

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-TK/652**

<b><u>Applicant</u></b>	Mr. CHENG Tsun Chung represented by Mr. HUI Kwan Yee
<b><u>Site</u></b>	Lot 1690 S.B (Part) in D.D. 17, Lung Mei, Tai Po, New Territories
<b><u>Site Area</u></b>	About 80 m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<b><u>Zoning</u></b>	“Recreation” (“REC”)
<b><u>Application</u></b>	Proposed Temporary Shop and Services (Store) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning approval for proposed temporary shop and services (store) for a period of 3 years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “REC” on the approved Ting Kok OZP No. S/NE-TK/19. According to the Notes of the OZP, ‘Shop and Services’ use in “REC” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The proposed store involves one single-storey structure with covered area of about 29.77m<sup>2</sup> (6.1m x 4.88m) and a building height of about 3.96m at the Site (**Drawing A-1**). The opening hours of the proposed store are from 8:00 a.m. to 8:00 p.m. daily.
- 1.3 In support of the application, the applicant submitted Application Form dated 30.8.2018 with attachments (**Appendix I**).

**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) as there are many visitors in the vicinity of the Site, the applicant wants to use the Site as a temporary store to provide drinks and snacks to the visitors. The proposed use would revitalize the Site and promote tourism; and

- (b) the applicant is willing to comply with all approval conditions if imposed by the Board.

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 obtaining consent from the current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Previous Application**

There is no previous application at the Site.

5. **Similar Applications**

5.1 There are nine similar applications (No. A/NE-TK/403, 442, 457, 523, 549, 564, 592, 614 and 639) for temporary shop and services use within the same “REC” zone in the vicinity of the Site. Eight of them (applications No. A/NE-TK/403, 442, 457, 549, 564, 592, 614 and 639) were approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) between 2012 and 2018 mainly on the considerations that the proposed developments were not incompatible with the surrounding environment; would unlikely cause significant adverse impacts on the surrounding areas; and/or relatively small in scale. However, Applications No. A/NE-TK/442, 457 and 592 were subsequently revoked due to non-compliance with approval conditions. The remaining application (No. A/NE-TK/523) for a temporary restaurant and convenience store was rejected by the Committee in 2014 mainly for the reasons of being not in line with the planning intention of the “REC” zone and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding areas.

5.2 Details of the applications are summarized at **Appendix II** and their locations are shown on **Plans A-1 and A-2**.

6. **The Site and Its Surrounding Areas** (Plans A-1 and A-2 and photos on Plan A-3 and A-4)

6.1 The Site is:

- (a) hard paved; and
- (b) partly occupied by a temporary structure with two containers underneath.

6.2 The surrounding areas are predominantly rural in character with village cluster of Lung Mei at its east, barbecue site at the west, vacant land at the north and Ting Kok Road at the south. To the south on the opposite side of Ting Kok Road is Lung Mei Beach.

## 7. Planning Intention

The planning intention of the "REC" zone is intended primarily for 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 recreational developments may be permitted subject to planning permission.

## 8. Comments from Relevant Government Departments

8.1 The following Government departments have been consulted and their views on the application and public comment received are summarized as follows:

### Land Administration

8.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of Lot No. 1690 S.B. in DD. 17 which is held under the Block Government Lease demised for agricultural purpose, no structure shall be erected thereon without prior approval from LandsD;
- (c) a recent site inspection revealed that unauthorized structures were found mainly erected on the Site and adjoining Lot Nos. 1682, 1683 and 1687 SA, all in DD. 17 without LandsD's prior approval;
- (d) the applicant should be informed that there is no guarantee of right-of-way to the lot concerned or approval of Emergency Vehicular Access (EVA) thereto;
- (e) the applicant is required to obtain a written consent or else from the registered owner of the lot concerned before implementation of the applicant's proposal;
- (f) if and after planning approval has been given by the Board, the Site owner has to apply for a Short Term Waiver ("STW") for the proposed structures. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of fees as considered appropriate; and
- (g) the dimensions of the structures and other details submitted by the applicant have not been verified and the applicant is required to demonstrate the dimensions and calculation of the structures area when

the STW application is submitted.

