

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/13

- Applicant** : 陳連桂先生 represented by 鄧港中先生
- Site** : Lot 1499 in D.D. 78, Kaw Liu Village, Ta Kwu Ling North, New Territories
- Site Area** : About 1,410 m²
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
- Zoning** : “Recreation” (“REC”)
- Application** : Proposed Temporary Eating Place and Shop and Services (Convenience Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place and shop and services (convenience store) for a period of three years (Plan A-1). The Site falls within an area zoned “REC” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2. According to the Notes of the OZP, ‘eating place’ and ‘shop and services’ are Column 2 uses under the “REC” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 The Site is accessible from Lin Ma Hang Road via a local track in the south (**Plan A-2**). The proposed development will provide one single-storey structure of about 5m in height with a total floor area of about 127.44 m² within the Site. The proposed structure would be used for kitchen (about 28.32 m²), storeroom (about 14.16 m²) and eating place cum convenience store (about 84.96 m²). A total of 25 private car parking spaces (measuring 5m x 2.4m each) and 5 parking spaces for vehicles not exceeding 5.5 tonnes (measuring 8m x 3.5m each) will be provided at the central and southern parts of the Site respectively. The operation hours of the Site are between 8:00 a.m. and 6:00 p.m. from Mondays to Sundays including public holidays. The site layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application Form with attachments received on 8.6.2018 (Appendix I)
- (b) Supplementary information received on 12.6.2018 (Appendix Ia)
- (c) Email received on 19.7.2018 requesting for deferment of consideration of the application (Appendix Ib)
- (d) Further information (FI) received on 2.10.2018 & 3.10.2018 (Appendix Ic)

1.4 At the request of the applicant (Appendix Ib), the Rural and New Town Planning Committee (the Committee) of the Board agreed on 3.8.2018 to defer making a decision on the application for two months pending the preparation of FI to address the departmental comments. The applicant submitted FI on 2.10.2018 and 3.10.2018 (Appendix Ic). The application is re-scheduled for consideration by the Committee on 16.11.2018.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form at Appendix I. They can be summarized as follows:

- (a) due to opening of the frontier closed area and the ongoing construction project at Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP), there has been a significant increase of workers in the Ta Kwu Ling area;
- (b) there is no safe and hygienic eating place and convenience store in the vicinity such that the construction workers and local residents have to commute between Ta Kwu Ling area and Fanling/ Sheung Shui, resulting severe in traffic congestion problems;
- (c) the proposed development under application at the Site is temporary in nature and the location is convenient for all people thus would alleviate the traffic problem; and
- (d) the convenience store would be operated like local provisions store and the operation hours would be from 8:00 a.m. and 6:00 p.m. from Mondays to Sundays including public holidays.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Ta Kwu Ling District Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department, the Site is not involved in any active enforcement case under the Town Planning Ordinance.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Application**

6.1 There is one similar application (No. A/NE-TKLN/6) for temporary retail shop, canteen and ancillary office for a period of three years within the “REC” zone in the Ta Kwu Ling North area. The application was approved with conditions by the Board on review on 13.4.2018 mainly on the grounds that the development could provide catering services to meet the needs of the construction workers within walking distance to the LT/HYW BCP; the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse departmental comments.

6.2 Details of the similar application area at **Appendix II** and its location is shown on **Plan A-1**.

7. **The Site and Its Surrounding Areas** (Plans A-1 to A-2, A-3a & A-3b and A-4)

7.1 The Site is:

- (a) flat, hard-paved and mostly vacant with a few converted containers on Site; and
- (b) accessible from Lin Ma Hang Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is situated in between the Lin Ma Hang Road widening works in the west and the associated road works for LT/HYW BCP in the east (**Plans A-1 and A-2**);
- (b) to the immediate north are a watercourse and vegetated land; and to the further north is the works area for the LT/HYW BCP (**Plans A-2 and A-3b**);
- (c) to the south and further south are a local track leading to sites used for parking of vehicles and fallow agricultural land (**Plan A-2**); and
- (d) to the southwest across Lin Ma Hang Road is Kaw Liu Village (**Plans A-1**).

