) In *Wing Ming Garment Factory Ltd v Wing Ming Industrial Centre (IO)* [2014] 4 HKLRD 52, G Lam J similarly held that section 18(1)(c) provided the necessary basis for the IO's

⁷ The Multi-storeyed Building Management Ordinance is the predecessor of the present BMO, and its section 18(1)(c) is identical to the BMO's section 18(1)(c).

standing to sue to enforce restrictive covenants provided in the deed of mutual covenant.

32. These authorities show that it is plain and obvious that section 18(1)(c) gives the IO the necessary standing to bring proceedings to enforce restrictive or negative covenants of the relevant deed of mutual covenants.

33. In contrast, Mr Li accepted that there is no authority at all to support the purported limited construction that he had advanced.

34. For all these reasons, we have no hesitation in rejecting Mr Li's submissions and agree with the Judge that the IO has the necessary standing under section 18(1)(c) to bring the present proceedings against the respondents seeking to enforce the Subject Clauses.

35. Grounds 1 and 2 therefore fail.

D2. Ground 3

36. Under this ground, Mr Li first and foremost submitted that the 1st respondent was entitled to rely on Clause 17 to erect (and presumably also to permit its tenants to erect) the Signboards on the exterior walls.

37. In support of this, at paragraphs 24 - 28 of his skeleton submissions, Mr Li's initially contended that the 1st respondent could rely on Clause 17 as it had become the permittee or licensee of the First Owner

or Oriental Shine by reason of the doctrine of estoppel, given that they had allegedly acquiesced in the erection of the Signboards.

38. However, at the hearing when dealing with the court's questions as to (a) how the 1st respondent could rely on estoppel without joining the First Owner and Oriental Shine as parties to these proceedings; and (b) in any event, how the estoppel could work against the IO, Mr Li disavowed the submissions that the 1st respondent was a permittee or licensee of the First Owner or Oriental Shine. He then advanced for the first time the submission that the 1st respondent had somehow acquired a "proprietary interest" in the exterior walls and had "stepped into the shoes" of the First Owner or Oriental Shine by reason of their acquiescence. The 1st respondent could therefore, Mr Li continued, exercise all the rights provided under Clause 17 to the First Owner as if it was the First Owner itself.

39. This latest submission is entirely without merit and a non-starter:

- (1) First, as a matter of substantive law, Mr Li had not been able to refer the Court to any legal principles to support his bold submission that the 1st respondent had somehow acquired a proprietary interest in the exterior walls solely because the First Owner or Oriental Shine had "acquiesced" in the erection of the Signboards. In this respect, he had rightly said that he was not relying on the principles relating to adverse possession as the 1st respondent simply had not achieved the necessary period of possession to even start

arguing possessory title. In our view, Mr Li's said submission is totally devoid of any legal basis.

(2) Second and in any event, on a procedural aspect, without joining the First Owner and Oriental Shine as parties to these proceedings, it is simply *not* open to the 1st respondent to advance such a submission as there is no way the court could and would seek to determine whether the 1st respondent had allegedly acquired an interest in the exterior walls adverse to their title owners. Mr Li however said it was the IO's own case that Oriental Shine had been dissolved and thus it was not practicable to join it. As pointed out by Yuen JA, the 1st respondent had not even attempted to obtain a court order to revive the company.

(3) Moreover, such a contention had not been advanced below and it is obviously facts and evidence sensitive and would affect the IO's conduct of the case. In light of the approach discussed in *Flywin Co Ltd v Strong & Associates* (2002) 5 HKCFAR 356 and *Lehmanbrown Ltd v Union Trade Holdings Inc* HCMP 977/2015, 17 June 2015, such new point cannot be entertained on appeal.

40. In the premises, we would also reject the submission that the 1st respondent had somehow acquired a proprietary interest in the exterior walls and become effectively the First Owner for the purpose of Clause 17.

