

REVIEW OF APPLICATION NO. A/K9/269
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Temporary School (Private Primary School) for a Period of 5 Years
at G/F, 1/F and R/F, Cheung Kei Center Tower B, One Harbourgate,
18 Hung Luen Road, Hung Hom, Kowloon**

1. Background

- 1.1 On 5.4.2017, the applicant, Bewater Fitness Limited represented by Lanbase Surveyors Limited, sought planning permission under section 16 of the Town Planning Ordinance (the Ordinance) for the proposed temporary school (private primary school) for a period of 5 years. The application premises (the Premises) is zoned “Comprehensive Development Area(2)” (“CDA(2)”) on the approved Hung Hom Outline Zoning Plan (OZP) No. S/K9/26¹ (**Plan R-1**).
- 1.2 On 22.9.2017, the Metro Planning Committee (MPC) rejected the application on the following grounds:
- (a) the application is not in line with the planning intention of the “CDA(2)” zone which is for retail and office uses and the intention to provide shop use at the premises to enhance the attractiveness and vibrancy of the Hung Hom waterfront, and should not be allowed even on a temporary basis; and
 - (b) approval of the application will set an undesirable precedent for similar applications in the area. The cumulative effect of approving such similar applications will affect the attractiveness and vibrancy of the Hung Hom waterfront.
- 1.3 For details, the following background documents are attached:
- (a) MPC Paper No. A/K9/269A (Annex A)
 - (b) Extract of minutes of the MPC meeting held on 22.9.2017 (Annex B)
 - (c) Secretary, Town Planning Board’s letter dated 13.10.2017 (Annex C)

2. Application for Review

On 2.11.2017, the applicant applied under section 17(1) of the Ordinance, for a review of the MPC’s decision to reject the application (**Annex D**). On 14.11.2017, the applicant submitted a review statement in support of the review (**Annex E**).

¹ The section 16 planning application and the application for review were submitted under the previous draft Hung Hom OZP No. S/K9/25. There is no change to the zoning and development restrictions for the site.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the applicant's review statement at **Annex E**. They are summarised as follows:

No contravention of the long-term planning intention of the "CDA(2)" zone

- (a) even though the proposed school use is not entirely in line with the planning intention of the "CDA(2)" zone which is for retail and office uses, its temporary nature for a period of 5 years would not affect the long term planning intention of the zone. The proposed school use is not incompatible with the surroundings which is characterised by a mix of residential developments, primary school, offices, hotels and open space uses, sympathetic considerations should be given to the proposed school use and a temporary planning permission should be granted;
- (b) the Premises is within a new development where the occupancy rate is not high. With Renaissance College in Ma On Shan² being an example, the establishment of a high quality school would generate interest, value, businesses and enhance the appeal of the area. The school would create opportunity for students and family members to bring vitality to the Hung Hom waterfront and would make contribution to the harbourfront area;

Precedents

- (c) the subject application should be acceptable given that there are similar planning applications for school use (including primary school, kindergarten and nursery) in commercial accommodation under "CDA" zones in other districts that were previously approved by the Rural and New Town Planning Committee;
- (d) given that planning applications for permanent school uses (including one for post-secondary college and four for tutorial school) were approved in commercial buildings in the Hung Hom area, a 5-year temporary school in a free-standing commercial block should be acceptable;
- (e) it is common to accommodate private schools in retail premises in Hong Kong such as The Harbour School and Delia School of Canada³. The innovative design and facilities of Mount Kelly School Hong Kong (MKSHK) will enhance the area during the school's occupation and promote the area with community and commercial activities, aesthetic appeal and greater diversity;

No objection from Government departments

- (f) all relevant government departments had no objection to the proposed use;

² Renaissance College is a private school located within an area zoned "Government, Institution or Community" on the Ma On Shan OZP. It is mainly surrounded by medium-density residential developments with commercial uses serving the residential neighbourhood.

³ The Harbour School and Delia School of Canada are located at premises zoned "Residential (Group A)" where 'School' is always permitted on the lowest three floors or in the purpose-designed non-residential portion of a building, and do not require planning permission.