8. Planning Intention

The planning intention of the “REC” zone in the Ta Kwu Ling North area is intended primarily for low-density recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the low-density recreational developments may be permitted subject to planning permission.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, Lands D):

- (a) the Site comprises private lot No. 1499 in D.D. 78. The lot is an Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access;
- (b) it is noted that unauthorized structures are erected on the lot which is not acceptable under the lease conditions. This office reserves the right to take necessary lease enforcement actions against the above irregularities; and
- (c) if the planning application is approved, the owner(s) of the lot concerned shall apply to his office for a Short Term Waiver (STW) to cover all the proposed structures on Site. The application for STW will be considered by Government in its landlord’s capacity and there is no guarantee that it will be approved. If the STW is approved, the commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by his office.

Traffic

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

- (a) the vehicular access between Lin Ma Hang Road and the Site is not managed by TD. The applicant shall be responsible for the management and maintenance of the vehicular access;
- (b) the width of the Site access should be no less than 7.3m;
- (c) the applicant shall provide justifications for the proposed 25 parking spaces for private car and 5 loading/ unloading spaces for goods vehicles at the Site by advising the estimated traffic flow;
- (d) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site and manoeuvring within the Site;

- (e) the applicant shall advise the management/ control measures to be adopted for the Site to ensure no queuing of vehicles outside the Site;
- (f) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (g) he objects to the application unless the applicant could satisfactorily address his concerns.

9.1.3 Comments of the Division Commander (Ta Kwu Ling), Hong Kong Police Force (DVC TKLDIV, HKPF):

- (a) he objects to the application; and
- (b) there is very heavy traffic flow on Lin Ma Hang Road. The proposed use under application near Lin Ma Hang Road would inevitably have adverse effects on the traffic flow there.

Environment

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

- (a) as no domestic structure was found within 100m from the Site boundary and the application is temporary in nature, the applicant is advised to follow EPD's latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites";
- (b) it is noted that there is no existing public sewer in the vicinity of the Site, which is outside Water Gathering Ground. As proposed by the applicant that septic tank and soakaway (STS) system will be provided for on-site sewage treatment/ disposal facilities to handle the sewage and wastewater generated from the proposed development, the applicant is advised that STS system may be acceptable provided that all relevant requirements in ProPECC PN 5/93 are met in designing, operating and maintaining the STS system. The applicant should also be reminded to observe relevant pollution control legislations such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc. during construction and operation stage of the proposed use;
- (c) as there is a watercourse located to the immediate north of the Site (**Plan A-2**), the applicant is advised to put in place necessary precautionary/ pollution control measures to prevent any pollution of nearby natural stream/ water courses during construction and operation stages of the proposed use; and
- (d) there was no substantiated environmental complaint against the Site during the past three years.

Landscape Aspect

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

- (a) she has reservation on the application from the landscape planning perspective;
- (b) according to the latest aerial photo of 2017 (**Plan A-3b**), the Site is situated in an area of disturbed rural landscape character comprising of farmlands (mostly abandoned), large areas of scrubland with tree groups and public works areas. Her site record dated 22.6.2018 noted that the Site was hard paved without vegetation. Aerial photo of 2015 (**Plan A-3a**) reveals that the area on both sides of Lin Ma Hang Road was rather intact and covered with natural vegetation. Compared with the aerial photo of 2017, it is noted that vegetation clearance in large aforesaid areas (including the Site and proposed vehicular access) have been taken place;
- (c) the approval of the application would set an undesirable precedent to encourage similar vegetation removal (including intact scrubland and tree groups within “REC” zone) prior to obtaining planning permission. The cumulative effect may further degrade the landscape character in the area and jeopardize the potential for future recreation development from the landscape planning perspective. Despite the submitted landscape proposal proposed continuous tree planting along the entire site boundary, some are in conflict with the development layout and not practicable. The applicant should consider adjusting the structures and car parking area so that there are adequate clearance distance (i.e. 3m from structures and 1m from drainage channels) to achieve continuous tree planting along the site boundary for screening purpose; and
- (d) should the application be approved by the Board, approval conditions on the submission and implementation of landscape proposal are recommended.