41. Other than relying on Clause 17, Mr Li also submitted under this ground that the 1st respondent was in any event *not* in breach of clauses 10(a)(i) and (iii) of the DMC for the following reasons:

(1) The restriction in clause 10(a)(i) of the DMC confines itself to walls or structures or façade of the building of which an owner(s) “*is/are entitled to the sole and exclusive use, occupation and enjoyment*”. However, given it is the IO’s own case that the 1st respondent does not have exclusive possession, occupation and / or enjoyment of the said exterior wall, it must follow that clause 10(a)(i) is inapplicable to the 1st respondent.

(2) In relation to clause 10(a)(iii), the restriction under it is confined to “*not to cut or damage*” any of “*the main walls or beams or floors of the Building*”. There is however no discussion in the Judgment and at the trial as to what constitutes a main wall for the purpose of this clause, nor is there any finding that the said external walls are main walls. There could therefore be no basis to find that the 1st respondent was in breach of this clause.

42. There is also nothing in these submissions. As submitted by Mr Lam, which we accept:

(1) The phrase “*of which it or they is/are entitled to the sole and exclusive use, occupation and enjoyment*” in clause 10(a)(i) only describe the words “*the said premises*” preceding the phrase, which each owner shall not alter. Each owner separately has also covenanted thereunder not to alter “*the walls or structure or façade of the Building*”, which was what the 1st respondent and its tenants undeniably did. See: [28] of the Judgment.

(2) The Judge in [28] of the Judgment noted that clause 10(a)(iii) is confined to “*not to cut or damage*” *inter alia*, “*the main*

walls” of the Building and held that the respondents were in breach by erecting the Signboards to the exterior walls. This can only be interpreted to mean that the Tribunal regarded the external walls to fall within the meaning of “*main walls*”, which must be correct as a matter of construction of the DMC: see *IO of Hong Leong Industrial Complex v HL Resources Ltd* [2009] 4 HKLRD 692 *per* Sakhrani J at paragraphs 75 - 77.⁸

43. We therefore also reject Ground 3.

E. CONCLUSION

44. For the above reasons, we have dismissed the appeals. As we have rejected all the grounds of appeal, it is unnecessary for us to deal with the grounds raised by the IO in the Respondent’s Notice to affirm the Judgment.

45. Mr Li accepted that the IO should have the costs of the appeals. The IO has set out its costs for the appeals in its Statement of Costs dated 28 October 2019 to be \$601,424.

46. In relation to this, Mr Li made only one objection at the hearing. He submitted that the costs for preparing the Respondent’s Notice (which is \$30,000) should be disallowed as it was in effect a

⁸ In that case, the incorporated owners failed in its claims against, *inter alia*, the former manager of the building for wrongly applying part of the management fund towards the repair and maintenance of the roof and external wall of the building that the owners allege to be exclusively owned by the developer. The incorporated owners’ appeal was dismissed and the Court of Appeal did not disturb the Judge’s ruling on the scope of “main walls” in clause (ii)(e) of the DMC being wide enough to include the external wall of the building: see [2010] 4 HKC 463. Their application for leave to appeal to the Court of Final Appeal was also dismissed: see [2010] HKCA 248.

cross-appeal. This was so, said Mr Li, as the IO stated at paragraph 1 of the Respondent's Notice that the ruling of the Judge at [19] of the Judgment is "erroneous".

47. This objection is misconceived.

48. At the preamble of the Respondent's Notice, it is clearly stated that the IO was seeking to affirm the Judge's decision on the additional grounds to be set out thereafter. Paragraph 1 of the Respondent's Statement then states as follows:

"Insofar as paragraph 19 of the Judgment is interpreted to mean that the [IO] had *locus standi* to sue only in respect of matter in which the owners have a common interest, such a ruling is erroneous. The Learned Judge should have ruled or made it clear that the [IO] had *locus standi* to sue under section 18(1)(c) of the [BMO], irrespective of whether the subject matter is situated at the common parts or not." (emphasis added)

49. Read in this context and properly, it is clear that what the IO is asking by way of the Respondent's Notice is to affirm the Judge's decision that it had the *locus standi* to sue in these proceedings under section 18(1)(c) of the BMO which does not require the finding that the subject matter of the suit concerns a common interest of the owners. This is *not* in the nature of a cross-appeal as contended by Mr Li.