Transitional arrangement and unnecessary concern on renewal of temporary permission

- (g) MKSHK would develop its city campus at portions of 2/F of Austin Tower (Phase I), Tsim Sha Tsui⁴, which is currently being operated by MKSHK as a playgroup centre. The city campus will be expanded within the said building in coming years. Education Bureau (EDB) is processing the school's application for provisional registration at portion of 2/F of Austin Tower, and the primary school license is expected to be obtained in a few months⁵. However, significant acquisition, expansion and renovation works are still required over the next four years. It is necessary to make arrangement for a temporary school at the Premises in order to provide adequate capacity to accommodate nearly 300 students before completion of the permanent campus;
- (h) the permanent school premises in Austin Tower would be ready in 2022, and the concern on continuous renewal of a temporary planning permission at the Premises that would contravene the long term planning intention of the "CDA(2)" zone is unnecessary. In any case, renewal application will be considered on individual merits and planning circumstances and there is no guarantee that the permission will be renewed;

School operation

- (i) regarding the concern about the lack of school facilities for students' outdoor activities at the Premises, MKSHK has made arrangements with a number of sports fields, swimming pools and activity centres in Tsim Sha Tsui for its students' activities. The Premises will also provide adequate interactive space for students in the proposed multi-purpose rooms for a gymnasium, ball games, design and technology suite, library, visual arts studio, and music and dance room (see **Drawings R-1 to R-4**);
- (j) a number of experienced and renowned educational professionals have been appointed to guide the school's development. The school has already been granted provisional registration by EDB for the Mount Kelly International Preschool⁶. The Preschool is in support of the transition to Mount Kelly's preparatory school programme in Hong Kong and then the high school in the UK; and

In support of supply of international-curriculum school places in Hong Kong

- (k) there are continuous requests and demands from Chambers of Commerce from the UK, USA, Canada and Australia for provision of international-curriculum school places in Hong Kong. The establishment of MKSHK is encouraged and

⁴ Austin Tower is located within an area zoned "Commercial" on the Tsim Sha Tsui OZP in which 'School' use is always permitted.

⁵ EDB approved the application for provisional registration of school at Austin Tower on 15.1.2018.

⁶ The Mount Kelly International Preschool is located at G/F and 1/F premises in The Austine Place, Kwun Chung Road within an area zoned "Residential (Group A)" on the Tsim Sha Tsui OZP in which 'School' use is always permitted.

supported by InvestHK, the British Chamber of Commerce, the British Counsel General and with the endorsement of the UK Secretary of State for Education.

4. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-1 and R-2)

4.1 The situations of the site and its surrounding areas at the time of the consideration of the section 16 application by MPC are described in paragraph 7 of **Annex A**. There has been no major material change since then.

Planning Intention

4.2 There has been no change to the planning intention of the concerned “CDA(2)” zone, which is for retail and office uses. Detailed requirements under the planning brief are in paragraph 8 of **Annex A**.

Background

4.3 The site on which the Premises is located was a land sale site sold in 2011. A planning application No. A/K9/247 for comprehensive office and retail development was approved by the Committee on 20.4.2012. Based on the approved scheme, the site was developed into One Harbourgate in 2016. According to the approved scheme and the approved Master Layout Plan (MLP) deposited at the Land Registry, the development comprises two 2-storey blocks near the waterfront (including the Premises) for ‘eating place/shop and services’ uses and two high-rise office blocks in the inland part with ground floor ‘eating place/shop and services’ uses (Appendix III of **Annex A**). The occupation permit dated 15.1.2016 shows that the two 2-storey blocks and the ground floor of the two office blocks are for shop uses.

4.4 In the review application, the applicant indicated that MKSHK would develop its permanent city campus for its preparatory school at portions of 2/F of Austin Tower. The building is located within an area zoned “Commercial” on the Tsim Sha Tsui OZP in which ‘School’ use is always permitted (**Plan R-7**). According to a recent site visit, some units on 2/F of the building are currently occupied by MKSHK as playgroup classrooms; the remaining units are occupied by an education centre, a church, medical clinics and an office. MKSHK’s application for provisional registration for a school that offers Year 1 to Year 8 curriculum at Units 201-206, 209-210, 213-214 and 216-220 on 2/F was received by EDB in mid-October 2017 and a certificate of provisional registration was issued on 15.1.2018⁷.

