

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-SKW/104

- Applicant** : Ms CHUNG Yuk Ying
- Site** : Lot 206 R.P. in D.D. 374 and adjoining Government Land, So Kwun Wat, Tuen Mun, New Territories
- Site Area** : 174m² (including 87m² of Government land (50%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13
- Zoning** : “Green Belt” (“GB”)
- Application** : Temporary Barbecue Area for a Period of 3 Years

1. The Proposal

1.1 The applicant seeks planning permission to use the application site (the Site) for temporary barbecue area for a period of 3 years. The Site falls within an area zoned “GB” on the approved So Kwun Wat OZP No. S/TM-SKW/13 (**Plan A-1**). According to the Notes of the OZP for the “GB” zone, ‘barbecue spot’ is under Column 1 which is always permitted. However, according to the revised definitions of terms/ broad use terms used in statutory plans, ‘barbecue spot’ excludes barbecue sites which are privately owned and/ or commercially operated. As such, the proposed temporary development requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by five vacant containers with unfinished works.

1.2 The major development parameters of the proposal are as follows:

Site Area	174m ² (including Government land of 87m ²)
Total Floor Area	About 77m ²
No. of Structure - Main Structure - Portable Toilet	1 (made up by 5 converted containers) 1
Building Height (for Main Structure)	5.6m (2 storeys)

Main Uses by Floor (for Main Structure)	
- G/F	Game Rooms, Food Storage
- 1/F	Staff Resting Rooms

1.3 According to the applicant, the operation hours of the Site would be confined to 7 days a week, from 11:00a.m. to 11:30p.m. Two barbecue pits will be provided and each pit can accommodate 8 to 12 patrons. According to the applicant's FI (**Appendix Ic**), the Government land within the Site will be used for loading/unloading activities and layby and no parking spaces will be provided. The layout plan submitted by the application is in **Drawing A-1**.

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

- (a) Application form received on 16.9.2019 **(Appendix I)**
- (b) Applicant's email dated 20.9.2019 providing replacement pages of application form and layout plan **(Appendix Ia)**
- (c) Applicant's letter dated 30.9.2019 providing replacement pages of application form and layout plan **(Appendix Ib)**
- (d) Further information (FI) dated 30.10.2019 providing responses to departmental comments and enclosing revised layout plan and drainage layout plan **(Appendix Ic)**
[The FI was accepted and exempted from publication and recounting requirements.]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form (**Appendix I**) and FI (**Appendix Ic**). They can be summarised as follows:

- (a) New residential developments will be completed in the coming years but no barbecue area is provided in the area. The proposed temporary barbecue area would provide a recreational outlet to serve the residents nearby. The barbecue area will also help foster social network amongst residents.
- (b) The Site is close to MacLehose Trail. The proposed use is a desirable place for hikers to spend quality time with their families and friends together.
- (c) The Site is far away from residential developments and thus will not cause noise and air nuisance to residents in the area.
- (d) The Site is conveniently located and there are franchised bus stops and green minibus stops within walking distance from the Site. Therefore, no parking spaces will be provided.
- (e) Drainage and sewerage facilities will be provided for the proposed use to avoid environmental impact on the surrounding areas (**Drawing A-2**).

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land, the “Owner’s Consent/ Notification” Requirements as set out in TPB PG No. 31A are not applicable.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) is relevant to the application. Relevant extracts of the Guidelines are attached at **Appendix II**.

- (a) There is a general presumption against development (other than redevelopment) in a "GB" zone.
- (b) An application for new development in a "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.
- (c) Passive recreational uses which are compatible with the character of surrounding areas may be given sympathetic consideration.
- (d) The design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.
- (e) The vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.
- (f) The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area.
- (g) The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

5. Background

5.1 The Site forms part of a larger site which is subject to on-going planning enforcement action against unauthorised development (UD) involving use for eating place. Enforcement Notice (EN) was issued on 9.5.2018 requiring the discontinuance of the UD. Since the UD had not been discontinued upon expiry of the EN, the EN recipients were prosecuted and convicted on 26.6.2019.

5.2 The Site also involved filling of land without prior planning permission from the Board. Reinstatement Notice requiring the reinstatement of the concerned land would be followed accordingly.

6. Previous Application

There is no previous application covering the Site.

7. Similar Application

There is no similar application within the “GB” zone on the OZP.