### Traffic

#### 8.1.2 Comments of the Commissioner for Transport (C for T):

- no in-principle objection to the application from traffic engineering point of view.

### Environment

#### 8.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) no comment on the application;
- (b) the applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites'; and
- (c) there is no environmental complaint case related to the Site in the past three years.

### Drainage

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

- (a) no in-principle objection to the application from the public drainage viewpoint;
- (b) if the application is approved, a condition should be included to request the applicant to submit and implement the drainage proposal to the satisfaction of Director of Drainage Services to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no existing DSD maintained public stormwater drain available for connection in the vicinity of the proposed use. The proposed use should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from the surrounding of the Site. Any existing flow path affected should be re-provided. The proposed use should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicant/owner should maintain such systems properly and rectify the systems if found to be inadequate or ineffective during operation. The applicant/owner should also be liable for and indemnify claims and demands arising out of damage or nuisance caused by failure of the systems. Furthermore, the systems will not be managed nor maintained by DSD;
- (d) there is no existing DSD's public sewers in the vicinity of the Site; and

- (e) the applicant should take all precautionary measures to prevent any disturbance, damage, and pollution from the proposed use to any parts of the existing drainage facilities in the vicinity of the Site. In the event of any damage to the existing drainage facilities, the applicant should be responsible for the cost of all necessary repair works, compensation and any other consequences arising therefrom. For works to be undertaken outside the lot boundary, prior consent and agreement from DLO/TP and/or relevant private lot owners should be sought.

#### Water Supply

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

- (a) no objection to the application; and
- (b) for provision of water supply to the proposed use, the applicant may need to extend the 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

##### 8.1.6 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations and water supplies for fire-fighting being provided to his satisfaction; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

#### Landscape

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising of scattered tree groups and houses. Although the proposed use is not in line with the planning intention of "REC" zone, given the small scale of the proposed development, it is considered not incompatible to the surrounding environment;
- (c) the Site is hard paved and occupied with temporary structure. No existing tree is found within the Site. Adverse impact on landscape resources arising from the proposed development is not anticipated; and

- (d) should the application be approved by the Board, since there is inadequate space for landscaping within the Site, the condition for submission and implementation of landscaping proposal is not recommended.

#### Buildings Matter

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

- (a) there is no record of approval by the Building Authority (BA) for the proposed buildings/structures at the Site and he is not in a position to offer comments on their suitability for the use related to the application; and
- (b) the applicant should note the followings:
  - (i) if any existing structures are erected on leased land without approval of the BD not being a New Territories Exempted House, they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the current application;
  - (ii) before any new building works (including any containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
  - (iii) for UBW erected on leased land, enforcement action may be taken by the BA 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;
  - (iv) in connection with (ii) above, the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 5 and 41D; and
  - (v) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at building plan submission stage.

#### Food and Environmental Hygiene

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

- (a) proper licence / permit issued by the Food and Environmental Hygiene Department (FEHD) is required if there is any food business / catering

service / activities regulated by DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislations for the public. Under the Food Business Regulation (Cap. 132X), a food business licence is required for the operation of the relevant type of food business listed in the Regulation. For any premises intended to be used for food business (e.g. a restaurant, a food factory, a fresh provision shop), a food business licence from the FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) shall be obtained. The application for licence, if acceptable by the FEHD, will be referred to relevant government departments such as the BD, FSD and Planning Department 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;

- (b) depending on the mode of operation, generally there are several types of food business licence/permits that the operator of a store may apply for under the Food Business Regulation :
  - (i) if food is sold to customers for consumption on the premises, a restaurant licence should be obtained;
  - (ii) if food is only prepared for sale for consumption off the premises, a food factory licence should be obtained;
  - (iii) if fresh, chilled or frozen meat is sold, a fresh provision shop licence should be obtained; and
  - (iv) if milk, frozen confections, non-bottled drinks, cut fruit etc. are to be sold, relevant restricted food permits should be obtained; and
- (c) the operator of related shop or store should take measures to prevent the existence of nuisance such as noise nuisance, pest nuisance and accumulation of refuse at the site. The refuse generated by the proposed use 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.