Previous Application

⁷ In addition to the Austin Tower premises, MKSHK obtained provisional registration for pre-school at a premises in The Austine Place.

- 4.5 The only previous application at the time of consideration of the section 16 application and to date was No. A/K9/247 covering the entire “CDA(2)” zone as highlighted above.

Similar Application

- 4.6 There is no similar application for proposed temporary school use within “CDA” zones in the Hung Hom Planning Scheme area at the time of the consideration of the s.16 application. Since then, no similar application has been considered by the Board.

5. Comments from Relevant Government Departments

- 5.1 Comments on the section 16 application made by relevant Government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, relevant Government bureaux/departments have been further consulted. Secretary for Education (SED) and District Lands Officer/Kowloon West, Lands Department (DLO/KW, LandsD) maintained their previous views and have further comments as follows:

Education

5.2.1 Comments of the SED:

On review application

- (a) an application for school registration of MKSHK that offers Year 1 to Year 8 curriculum at various units on 2/F of Austin Tower has been received by EDB. A certificate of provisional registration was issued on 15.1.2018. The certificate of provisional registration is normally valid for one year;
- (b) EDB relies on Buildings Department (BD)’s endorsed layout plan for counting the number of classrooms of school premises and the recommendations from Department of Health (DH) for the number of students permitted in each classroom. According to BD’s endorsed layout plan, the number of classrooms of MKSHK at the Austin Tower premises is 8 that can accommodate a maximum of 119 students and 8 teachers/staffs. EDB will issue in due course a certificate of accommodation regarding the actual number of students that are allowed to be accommodated based on DH’s advice;
- (c) a new round of consultancy study commissioned by EDB about the provision of international school places at primary and secondary levels in Hong Kong has been completed in February 2017. According to the projections, there will be no shortfall in international school places at primary and secondary levels in the

coming seven school years starting from 2016/17, except a small shortfall of about 150 international school places at primary level in the 2016/17 school year; and

On s.16 application

- (d) application should be made to Education Bureau for licensing of the school at the Premises under the Education Ordinance Cap. 279;
- (e) the Premises is not designed for school use, the EDB could only grant registration to a proposed school subject to the provision of the following documents:
 - (i) clearance from the Board, LandsD, BD, Fire Services Department, etc. in respect of the proposed school use. It cannot be assumed that the proposed school will be successfully registered even if clearance from the Board is given; and
 - (ii) a completed Form 1 entitled 'Application for Registration of a School' attached with other necessary documents/details such as proposed syllabus, timetable, tuition fees, application(s) for manager registration and documentary proof of the right to use the relevant premises, such as tenancy agreement, rental receipts, etc;
- (f) the crude assessment is that the public primary school places in Kowloon City District (including the Hung Hom area) is generally in balance up to 2024; and
- (g) no comment on the temporary nature of the school application.

Lands Administration

5.2.2 Comments of the DLO/KW, LandsD:

On review application

- (a) regarding the public comments on the proposed lay-by and loading/unloading arrangement being inconsistent with Deed of Mutual Covenants (DMC), DMC is a private agreement between the co-owners governing their reciprocal rights and obligations in respect of the development. Government is not in privity to the DMC. The matter shall be settled by the applicant with the lot owner(s).

On s.16 application

- (b) no objection to the application;
- (c) the Premises falls within KIL No. 11111. Details of the lease conditions are in Appendix IV of **Annex A**;

- (d) due to the reduction in the total existing GFA for retail use (since part of such GFA is converted to school use), the total resultant numbers of parking spaces, loading/unloading spaces and lay-bys to be provided within the lot will be in contravention of the lease requirements. The lot is held under multiple ownership and the applicant may need to establish its legal right and obtain the written consent/ permission from the lot owner(s) to use or provide the parking spaces, loading/unloading spaces and lay-bys at the proposed locations; and
- (e) if the application is approved by the Board, the lot owner has to apply for a lease modification or temporary waiver to implement the proposed car parking, loading/unloading and lay-by arrangements. However, there is no guarantee that such application will be approved. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord as its sole discretion. If such application is approved, it will be subject to such terms and conditions, including the payment of a premium or waiver fee and administrative fee as may be imposed by LandsD.