50. We therefore do not accept this objection.

51. At the same time, Mr Lam fairly accepted at the hearing that the costs of the junior fee earner⁹ as stated in the Statement of Costs could

⁹ Abbreviated as "GM" in the Statement of Costs.

be reduced,¹⁰ as it was unnecessary to involve two fee earners for the same types of work. In the premises, we would summarily assess the costs to be \$543,424¹¹.

52. We would therefore further order that the 1st respondent shall pay the IO the costs of the appeals in the sum of \$543,424.

(Johnson Lam)
Vice President

(Maria Yuen)
Justice of Appeal

(Thomas Au)
Justice of Appeal

Mr CY Li SC, Mr Avery Chan and Mr Lau Ka Kin, instructed by Cheung & Yip, for the Appellant (1st Respondent) in all actions

Mr Douglas Lam SC and Ms Jacqueline Law, instructed by SK Lam, Alfred Chan & Co, for the Respondent (Applicant) in all actions

¹⁰ In total \$58,000.

¹¹ \$601,424 - \$58,000 = \$543,424.

Attachment V

Y. L. T. L. 333

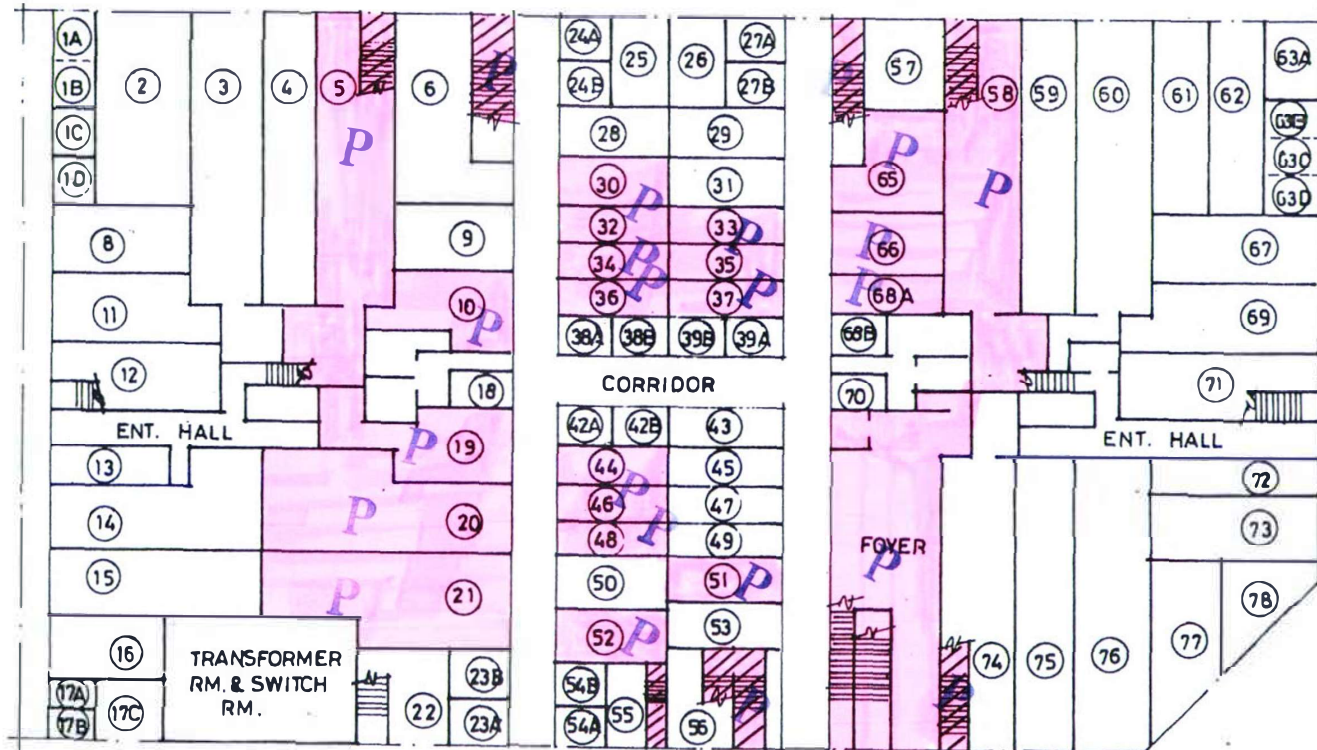
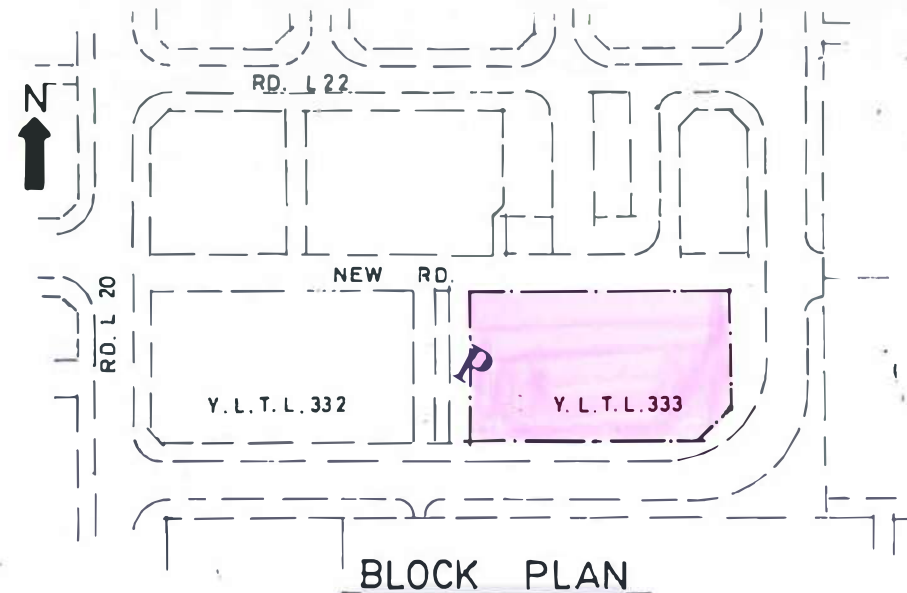
YUEN LONG N.T.

SITE AREA : 2682.00 M²

ANNUAL RENTAL : \$ 300.⁰⁰



註冊樓宇編號 M/N 10123101070076 A4C



GROUND FLOOR PLAN

0 2.5 5 10 M.