8.2 The following Government departments have no comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department;
- (c) Director of Electrical and Mechanical Services;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Director of Leisure and Cultural Services; and
- (g) District Officer/Tai Po, Home Affairs Department.

9. **Public Comment Received During Statutory Publication Period**

On 7.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment from an individual was received objecting to the application on the ground of undesirable precedent (**Appendix III**).

10. **Planning Considerations and Assessments**

- 10.1 The applicant seeks planning permission to use the Site for a proposed temporary shop and services (store) for a period of three years. The applied use is not in line with the planning intention of the "REC" zone which is primarily for recreational developments for the use of the general public. Nevertheless, as the proposed store is on a temporary basis for three years, it is not expected to jeopardize the long-term planning intention of the "REC" zone.
- 10.2 Situated at the western fringe of Lung Mei Village, the applied use with a site area of about 80m<sup>2</sup> is small in scale and not incompatible with the surrounding rural character comprising a mix of village houses and barbecue site (**Plans A-2 and A-3**). It is also not anticipated to cause significant adverse traffic, sewerage, drainage and landscape impacts on the surrounding areas. Concerned Government departments, including the C for T, DEP, CE/C of WSD, CE/MN of DSD, D of FS, DFEH, CBS/NTW of BD and CTP/UD&L of PlanD have no objection to / adverse comment on the application.
- 10.3 Eight similar applications No. A/NE-TK/403, 442, 457, 549, 564, 592, 614 and 639 within the same "REC" zone were approved with conditions by the Committee for a period of 3 years between 2012 and 2018 mainly on the considerations that the proposed developments were not incompatible with the surrounding environment; would unlikely cause significant adverse impacts on the surrounding areas; and/or relatively small in scale. The circumstances of the current application are similar with those of the approved cases. Regarding application No. A/NE-TK/523 for a temporary restaurant and convenience store, it was rejected by the Committee in 2014 mainly for the reasons of being not in line with the planning intention of the "REC" zone and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding areas.
- 10.4 The Site is partly occupied by a temporary structure with 2 containers underneath (**Plan A-4**). An advisory clause is recommended to remind the applicant that the planning permission, if granted by the Committee, is given to the development/uses under application and does not condone any other development/uses which currently exists on the Site and not covered by the application.
- 10.5 Regarding the public comment objecting to the application on the ground of undesirable precedent, comments of relevant Government departments and the planning assessment above are relevant.



## 11. Planning Department's Views

- 11.1 Based on the assessment made in paragraph 10 and having taken into account the public comment mentioned in paragraph 9, the Planning Department considers that the temporary shop and services (store) could be tolerated for a period of three years.
- 11.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 19.10.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 19.4.2019;
- (c) in relation to (b) above, the implementation of drainage proposal 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 19.7.2019;
- (d) the submission of a fire service installations and water supplies for fire-fighting proposal 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 19.4.2019;
- (e) in relation to (d) above, the implementation of fire service and water supplies for fire-fighting installations proposal within 9 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 19.7.2019;
- (f) if approval condition (a) is not complied with at any time during the planning approval, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice;
- (g) if any of the above planning conditions (b), (c), (d) or (e) 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; and
- (h) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

### Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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

The proposed development is not in line with the planning intention of the "Recreation" zone which is intended primarily for recreational developments for the use of the general public. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

**12. Decision Sought**

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 12.3 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.

**13. Attachments**

<b>Appendix I</b>	Application Form received on 30.8.2018 with attachments
<b>Appendix II</b>	Similar Applications
<b>Appendix III</b>	Public Comment
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos