

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/NE-TK/655

<u>Applicant</u>	Mr LAI Kin Wah represented by Mr HUI Kwan Yee
<u>Site</u>	Lots 1646 RP (Part), 1651 S.B RP (Part) and 1652 RP (Part) in D.D. 17, Lo Tsz Tin, Tai Po, New Territories
<u>Site Area</u>	About 43.68 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Recreation” (“REC”)
<u>Application</u>	Renewal of Planning Approval for Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary shop and services (real estate agency) 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 within the “REC” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission under Application No. A/NE-TK/564.
- 1.2 The Site is the subject of two previous applications (No. A/NE-TK/403 and 564) for the same use. The last application No. A/NE-TK/564 was approved with conditions by the Rural and New Town Planning Committee (the Committee) for a period of 3 years on 20.11.2015, which is valid until 20.11.2018. All the approval conditions have been complied with.
- 1.3 The applied use consists of a single-storey (3.35m high) structure with a total floor area of about 43.68m² (14.32m x 3.05m). The opening hours of the shop are from 10:00 a.m. to 8:00 p.m. daily. The Site is accessible via Ting Kok Road.
- 1.4 Compared with the last approved application (No. A/NE-TK/564), the current application is for the same use with the same major development parameters

and operation hours.

- 1.5 In support of the application, the applicant submitted Application Form with attachments received on 4.10.2018 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) planning permission for the same use was granted in November 2015 for a period of three years. Renewal application is submitted because the valid planning permission is going to expire; and
- (b) the applicant provides real estate agency services to the potential house buyers in the area along Ting Kok Road. The Site is a piece of abandoned agricultural land and the applied use would better utilize the undeveloped land in the New Territories.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B) are relevant to the application. The relevant assessment criteria are at **Appendix II**.

5. Previous Applications

5.1 The Site is the subject of two previous applications (No. A/NE-TK/403 and 564) for the same use, which were approved by the Committee with conditions for a period of 3 years on 5.10.2012 and 20.11.2015 respectively. They were approved mainly on the considerations that the proposed development on a temporary basis would not jeopardize the long-term planning intention of the “REC” zone; was not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. For the last previous application No. A/NE-TK/564 which is valid until 20.11.2018, all the approval conditions including those related to drainage and fire safety aspects have been complied with.

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

6. Similar Applications

6.1 There are eight similar applications (No. A/NE-TK/442, 457, 523, 549, 592, 614, 639 and 652) for temporary shop and services use within the same “REC” zone in the vicinity of the Site. Seven of them (Applications No. A/NE-TK/442, 457, 549, 592, 614, 639 and 652) were approved with conditions for a period of 3 years by the Committee between 2012 and 2018 mainly on the considerations that the proposed developments were of relatively small scale; not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. 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.

6.2 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2 and photos A-3 and A-4)

7.1 The Site is:

- (a) paved and currently used for the applied use with valid planning permission; and
- (b) located at the roadside of Ting Kok Road.

7.2 The surrounding areas are predominantly rural in character with village houses, barbecue areas and vacant land. To the east and northwest, there are village proper of Lung Mei and Lo Tsz Tin. To the south on the opposite side of Ting Kok Road is Lung Mei Beach.

8. Planning Intention

The planning intention of the “REC” zone is 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.

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/Tai Po, Lands Department

(DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of Lots No. 1646 RP, 1651 SB RP and 1652RP, all in D.D. 17 which are held under the Block Government Lease demised for agricultural purpose, no structure shall be erected thereon without prior approval from the LandsD;
- (c) the registered owner of the Site submitted a Short Term Waiver (STW) application to DLO/TP in respect of a structure erected on the Site (covered by the current application) and the STW application is under processing. 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
- (d) recent site inspection revealed that apart from the structure under application for real estate agency purpose, three unauthorized structures for porch, storage and electric meter box purposes were found erected on the Site and adjoining Lots No. 1651 RP and 1651 S.B ss.1, without LandsD's prior approval. The site owner is required to clear the unauthorized structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate lease enforcement action will be taken in due course.

Traffic

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

- no comment on the application from traffic engineering point of view.

Environment

9.1.3 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

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

- (a) no in-principle objection to the application from public drainage point of view;
- (b) there are existing DSD maintained public drains in the vicinity of the Site. As there is no change to the applied use, proposed layout and development parameters as compared with the previously approved scheme under Application No. A/NE-TK/564 of the same site, no further comment is made on the current application except that the existing drainage facilities on the application site shall be maintained at all times during the planning approval period; and
- (c) the applicant should take all precautionary measures to prevent any disturbance, damage and pollution from the development to any parts of the existing drainage facilities, the applicant would be held responsible for the cost of all necessary repair works, compensation and any other consequences arising therefrom.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for fire fighting being provided to the satisfaction of Fire Services Department (FSD);
- (b) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed;
- (c) in such circumstances, except where building plan is circulated under the Centralised Processing System of the Buildings Department, the applicant is required to send the relevant layout plans incorporated with the proposed FSIs to FSD for approval. In doing so, the applicant should note that:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the locations of the proposed FSIs and the access for emergency vehicles should be clearly marked on the layout plans; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of the aforesaid plans. The applicant will need to subsequently provide such FSIs according to the approved proposal.

Nature Conservation

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

- no comment on the application from nature conservation point of view as the Site is located at roadside with an existing temporary shop.

Landscape

9.1.7 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 applied use is not in line with the planning intention of “REC” zone, it is not incompatible to the surrounding environment. The Site is paved and occupied with temporary structure erected from the previous applications. No significant change is observed in the adjacent area and within the application boundary since the last application. No existing tree is found within the Site. Adverse impact on landscape character and landscape resources arising from the continual use of temporary shop and services (real estate agency) is not anticipated; and
- (c) since the footprint of existing temporary structure covered the entire site, there is no space for landscaping within the site. Should the Town Planning Board approve the application, the standard condition for submission and implementation of landscaping proposal is not recommended.

Building Matter

9.1.8 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 structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application; and
- (b) the applicant is advised to note the following points:
 - (i) if the 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 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 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.

Environmental Hygiene

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

- the applicant should take measures to prevent the existence of nuisance such as pest nuisance and accumulation of refuse at the Site.

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

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

10. Public Comment Received During Statutory Publication Period

On 12.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is for renewal of the planning permission granted under previous application No. A/NE-TK/564 for temporary shop and services (real estate agency) for a period of 3 years at the Site zoned “REC” . Although the applied use is not in line with the planning intention of the “REC” zone which is primarily intended for recreational developments for the use of the general public, approval of the application on a temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “REC” zone.
- 11.2 The applied use with a site area of about 43.68m² is small in scale and not incompatible with the surrounding rural character mainly comprising village houses, barbecue areas and vacant land (**Plans A-2 and A-3**). The Site is involved in two previous planning applications (No. A/NE-TK/403 and 564) for the same use approved with conditions by the Committee on 5.10.2012 and 20.11.2015 respectively. Also, seven similar applications (No. A/NE-TK/442, 457, 549, 592, 614, 639 and 652) for temporary shop and services use were approved with conditions by the Committee from 2013 to 2018 within the same “REC” zone (paragraph 6 and **Plan A-1** refer). Approval of the current application is in line with the Committee’s previous decisions.
- 11.3 This application is in line with the TPB PG-NO. 34B in that there has been no material change in planning circumstances of the Site and the surrounding areas since the last planning approval was granted under Application No. A/NE-TK/564 on 20.11.2015, and all the approval conditions of the last application including the submission and implementation of FSIs proposal have been complied with. No environmental complaint has been received in the past 3 years. There is also no adverse comment from relevant departments and no local objection, and there would be no adverse planning implications arising from the renewal of the planning approval. Moreover, the 3-year approval period sought is not longer than the original validity period of the previous approval and is reasonable.
- 11.4 The applied use is 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. To minimize the possible nuisance generated by the development, approval condition restricting the operations hours is recommended in paragraph 12.2 (a) below. Besides, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest ‘Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses’ in order to alleviate any potential environmental impact. Non-

compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on site will be subject to enforcement action by the Planning Authority. The technical requirements of D of FS could be addressed by approval conditions in paragraphs 12.2 (c) and (d) below.

- 11.5 There is no public comment received on the application during the statutory publication period.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 above, the Planning Department has no objection to the application.
- 12.2 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, and be renewed from 21.11.2018 until 20.11.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no night-time operation between 8:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing drainage facilities on the application site shall be maintained at all times during the planning approval period;
- (c) the submission of a fire service installations *and water supplies for fire fighting* proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2021.5.2019;
- (d) in relation to (c) above, the implementation of fire service installations *and water supplies for fire fighting* proposal within **9** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2021.8.2019;
- (e) 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
- (f) if any of the above planning conditions (c) or (d) 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 attached at **Appendix V**.

- 12.3 Alternatively, should the Committee decide to reject the application, the

following reason for rejection is suggested for Members' reference:

- the continual occupation of the Site for the development is not in line with the planning intention of the "REC" zone which is intended primarily for 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 for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 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.
- 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 and Attachments received on 4.10.2018
Appendix II	Relevant Extract of the Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B)
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Recommended Advisory Clauses
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photo