

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/19

- Applicant** : Mr. CHEUNG Man-fai
- Site** : Lot 1527 S.A in D.D. 78, Lin Ma Hang Road, Ta Kwu Ling North, New Territories
- Site Area** : About 1,387 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 Shop and Services (Retail Shop) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail shop) for a period of five years at the application site (the Site) (**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, ‘shop and services’ is a Column 2 use under the “REC” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently vacant.
- 1.2 The Site is connected via a temporary construction access from Lin Ma Hang Road near a section of the Heung Yuen Wai Highway (**Plan A-1**). According to the applicant, the proposed development will involve the filling of land by 0.5m in depth by soil and cement. Five 2-storey converted containers (12.19m (L) x 2.44m (W) x 5.18m (H)) will be placed along the northern and eastern boundaries of the Site with a total floor area of 297.44m² for retail shop on the ground floor and office & warehouse on the first floor. A total of 10 private car parking spaces (measuring 5m x 2.5m each) and one loading/unloading space for heavy goods vehicle (11m x 3.5m) will be provided within the Site. An access point is proposed at the southwestern boundary of the Site. The operation hours are from 9 a.m. to 7 p.m. from Mondays to Fridays and from 9 a.m. to 9 p.m. on Saturdays and Sundays. 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 26.2.2019 (Appendix I)
- (b) Supplementary information received on 1.3.2019 (Appendix Ia)

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 Ia**. They can be summarized as follows:

- as the Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) is due to open soon, it is expected that significant amount of visitors would come to Hong Kong for shopping in the Ta Kwu Ling area. Favourable consideration should be given to this application.

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

The applicant is one of the “current land owners” and 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 obtaining consent from the concerned land owner. 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 are 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-3 and A-4)

7.1 The Site is:

- (a) a vacant wetland covered with vegetation; and
- (b) currently connected via a temporary construction access from Lin Ma Hang Road near the Heung Yuen Wai Highway.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is situated in the vicinity of the associated road works for Heung Yuen Wai Highway in the west (**Plans A-1 and A-2**). According to PM(N) of CEDD, the under-bridge area adjoining the Site would be planting area with no provision of vehicular access;
- (b) to the north and further north are a watercourse and some active and fallow agricultural land (**Plan A-2**);
- (c) to the south and further south are some vacant, active and fallow agricultural land (**Plan A-2**); and
- (d) to the east and further east are some wetland and land reserved for the village development of New Chuk Yuen Village respectively (**Plans A-1 and A-2**).

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. 1527 S.A in D.D. 78 which is an Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement for acquiring access. The Government

shall accept no responsibility in such arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;

- (b) the Site is adjoining the project boundary of “PWP Item No. 5013GB – Liantang/Heung Yuen Wai Boundary Control Point and Associated Work”; 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) he objects to the application from traffic engineering point of view;
- (b) the applicant has not provided any information on the vehicular access to the Site while it is noted that the Site is currently only connected via a temporary construction access from Lin Ma Hang Road near a section of Heung Yuen Wai Highway; and
- (c) should the application be approved, approval conditions on the submission and implementation of traffic impact assessment are recommended.

Environment

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

- (a) as 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 (CoP)”;
- (b) in view that no toilet facilities and canteen are proposed, adverse impacts on water quality and sewerage infrastructure are not expected from the Site;
- (c) should the application be approved and should there be any sewage generated from the proposed use, the applicant should be advised to strictly follow the provisions in the CoP that proper on-site sewage treatment and disposal facilities should be provided. Septic tank and soakaway (STS) system may be acceptable provided that all relevant requirements in ProPECC PN 5/93 are met on the design and construction of STS system, in particular the percolation test and the minimum distance requirements, which should be duly certified by an Authorized Person (AP); and

- (d) should the application be approved, the applicant should also be reminded of his obligation to strictly comply with all environmental protection/pollution control ordinances, in particular Water Pollution Control Ordinance and Waste Disposal Ordinance, and to follow relevant measures given in the EPD's latest CoP, during construction and operation stages of the proposal;
- (e) the applicant should also be reminded that necessary precautionary/pollution control measures should be put in place to prevent any pollution of nearby waterbodies/ watercourse during construction and operation stages of the proposed use.

Landscape Aspect

9.1.4 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) based on aerial photo of 2017 (**Plan A-3**), the site is situated in an area of rural landscape character surrounded by farmland, clustered tree groups and some temporary structures. An existing watercourse is found to the further northwestern and northern part of the Site (**Plan A-2**). According to her site survey in March 2019, the Site consisted of marshy areas and patches of wetland vegetation;
- (c) based on the information provided by the applicant, the entire Site would be hard paved to accommodate the proposed development. Significant adverse impact on existing landscape resources (i.e. marshy areas and vegetation within the site) is anticipated, and the potential impact on habitat(s) for any associated wildlife and existing watercourse could not be ascertained. Besides, the existing rural landscape character of the Site would be permanently changed to a hard paved area with retail shops, which is considered incompatible with the surrounding environment. Approval of the application may encourage more similar proposed uses in the area, which would lead to degradation of the rural landscape character dominated by farmland and vegetation in the vicinity; and
- (d) should the application be approved, it is considered not necessary to impose a landscape condition as there is no major public frontage along the site boundary and clustered tree groups are found in close proximity of the Site. The effect on enhancing the quality of public realm is not apparent.