Drainage

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

- (a) he has no objection to the application from the public drainage point of view;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Building Matters

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

- (a) if any existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorised under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
- (b) before any new building works (including containers/open sheds of temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (c) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (d) if the proposed use under application is subject to the issue of a licence, the applicant should be reminded that any existing structures on the 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;
- (e) in connection with (b) above, the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the B(P)Rs respectively; and
- (f) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined under Regulation 19(3) of the B(P)Rs at the building plan submission stage.

Water Supply

9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Fire Safety

9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) he has no objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction. Emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by Buildings Department; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Nature Conservation

9.1.10 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) she has no adverse comment on the application from nature conservation point of view as the Site had been paved and disturbed. It is noted that a watercourse is located to the immediate north of the Site (**Plan A-2**); and
- (b) should the application be approved, the applicant should be reminded to perform good site practice so as to prevent debris and surface run off from polluting the watercourse nearby.

Food and Environmental Hygiene

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

- (a) he has no objection to the application;
- (b) relevant food licence/ restricted food permit should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). His detailed comments are at **Appendix III**;
- (c) no environmental nuisance should be generated to the surroundings in connection with the operation of any commercial/ trading activities; and
- (d) any waste generated from the commercial/ trading activities is regarded as trade waste, 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.

Project Interface

9.1.12 Comments of the Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD):

- (a) he has no comment on the application from project interface point of view; and

- (b) the LT/HYW Connecting Road including the associated Lin Ma Hang Road widening works (Ping Che Road to Tsung Yuen Ha Section) will be substantially completed by end December 2018.

District Officer's Comments

- 9.1.13 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

the incumbent North District Council (NDC) member of subject constituency has no comment on the application while the Ta Kwu Ling District Rural Committee does not reply to the consultation.

- 9.2 The following Government departments have no comment on / no objection to the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Senior Manager (Capital Works), Innovation and Technology Commission (SM(Capital Works), ITC); and
- (d) Chief Town Planner/ Studies and Research, Planning Department (CTP/SR, PlanD).

10. Public Comments Received During Statutory Publication Period

On 15.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received (**Appendix IV**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining public comment submitted by an individual raises objection to the application mainly on the grounds that the application seems to legitimize illegal parking of vehicles and brownfield operations; and the proposed development is not in line with the planning intention of "REC" zone and they are incompatible with the surrounding land uses.

11. Planning Considerations and Assessments

11.1 The proposed temporary eating place and convenience store under application falls entirely within an area zoned "REC" on the OZP (**Plan A-1**). The proposed development is not in line with the planning intention of the "REC" zone, which is primarily for low-density recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. The applicant has not provided any strong justifications in the submission to merit a departure from the planning intention of "REC" zone, even on a temporary basis.

11.2 The Site is located in between the Lin Ma Hang Road widening works in the west and the associated roads works for LT/HYW BCP in the east (**Plan A-1**). The proposed development is not entirely incompatible with the surrounding environment. Nevertheless, CTP/UD&L advises that the Site is situated in area of disturbed rural landscape character comprising of farmlands (mostly abandoned), large areas of

scrubland with tree groups and public works areas (**Plan A-3b**). The proposed landscape proposal with continuous tree planting along the Site boundary is in conflict with the proposed site layout and is not practical (**Drawing A-3**). She has reservation on the application from the landscape planning perspective. Approval of the application would set an undesirable precedent for similar applications in the “REC” zone that the cumulative effect of approving such similar applications would result in further degradation of the landscape character of the area and jeopardize the potential for further recreation development from the landscape planning perspective. DAFC and DEP have no adverse comment on the application and advise that the applicant should perform good site practice and adopt necessary precautionary/ pollution to prevent polluting nearby watercourse during construction and operation of the proposed development.