5.3 The following Government departments have no further comments on the review application and maintain their previous views on the section 16 application. The main views are recapitulated as follows:

Traffic

5.3.1 Comments of Commissioner for Transport:

- (a) no adverse comment on the application provided that the following traffic mitigation measures as submitted will be implemented by the applicant:
 - (i) adoption of staggered school hours;
 - (ii) implementation of mandatory school bus policy and deployment of school buses with a minimum seating capacity of 28;
 - (iii) the use of proposed lay-bys for pick-up/set-down activities; and
 - (iv) submission of bi-monthly monitoring reports on the implementation of the proposed traffic mitigation measures stated in (i) to (iii) above.
- (b) it is envisaged that with the measures implemented, the proposed school would not have adverse traffic impact on the nearby public road network; and

- (c) further review on the ancillary parking facilities for other office and retail uses of the Premises was made and it was concluded that the ancillary parking, loading and unloading provisions would not be affected.

Harbourfront Aspect

5.3.2 Comments of the Assistant Secretary (Harbour) 1, Development Bureau (AS(H)1, DEVB):

- (a) as long as the provision of the proposed temporary school would not affect the operation of existing waterfront promenade and its future refurbishment, there is no particular objection to the application; and
- (b) the applicant consulted Harbourfront Commission's Task Force on Harbourfront Developments in Kowloon, Tsuen Wan and Kwai Tsing on 19.9.2017. The Task Force's views were summarised in a letter and conveyed by AS(H)1, DEVB to PlanD on 21.9.2017 after the paper for s.16 planning application was issued (**Annex H**). Those views were presented to MPC at the meeting on 22.9.2017 and are summarised below:
 - (i) in general, school use would help provide a harbourfront with diversified and vibrant uses, however, Members of Task Force raised concerns in terms of vibrancy, traffic, safety and design on the application;
 - (ii) the area concerned was not planned for schools, and the existing building should be used for providing food and beverage and retail services that could attract more patrons to the promenade and bring vibrancy to the waterfront;
 - (iii) the MLP did not include suitable planning to cater for the proposed school. It would give rise to other implications such as school-related vehicular traffic;
 - (iv) since the building adopted an open design, suitable measures should be put in place to ensure the security and safety of young students; and
 - (v) there was not sufficient space in the building to provide adequate facilities such as sports ground or play area for the young students, and the proposed school was not well integrated with the nearby land uses.

District Officer's Comments

5.3.3 Comments of the District Officer (Kowloon City), Home Affairs Department:

it is noted that PlanD has directly consulted relevant Kowloon City District Council (KCDC) members, the Hung Hom Area Committee as well as management committees, management companies of buildings, operators, and residents of buildings near to the Premises. Their comments, if any, should be considered.

- 5.4 The following Government departments maintain their previous views of having no objections or no comments on the application:

No Objections (see their comments in paragraph 9 of Annex A)

- (a) Director of Environmental Protection;
- (b) Director of Fire Services; and
- (c) Chief Building Surveyor/Kowloon, Buildings Department.

No Comments

- (d) Director of Leisure and Cultural Services;
- (e) Commissioner of Police;
- (f) Chief Highway Engineer/Kowloon, Highways Department;
- (g) Chief Engineer/Construction, Water Supplies Department; and
- (h) Chief Engineer/Mainland South, Drainage Services Department.