Nature Conservation

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

- (a) the Site is currently a wetland covered with aquatic plants and other vegetation (**Plan A-4**). The proposed use would lead to wetland loss. While noting that the Site falls within "REC" zone, any loss of wetland is not desirable from nature conservation point of view; and

- (b) regarding the watercourse to the north of the Site, the section adjacent to the north of the Site is inaccessible (**Plan A-2**). Nonetheless, the upper part of the watercourse near Chuk Yuen Village is with moderate water flow and the stream bed is semi-natural. Should the application be approved, the applicant should be reminded to perform good site practice in order not to pollute the watercourse nearby.

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) there is no record of submission of the proposed temporary buildings/ structures and land filling to the Building Authority;
- (b) if the proposed temporary buildings/ structures and land filling fall under building works under the Buildings Ordinance, prior approval and consent from the Building Authority is required; and
- (c) his other advisory comments are at **Appendix IV**.

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 in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Project Interface

9.1.10 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;
- (b) the under-bridge area to the west of the Site would be planting area with no provision of vehicular access to the Site; and
- (c) the Heung Yuen Wai Highway and associated road works including the associated Lin Ma Hang Road widening works (Ping Che Road to Tsung Yuen Ha Section) will be commissioned in 2019.

District Officer's Comments

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

- he has consulted the locals. The incumbent North District Council (NDC) member of subject constituency supports the application while the Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Chuk Yuen do 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); and
- (c) Division Commander (Ta Kwu Ling), Hong Kong Police Force (DVC TKLDIV, HKPF);

10. Public Comments Received During Statutory Publication Period

On 5.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received (**Appendix III**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining two public comments submitted by a villager from Chuk Yuen Village and an individual raise objection to the application mainly on the grounds that there is

no vehicular access to the Site; the proposed development would have adverse drainage impact on the surrounding area including farmland; and potential petrol leakage from vehicles on the Site.

11. Planning Considerations and Assessments

- 11.1 The proposed temporary shop and services (retail shop) 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 to the east of the associated roads works for Heung Yuen Wai Highway (**Plans A-1 and A-2**). CTP/UD&L advises that the Site is situated in area of rural landscape character surrounded by farmland, clustered tree groups and some temporary structures (**Plan A-3**). An existing watercourse is found to the further northwestern and northern part of the Site (**Plan A-2**). She has reservation on the application from the landscape planning perspective as the Site consists of marshy areas and patches of wetland vegetation. According to the submission, the entire Site would be hard paved to accommodate the proposed development. Significant adverse impact on existing landscape resources (i.e. marshy areas and vegetation within the site) is anticipated, and the potential impact on habitat(s) for any associated wildlife and existing watercourse could not be ascertained. The existing rural landscape character of the Site would be permanently changed to a hard paved area with retail shops, which is considered incompatible with the surrounding environment. Approval of the application may encourage more similar proposed uses in the area, which would lead to degradation of the rural landscape character dominated by farmland and vegetation in the vicinity. DAFC also advises that the proposed development would lead to wetland loss which is not desirable from nature conservation point of view.
- 11.3 C for T does not support the application as the Site is only connected via a temporary construction access from Lin Ma Hang Road near a section of Heung Yuen Wai Highway. The applicant has not provided information on the proposed vehicular access, the estimated traffic flow, justifications for the proposed parking spaces, relevant satisfactory management/ control measures, traffic arrangement and vehicle manouvering within the Site and provision and management of pedestrian facilities. In this regard, the applicant has failed to demonstrate in the submission that there is no adverse traffic impact arising from the development. PM(N) of CEDD also advises that the under-bridge area adjoining the Site would be planting area with no provision of vehicular access upon completion of the Heung Yuen Wai Highway and associated works. DEP has no adverse comment on the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)”, perform good site practice and adopt necessary precautionary/ pollution to prevent polluting nearby watercourse during construction and operation of the proposed development. Other relevant Government departments consulted, including CHE/NTE of HyD, D of FS, DEMS and D of WS 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. However, for the subject application, there are adverse departmental comments from TD 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 Regarding the adverse public comments as detailed in paragraph 10 above, the Government department's comments and the planning assessment 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/ecotourism. 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 5 years until **12.4.2024**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m. from Mondays to Fridays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 9:00 p.m. and 9:00 a.m. from Saturdays to Sundays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 12.10.2019;

- (d) 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 12.10.2019;
- (e) in relation to (d) 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 12.1.2020;
- (f) 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 12.10.2019;
- (g) in relation to (f) 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 12.1.2020;
- (h) 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 12.10.2019;
- (i) in relation to (h) 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 12.1.2020;
- (j) if any of the above planning conditions (a) or (b) 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
- (k) if any of the above planning conditions (c), (d), (e), (f), (g), (h) or (i) 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 IV**.

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 26.2.2019
Appendix Ia	Supplementary Information received on 1.3.2019
Appendix II	Similar s.16 Application within “REC” Zone on the approved Ta Kwu Ling North Outline Zoning Plan No. S/NE-TKLN/2
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo taken in 2017
Plan A-4	Site Photos

**PLANNING DEPARTMENT
APRIL 2019**