LAM CHING WAH
B.ARCH HKIA ARAIA
AUTHORISED PERSON ARCHITECT



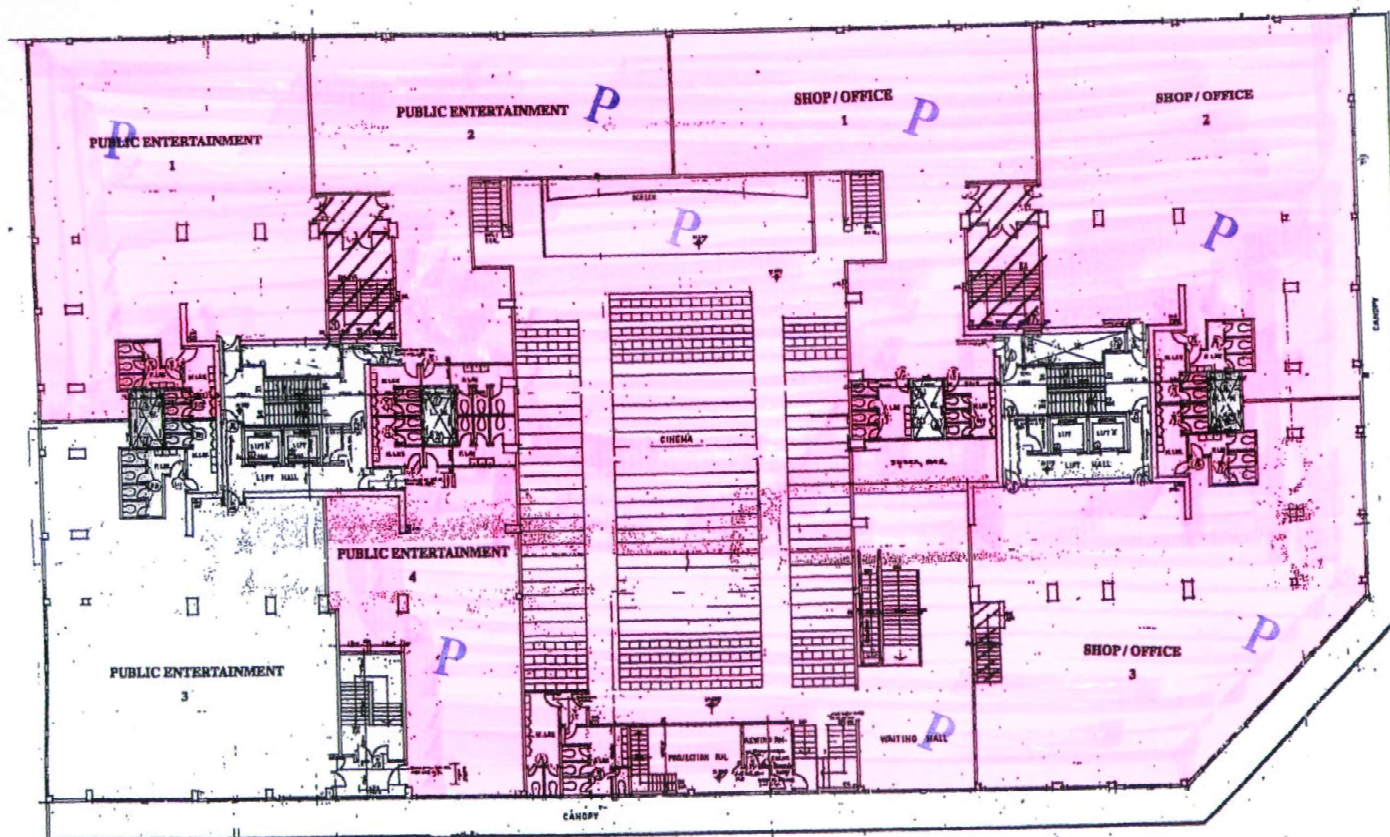
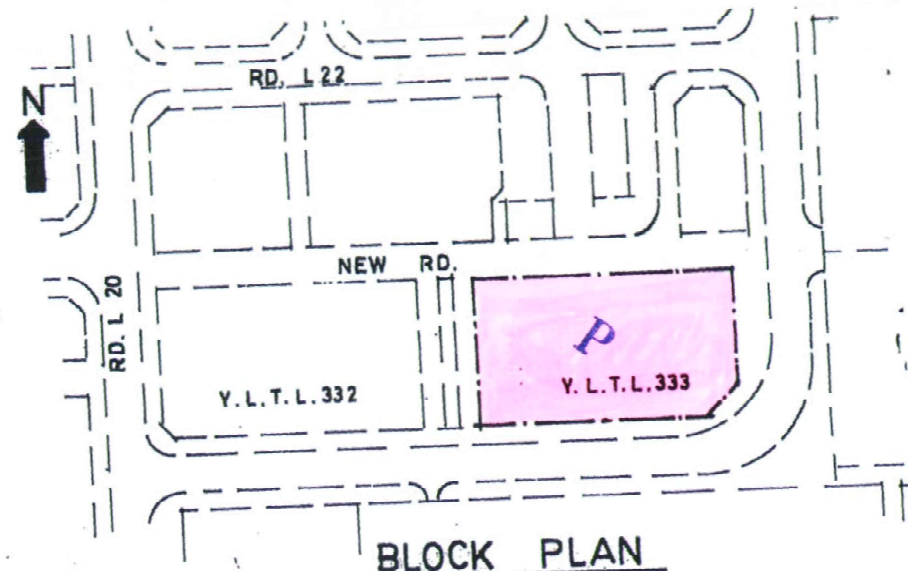
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Y.L.T.L. 333