8. The Site and Its Surrounding Areas (Plans A-2 to A-4b)

8.1 The Site:

- (a) is paved with concrete and debris (**Plan A-4a**);
- (b) partly occupied by five converted containers with unfinished works (**Plans A-4a and A-4b**); and
- (c) is accessible from So Kwun Wat Road via a local track (**Plan A-2**).

8.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character with scattered agricultural activities intermixed with residential dwellings and vacant land set against green and vegetated land/ hillslopes (**Plans A-2 and A-3d**); and
- (b) about 450m to the north of the Site is Tai Lam Country Park (**Plan 1**).

8 Planning Intention

The planning intention of “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. However, limited development may be permitted if they are justified on strong planning grounds.

9 Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department

(DLO/TM, LandsD):

- (a) The Site falls within Lot No. 206 RP in D.D.130 ('the Lot') and the adjoining Government land. The Lot is an Old Schedule Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Site inspection revealed that container-converted structures were erected straddling over the Lot and the adjoining lots. No prior approval has been given. The owner of the Lot has submitted an application for Short Term Waiver ('STW') to regularise the existing structures and the application is being withheld pending decision of the planning application. However, the layout and configuration of the existing structures are found different from the proposal shown on the application.
- (c) If planning permission is given, his Office will reactivate the processing of the STW. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administration fee etc.
- (d) Notwithstanding the above, his Office reserves the right to take enforcement actions as considered appropriate against any unauthorised erection/extensions/alternations of the structures affected irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures be found erected without any prior approval given by his Office or any unauthorised occupation of Government land.
- (e) It is noted that the applicant proposed to use the Government land to the southwestern side of the Lot for loading/unloading purposes and as passing bay. As the Government land may be of general commercial interest to others, direct grant of the subject Government land by way of Short Term Tenancy (STT) to the applicant will not be considered. His Office reserves the right to take land control and enforcement action if the subject Government land is unlawfully occupied.
- (f) As indicated on the applicant's drainage plan (**Drawing A-2**), the Polyvinyl Chloride (PVC) underdrain and U channel are proposed to be constructed on the Government land. The applicant is reminded that prior approval will be required for laying the drains and channels on any Government land and there is no guarantee that approval will be given. In the event that approval is given, the applicant would be required to apply for an excavation permit from his Office before the commencement of any construction works.

- (g) The Site is accessible via Government land adjoining a road branching off from Tuen Mun Road. His Office does not carry out maintenance works for the access and road nor guarantee that right-of-way will be given to the Site.

Traffic

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

- (a) Given that So Kwun Wat is a relatively remote region, visitors may not access the Site by public transport. Strong justification for not providing car parking spaces for visitors should be provided.
- (b) Noting that the Government land within the Site will be used for loading/unloading and passing bay purposes, the applicant should demonstrate that sufficient space within the concerned land is provided for manoeuvring of vehicles. The applicant should also clarify what kind of vehicles will access the concerned land for the aforementioned purposes.
- (c) The trip generation due to the proposed use and the impact on the nearby road network should be provided.
- (d) No vehicle is allowed to queue back to or reverse onto/ from public road at any time during the planning approval period.
- (e) The Site is connected to the public road network via a section of local access road which is not managed by his Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (f) The run-in/out of the Site should be indicated.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) He has no comment on the application from highways maintenance perspective on the understanding that no vehicular access is proposed and no public road is affected by the application.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) He is unable to support the application at this stage.
- (b) Further information dated 30.10.2019 (**Appendix Ic**) has not properly addressed the potential environmental impact arising from the

proposed use, in particular water quality and wastewater impacts. Detailed comments are provided in **Appendix III**.

- (c) Should the application be approved, the operation of the proposed use should not be beyond 11:00p.m.to avoid noise nuisance to avoid noise impact in night time.

Urban Design and Visual

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

The Site falls within an area zoned “GB” on the OZP. Given that the proposed use would not involve development of any high-rise structures, he has no comment on the application from visual impact point of view.