6. Public Comments Received During Statutory Publication Period

- 6.1 A total of 19 public comments were received on the section 16 application, with 13 supporting, 1 providing views and 5 objecting to the application. Details are in paragraph 10 of **Annex A**.
- 6.2 On 17.11.2017, the review application was published for public inspection. During the first three weeks of the public inspection period which ended on 8.12.2017, a total of 168 comments were received. The comments included 150 supporting/in favour, 2 raising objection and 16 providing views. A full set of the public comments is deposited at the Secretariat of the Board for Members' reference. Some examples of supporting comments, objecting comments, and comments providing views are at **Annexes F(i) to F(iii)** respectively. Their major views are summarised in the following paragraphs:

Supporting

- 6.3 They are submitted by MKSHK staff, MKSHK school parents, The British Chamber of Commerce in Hong Kong, UK Department for International Trade, British Consulate General, local residents, prospective expats and individual members of the public. Their main reasons are:
- (a) the proposed new school would enhance access to a high quality British education which will benefit the local and international community, attract expats to reside in Hong Kong and bring business opportunities to the immediate surrounding and the territory;
 - (b) the proposed school will meet the district and territorial demand for private school / international curriculum schools;

- (c) “Hong Kong 2030+: Towards a Planning Vision and Strategy Transcending 2030” has set out the key objective of nurturing and attracting talents, which can be met by offering diverse lifestyle and supporting facilities (e.g. international school). Rejection of the application is in contrary to this mission;
- (d) the temporary school premises plays an important role in the long-term development strategy of MKSHK in the coming years. Approval of the application would enable the enrolled students to continue their studies at a well-designed campus environment; and
- (e) reasons for rejection of the application are absurd and illogical as there are already too many similar dining experiences around the Tsim Sha Tsui area. Residents of Kowloon do not need more retail and dining outlets but a school is in high demand.

Opposing

6.4 They are submitted by an individual and the TST Residents Concern Group for the following main reasons:

- (a) the One Harbourgate development has clearly defined uses for office and the two low-blocks for shop/food and beverages uses. It is intended to provide essential services for the growing local community and workers at the offices, and visitors of the waterfront; and
- (b) the proposed school does not provide outdoor recreational facilities for its students. If the students use the waterfront promenade as play area, it may interfere with other users of the waterfront and there are safety concerns.

Providing Views

6.5 They are submitted by individuals for the following main reasons:

- (a) the proposed use of the driveway and three loading/unloading space/ lay-bys on G/F for school bus lay-bys contravene the approved carpark layout plan and the DMC;
- (b) under the DMC, the loading and unloading spaces/ lay-bys on G/F are common areas for loading and unloading good vehicles and for picking up/setting down of passengers from motor vehicles (including taxis) by the owners and occupiers of the development and their bona fide visitors or invitees. Any changes to the required provision and car park layout should be approved by Director of Lands and the Building Authority; and
- (c) the Manager of the DMC should not allow breach of provision of the DMC and land grant and any conversion of the common areas for other uses requires approval of the Owners’ Committee.

7 **Planning Considerations and Assessment**

- 7.1 The application is to seek planning permission to use the eastern 2-storey block in One Harbourgate for temporary school (private primary school) use for five years. One Harbourgate comprises two 14-storey office blocks with ground floor shops along Hung Luen Road and two 2-storey blocks for shop and dining uses abutting the Hung Hom Promenade.
- 7.2 According to the Notes of the OZP, the planning intention of the “CDA(2)” zone, covering the Premises, is for retail and office use. According to the planning brief, the “CDA(2)” zone is for retail (including dining) and office use and the intention is to allow for alfresco dining to enhance attractiveness and vibrancy of the waterfront promenade. In addition, under the approved MLP and the approved building plans, the Premises is for ‘eating place/shop and services’. If the Premises is converted for school use, it will fall short of achieving the planning intention, especially during evening time and weekends.
- 7.3 At the meeting held on 22.9.2017, MPC rejected the application for two reasons (a) the application is not in line with the planning intention of the “CDA(2)” and should not be allowed even on a temporary basis; and (b) undesirable precedent.