YUEN LONG N.T.

SITE AREA : 2682.00 M²

ANNUAL RENTAL : \$ 300.⁰⁰



1 ST FLOOR PLAN

0 2.5 5 10 M.

KCM
LAM CHING WAH
ARCHITECT
AUTHORISED PERSON ARCHITECT

Vine Church at Yuen Long
1/F Ho Shun Lee Building, No.9 Fung Yau Street South, Yuen Long



Exclusive Main Staircase Entrance to 1/F of Rental Premises and proposed signage to be located above



Concerned Façade on Fung Kwan Path showing the location of the Rental Premises on 1/F and the exclusive Staircase Entrance



Exclusive Fire Escape Stair Exit



Concern Façade on No.9 Fung Yau Street South showing the location of Rental Premises, concern Exclusive Fire Escape Stair Exit & Exclusive Lift Platform Access



Exclusive access to the Lift Platform

Similar Applications within the subject “R(A)” Zone on the Yuen Long OZP

Approved Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Approval Conditions</u>
1	A/YL/40	Religious Institution	6.3.1998	(1), (2)
2	A/YL/110	Religious Institution (Church)	7.11.2003	-
3	A/YL/137	Religious Institution	3.2.2006	(3)

Approval Condition(s):

- (1) The maintenance of all the existing fire service installations and equipment within the application premises.
- (2) The design and provision of sprinkle system, emergency lighting, visual fire alarm signals and ventilation/air conditioning control system.
- (3) The provision of fire service installations.

Advisory clauses

- (a) to note the comments of the District Lands Officer/Yuen Long, Lands Department that the Premises falls within Yuen Long Town Lot No. 333, which is held under New Grant No. 2976 dated 3.12.1980 (“the New Grant”). According to the New Grant, it contains, inter alia, the following restrictions: “the Lot shall not be used for any purpose other than non-industrial purposes, and in particular any building or part of any building erected shall not be used for any purpose other than the ground and first floors for non-industrial purposes.” The applicant should be reminded to ensure that the proposed use of the Premises would be in compliance with the prevailing ordinances and regulations including but not limited to fire services and building requirements;
- (b) to note the comments of the Chief Building Surveyor/New Territories West, BD that based on the limited information provided, the applicant’s attention is drawn to the following points:
 - (i) if the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the application site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
 - (ii) provision of prescribed windows for habitation or as an office to comply with Regulations 30, 31 and 32 of the Building (Planning) Regulations (B(P)R);
 - (iii) provision of windows for rooms containing soil fitments to comply with Regulation 36 of the B(P)R;
 - (iv) provision of barrier free access and accessible toilet to comply with Regulation 72 of the B(P)R;
 - (v) the numbers of sanitary fitments required should comply with Building (Standards of sanitary fitments, plumbing, drainage works and latrines) Regulations; and
 - (vi) if any proposal involves non-exempted alterations and additions works and/or material change in use of a building, detailed checking will be carried out during building plan submission stage;
- (c) to note the comments of the Director of Food and Environmental Hygiene (DFEH) as follows:
 - (i) no Food and Environmental Hygiene Department’s (FEHD) facilities will be affected;
 - (ii) 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 Cap. 132;
 - (iii) 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 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;