- 11.3 C for T does not support the application as the applicant has not provided information on the estimated traffic flow, justifications for the proposed parking spaces, relevant satisfactory management/ control measures, traffic arrangement and vehicle manoeuvring within the Site and provision and management of pedestrian facilities. HKPF also objects to the application as the proposed development would worsen the traffic situation on Lin Ma Hang Road. In this regard, the applicant has failed to demonstrate in the submission that there is no adverse traffic impact arising from the development. Other relevant Government departments consulted, including CHE/NTE of HyD, PM(N) of CEDD, D of FS, DEMS, D of WS and DFEH have no adverse comment on or no objection to the application.
- 11.4 The Site is not subject of any previous planning application, whereas one similar application for temporary retail shop, canteen and ancillary office for a period of three years (No. A/NE-TKLN/6) was approved with conditions by the Board on review on 13.4.2018 on the grounds that the development could provide catering services to meet the needs of the construction workers within walking distance to the LT/HYW BCP; the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse departmental comments including TD and HKPF. However, for the subject application, there are adverse departmental comments from TD and HKPF on the traffic impact arising from the proposed development. The planning circumstance of the subject application is different from the similar approved application.
- 11.5 There is an adverse public comment on the application mainly on the grounds that the proposed temporary eating place and convenience store are not in line with the planning intentions of “REC” zone and incompatible with surrounding land uses. Approval of the application would set an undesirable precedent for similar applications in the area. In this regard, relevant Government departments’ comments and the planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and public comments in paragraph 10 above, the Planning Department does not support the application for the following reasons:
- (a) the proposed temporary use under application is not in line with the planning intention of the “REC” zone for the Ta Kwu Ling North area which is primarily

for low-density recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission to justify for a departure from the planning intention, even on a temporary basis; and

- (b) the applicant fails to demonstrate in the submission that the development would not result in adverse traffic impact on the surrounding areas.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **16.11.2021**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (c) a notice should be posted at a prominent location of the Site to indicate that no medium or heavy goods vehicles exceeding 5.5 tonnes as defined in the Road Traffic Ordinance or container trailers/tractors are allowed to be parked/stored on or enter/exit the Site during the planning approval period;
- (d) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.5.2019;
- (e) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.5.2019;
- (f) in relation to (e) above, the provision of drainage facilities within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.8.2019;
- (g) the submission of proposals for fire service installations and water supplies for fire-fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.5.2019;
- (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for fire-fighting within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.8.2019;
- (i) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.5.2019;

- (j) in relation to (i) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.8.2019;
- (k) the submission of a traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 16.5.2019;
- (l) in relation to (k) above, the implementation of traffic improvement measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 16.8.2019;
- (m) the submission of the design of septic tank and soakaway system and/or other wastewater treatment facilities within 6 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 16.5.2019;
- (n) in relation to (m) above, the implementation of the design of septic tank and soakaway system and/or other wastewater treatment facilities within 9 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 16.8.2019;
- (o) if any of the above planning conditions (a), (b) or (c) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (p) if any of the above planning conditions (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (n) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

13. Decision Sought

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

14. Attachments

Appendix I	Application Form with attachments received on 8.6.2018
Appendix Ia	Supplementary Information received on 12.6.2018
Appendix Ib	Email received on 19.7.2018 requesting for deferment of consideration of the application
Appendix Ic	Further Information received on 2.10.2018 and 3.10.2018
Appendix II	Similar s.16 Application within “REC” and “GB” Zones on the approved Ta Kwu Ling North Outline Zoning Plan No. S/NE-TKLN/2
Appendix III	Detailed Comments from Food and Environmental Hygiene Department
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Drainage Plan
Drawing A-3	Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and A-3b	Aerial Photos taken in 2015 and 2017
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2018**