Not in line with Planning Intention

- 7.4 In response to rejection reason (a), the applicant reiterated that the temporary nature of the proposed school would not affect the long term planning intention of the “CDA(2)” zone as the use is only for five years and renewal of the planning permission after 5-year period is not necessary as the permanent city campus at Austin Tower will be ready in around 2022. The applicant considered that the proposed school use is not incompatible with surrounding land uses and would create opportunity for students and their family to bring vibrancy to the waterfront and also bring business opportunities to both Hung Hom and Hong Kong.
- 7.5 As shown in the approved MLP, there is a clear planning intention to provide retail and dining facilities in the two 2-storey blocks to enhance the vibrancy and attractiveness of the adjoining Hung Hom waterfront. The concerned building was designed and approved for such uses as reflected in the building plans. As such, the proposed school use is considered not in line with the planning intention. As previously raised by MPC, there was also concern that the proposed school use would create constraint on the use of the other low-rise block within One Harbourgate. The Task Force of the Harbourfront Commission also cast doubt on the suitability of the Premises for school use. The applicant has not provided additional and convincing arguments in the review application to address these concerns, and the school is not acceptable even on a temporary basis. The Premises should be retained for shop and restaurant uses accessible to the general public so as to enhance the attractiveness and vibrancy of the Hung Hom waterfront.

Undesirable Precedent

- 7.6 In response to rejection reason (b), the applicant quoted three cases where planning permission was granted for school use in commercial portions of development under “CDA” zones as follows:

Application	Applied Use	Location	Approval Date
A/I-TCTC/16	School (International Primary School)	G/F, Seaview Crescent, No. 8 Tung Chung Road	1.3.2002 (lapsed)
A/I-TCTC/47	Temporary School (International Primary School) for 5 years),	Tung Chung	23.5.2014
A/TM-LTY Y/235	Proposed School (Kindergarten and Nursery)	The Sherwood, 8 Fuk Hang Tsuen Road, Lam Tei	1.6.2012

- 7.7 Application Nos. A/I-TCTC/16 and A/I-TCTC/47 are both for proposed international primary school within the commercial area (for shop and services uses) at the podium ground floor of the clubhouse building of a residential development in Tung Chung. The premises are zoned “CDA” in the Tung Chung Town Centre Area OZP and the planning intention is for comprehensive residential and commercial uses with the provision of open space and other supporting facilities. The former application was approved on permanent basis in 2002 but the planning permission lapsed in 2005 as the proposal has not been implemented. The latter is on a temporary basis for a period of 5 years (to expire in 2019) and was for regularisation of a primary school operating without registration. Whilst there was concern about suitability of the premises for school use, the Board noted that the proposed school use was generally in line with the planning intention of that “CDA” and EDB’s advice that there was acute demand for international school places in Tung Chung, and considered that the school use could be tolerated on a temporary basis.
- 7.8 As for application No. A/TM-LTY Y/235, it involved a proposed school (kindergarten/nursery) use at the retail podium of an existing residential development with commercial and community uses zoned “CDA” in the Lam Tei and Yick Yuen OZP. The planning intention of that “CDA” is for residential use with provision of commercial, open space and other supporting facilities. When the Board approved the application in 2012, it noted that part of the application site was already designated for kindergarten/nursery use on the approved MLP and the application to extend the kindergarten/nursery to some areas that were originally designated for retail use on the approved MLP was in line with the planning intention of that “CDA”.
- 7.9 The above applications quoted by the applicant is not applicable for consideration of the subject application. The specific planning intention of the subject Premises in the “CDA(2)” zone is for retail (including dining) use to enhance attractiveness and vibrancy of the waterfront. None of the “CDAs” in the quoted cases have such unique planning intention and those applications were generally considered to be in line with the planning intention to support the residential developments.

The Board also considered the temporary school use at Tung Chung could be tolerated to meet the acute demand for international school places in Tung Chung at the time; this is not applicable to the subject case as SED has advised that there will be no projected shortfall in international school places in the Territory in the coming seven years starting from 2016/17, except a small shortfall of about 150 international school places at primary school level in the past 2016/17 school year.