- (iv) 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. The operation of the food business place must not cause any environmental nuisance to the surrounding. The refuse generated by the proposed eating place is 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; and
 - (v) proper licence issued by FEHD is required if related place of entertainment is involved. Any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building, erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public Entertainment Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement, a Place of Public Entertainment Licence (or Temporary Place of Public Entertainment Licence) should be obtained from FEHD whatever the general public is admitted with or without payment; and
- (d) to further liaise with the Incorporated Owners of Ho Lee Shun Building on the building management matter and the concerned access to the Premises.

致城市規劃委員會秘書：

專人送遞或郵遞：香港北角渣華道 333 號北角政府合署 15 樓

傳真：2877 0245 或 2522 8426

電郵：tpbpd@pland.gov.hk

To: Secretary, Town Planning Board

By hand or post: 15/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong

By Fax: 2877 0245 or 2522 8426

By e-mail: tpbpd@pland.gov.hk

有關的規劃申請編號 The application no. to which the comment relates: A/YL/297

意見詳情（如有需要，請另頁說明）

Details of the Comment (use separate sheet if necessary)

我十分同意這個宗教機構的申請，單位內有獨立樓梯上落，又有電梯供長者及殘疾人士使用，不需要霸佔住宅的電梯，影響居民上樓的時間。個人認為這個佈局是專門設計的，有先天性避免與住宅之間產生衝突的優勢。

「提意見人」姓名／名稱 Name of person/company making this comment

Chu Ho Yi Denise

簽署 Signature



日期 Date

11th November, 2022

致城市規劃委員會秘書：

專人送遞或郵遞：香港北角渣華道 333 號北角政府合署 15 樓

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意見詳情（如有需要，請另頁說明）

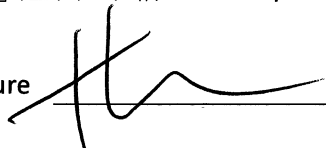
Details of the Comment (use separate sheet if necessary)

我不認為這個宗教機構的申請會對周邊的地方造成任何不良的影響。鄰近有小巴總站、港鐵、輕鐵，亦有多條巴士線途經附近，因此不會對增加塞車的問題。另外，基督教是導人向善的地方，甚少與人衝突，因此不會對樓上的居民構成滋擾。

「提意見人」姓名／名稱 Name of person/company making this comment

陳皓明

簽署 Signature



日期 Date

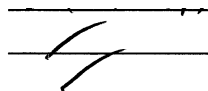
13 Nov 2022

通訊地址 Postal Address

電話號碼 Tel No.

傳真號碼 Fax No

電郵地址 E-mail address



致城市規劃委員會秘書：

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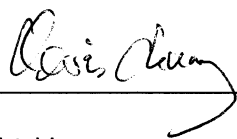
意見詳情（如有需要，請另頁說明）

Details of the Comment (use separate sheet if necessary)

本人支持該申請規劃。這個小社區是靜中帶旺，有學校、有餐廳、小食店、補習社和美容店等不同的服務行業，過一個街口亦有教堂及幼稚園，所以這個教堂絕對是與周邊的地區相容。

「提意見人」姓名／名稱 Name of person/company making this comment CHUNG CHZ LEUNG

簽署 Signature



日期 Date

11/11/22

通訊地址 Postal Address

電話號碼 Tel No.

傳真號碼 Fax No

電郵地址 E-mail address

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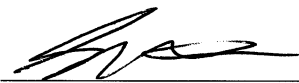
意見詳情（如有需要，請另頁說明）

Details of the Comment (use separate sheet if necessary)

I saw their drawings and layout and noted that the application premises has independent staircases
and lift. I think it is great as it can separate with the residential building on top and the shopping
mall to prevent any potential interfacing issues with the residents and visitors, such as security.

「提意見人」姓名／名稱 Name of person/company making this comment STEPHEN HESKETH.

簽署 Signature



日期 Date

13-11-2022

通訊地址 Postal Address

電話號碼 Tel No.

傳真號碼 Fax No

電郵地址 E-mail address

致城市規劃委員會秘書：

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有關的規劃申請編號 The application no. to which the comment relates: A/YL/297

意見詳情（如有需要，請另頁說明）

Details of the Comment (use separate sheet if necessary)

I Cynthia Dhasla fully support this church
planting "The Vine" in Yuen Long since there
is correct teaching and doctrine. Everyone is
good and work hard. They all work towards
spiritual and also socially helping. I would
recommend having these bunch of people working
in Yuen Long. Thank you.

「提意見人」姓名／名稱 Name of person/company making this comment Cynthia Dhasla

簽署 Signature Cynthia Dhasla 日期 Date 13 Nov 2022

通訊地址 Postal Address _____

電話號碼 Tel No. _____

傳真號碼 Fax No. _____

電郵地址 E-mail address _____

致城市規劃委員會秘書：

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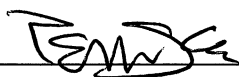
意見詳情（如有需要，請另頁說明）

Details of the Comment (use separate sheet if necessary)

I think it is a positive thing as the church will organise different kind of charitable activities and
others meaningful events to help their members and the local community.

「提意見人」姓名／名稱 Name of person/company making this comment MELODY SO

簽署 Signature



日期 Date

11 NOV 2022

通訊地址 Postal Address

電話號碼 Tel No.

傳真號碼 Fax No

電郵地址 E-mail address

☐ Urgent ☐ Return Receipt Requested ☐ Sign ☐ Encrypt ☐ Mark Subject Restricted ☐ Expand personal&publi



A/YL/297 9 Fung Yau Street South, Yuen Long
28/11/2022 02:59

From:

To: tpbpd <tpbpd@pland.gov.hk>

File Ref:

A/YL/297

G/F (Part) and 1/F (Part), Ho Shun Lee Building, 9 Fung Yau Street South, Yuen Long

Site area: 628sq.m

Zoning: "Res (Group A)"

Applied use: Religious Institution / Shop and Services / Eating Place / Office

Dear TPB Members,

So what Sect is this? Applications for religious institutions should be obliged to provide this information.

What is its track record, is it evangelical, what impact would it have on the residents of the development?

Members should demand more details.

Mary Mulvihill

就規劃申請/覆核提出意見 Making Comment on Planning Application / Review

參考編號

Reference Number:

221129-114441-54831

提交限期

Deadline for submission:

29/11/2022

提交日期及時間

Date and time of submission:

29/11/2022 11:44:41

有關的規劃申請編號

The application no. to which the comment relates:

A/YL/297

「提意見人」姓名/名稱

Name of person making this comment:

好順利大廈業主立案法團

意見詳情

Details of the Comment :

本人為好順利大廈業主立案法團聘任的物業管理公司「威訊物業管理有限公司」代表，奉法團之命就有關城市規劃申請A/YL/297擬將大廈部份地舖連同一樓部份及原戲院位置改建為宗教機構連附屬商店及服務行業、食肆及辦公室作出反對。原因是如按照上述規劃申請將會出現大量外來人流，而由於通往一樓的位置如使用升降機必須經過好順利大廈的住宅大堂入口，而且一樓位置有通道可以直達住宅各樓層，此舉會出現嚴重的保安問題，而且升降機亦有嚴重的負荷。另外，出入的樓梯亦屬於大廈的公眾範圍，有關位置的樓梯範圍於近年亦涉及法律訴訟事件，最終由法庭判決釐訂為屬於大廈公共地方由法團管轄範圍。