- 7.10 The Applicant also quoted planning applications approved for permanent educational/school uses (mainly premise-based tutorial schools) in commercial buildings in Hung Hom (see paragraph 4.3 of **Annex E**). These cases are considered irrelevant to the subject case as those sites/premises are all within “R(A)4” zones with different planning intention as compared to the subject “CDA” and the planning considerations for tutorial school applications are different from the subject case. Regarding other private schools within retail premises quoted by applicant (see paragraph 4.4 of **Annex E**), they are always permitted within “R(A)” zoning in the respective OZPs.

Applicant’s responses to other concerns of MPC

- 7.11 Regarding the lack of floor area and outdoor activity area for a standard primary school, the applicant’s justifications are summarised in paragraph 3(i) above. Regarding the concern on continuous renewal of the temporary planning permission, the MKSHK’s plan is to establish a permanent city campus at Austin Tower in 2022. EDB has recently given provisional registration to MKSHK for operation of a preparatory school thereat as summarised in paragraph 5.2.1(a) and (b) above.

Public Comments

- 7.12 Majority of the public comments were submitted by MKSHK staff and school parents who supported the application for the provision of quality education for the community. While the establishment of international schools in Hong Kong was welcomed, the Premises was considered not suitable location for school use. The views that the area does not need more retail and dining outlets are not substantiated and contrary views are received in the public comments.
- 7.13 Regarding the opposing comments on ground of planned intention for the subject Premises for shop/food and beverage uses, the assessment in paragraphs 7.4 and 7.5 above are relevant.
- 7.14 In respect of the concern that the proposed arrangement to use the loading and unloading spaces/ lay-bys on G/F for temporary school bus lay-bys contravenes the DMC, in the s.16 stage, the applicant advised that consent of all property owners have been obtained for the arrangement (Annex F of Appendix 1d in **Annex A**). These public comments relating to the DMC were forwarded to the applicant but no further response has been provided in this regard. Nevertheless, as pointed out by DLO/KW, LandsD, DMC is a private agreement between the co-owners governing their reciprocal rights and obligations in respect of the

development. Government is not in privity to the DMC and the matter shall be settled by the applicant with the lot owner(s).

8 **Planning Department's Views**

8.1 Based on the assessment made in paragraph 7 above, the Planning Department does not support the review application for the following reasons:

- (a) the application is not in line with the planning intention of the "Comprehensive Development Area(2)" zone which is for retail and office uses and the intention to provide shop use at the premises to enhance the attractiveness and vibrancy of the Hung Hom waterfront, and should not be allowed even on a temporary basis; and
- (b) approval of the application will set an undesirable precedent for similar applications in the area. The cumulative effect of approving such similar applications will affect the attractiveness and vibrancy of the Hung Hom waterfront.

8.2 Should the Board decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of 5 years, as applied for, until 2.2.2023. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the implementation of the traffic mitigation measures, including staggered school hours, mandatory school bus policy with deployment of minimum 28-seater buses, and pick up/set down at designated lay-bys during the school operation period, as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (b) the submission of bi-monthly monitoring reports on the implementation of the proposed traffic mitigation measures as stated in condition (a) above during the school operation period, as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (c) the provision of water supply for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board before operation of the school;
- (d) if any of the above planning conditions (a) or (b) is not complied with during the school operation period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and

- (e) if planning condition (c) is not complied with before operation of the school, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Annex G**.

9 **Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the MPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

10 **Attachments**

Annex A	MPC Paper No. A/K9/269A
Annex B	Extract from Minutes of the MPC Meeting held on 22.9.2017
Annex C	Letter to the Applicant from the Secretary, Town Planning Board dated 13.10.2017
Annex D	Applicant's letter dated 2.11.2017 requesting for review of MPC's decision
Annex E	Applicant's letter dated 14.11.2017
Annex F	Samples of Public Comments
Annex G	Suggested Advisory Clauses
Annex H	Letter from Secretary, Task Force on Harbourfront Developments in Kowloon, Tsuen Wan and Kwai Tsing, Harbourfront Commission dated 21.9.2017
Drawings R-1 to R-7	Plans submitted by the Applicant at the s.16 Application
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3 to R-6	Site Photos
Plan R-7	Location Plan of MKSHK's Permanent City Campus at Austin Tower