Landscape

9.1.6 CTP/UD&L, PlanD:

- (a) He has reservation on the application from the landscape planning perspective.
- (b) The Site is located near Tuen Mun Road, in an area of miscellaneous rural fringe landscape surrounded by natural woodland, and some temporary structures are found to its further west. With reference to his site visit conducted on 11.10.2019, the Site is mostly hard paved, occupied by some temporary structures, and without existing vegetation within the Site.
- (c) It is noted from aerial photos of 2015 (**Plan A-3a**) and 2018 (**Plan A-3d**) that the Site had been extensively modified during this period, and existing vegetation had been cleared prior to planning permission that landscape impact has been taken place. Although further adverse landscape impact on the surrounding area is not anticipated, the proposed development, if approved, would set an undesirable precedent to encourage similar site modification and vegetation clearance prior to planning approval. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment and the integrity of the subject “GB” zone.

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

- (a) The Site falls within the “GB” zone on the approved So Kwun Wat OZP No. S/SKW-TM/13. Upon site inspection, the Site is paved and mostly disturbed.
- (b) With reference to past aerial photos, it is noted that the Site was largely vegetated in July 2016 but was paved in April 2017. It is trusted that the Board would take into account the history of the Site when considering the application. ‘Destroy first, Develop later’

approach should not be encouraged.

Drainage

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

- (a) Upon reviewing the applicant's FI (**Appendix Ic**), it is considered that the FI does not contain sufficient information and details to demonstrate the adequacy of the drains in which no adverse drainage impact would result from the proposed use.
- (b) Notwithstanding the above, should the application be approved, an approval condition may be included to request the applicant to submit and implement a drainage proposal to the satisfaction of Director of Drainage Services to ensure that the proposed use will not cause any adverse drainage impact to the adjacent area.
- (c) Specific comments on the applicant's FI are provided in **Appendix III**.

Buildings Matters

9.1.9 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 for any structures at the Site.
- (b) If the existing structures erected on leased land are 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.
- (c) Before any new building works (including containers/ open sheds as 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 coordinator for the proposed building works in accordance with the BO.
- (d) For UBW erected on lease land, enforcement action may be taken by the BD to affect 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.
- (e) If the proposed use under application is subject to the issue of a license, the applicant is 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.

- (f) In connection with 9.1.9 (c) above, the Site shall be provided with means if obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (g) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.
- (h) Formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be provided at the building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the application subject to fire services installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. In addition, the applicant should also be advised on the following points:
 - i. the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - ii. the location of the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

9.1.11 Comments of District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has no comment on the application and consultation letters were distributed to the local.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P);

- (e) Director of Leisure and Cultural Services (DLCS);
- (f) Director of Electrical and Mechanical Services (DEMS); and
- (g) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO)

10 Public Comments Received During the Statutory Publication Periods

The application was published on 4.10.2019. During the statutory public inspection period, five public comments were received from Kadoorie Farm and Botanic Garden, Aegean Coast Owners' Committee, The Hong Kong Bird Watching Society, Designing Hong Kong and a member of the public (**Appendix IV**). All the public comments raised objection to the application mainly on the following grounds:

- (a) The Site is located within the "GB" zone which is primarily not intended for development. This application is a 'Destroy to Build' case. Approval of the application will set an undesirable precedent for similar applications;
- (b) the proposed use will cause pollution, environmental nuisance and traffic congestion to the surrounding area;
- (c) there is no justification to include Government land, which occupies 50% of the site area, in the current application; and
- (d) there are a few barbecue sites in the surrounding area which could fully satisfy residents' demand for barbecue facilities.

11 Planning Considerations and Assessment

11.1 The current application is for temporary barbecue area for a period of three years at the Site zoned "GB" on the OZP. The proposed use is not in line with the planning intention of the "GB" zone which is for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. The applicant has not provided any strong planning justification in the submission to merit a departure from such planning intention, even on a temporary basis.

11.2 The proposed use is not entirely compatible with the surrounding area which is predominantly rural in nature with scattered agricultural activities intermixed with abandoned farmland and vegetated land/hillslopes linking to Tai Lam Country Park (**Plans A-2 and A-3d**). CTP/UD&L has reservation on the proposed use as clearance of vegetation had taken place prior to granting of the planning approval. Cumulative impact of such approval would further degrade the landscape quality of the surrounding environment and the integrity of the subject "GB" zone. DAFC also expressed concern on the application as the Site has been paved and mostly disturbed recently which should not be encouraged.

11.3 The applicant did not provide sufficient information to demonstrate that the proposed use would not have adverse traffic impact. C for T has requested the applicant to provide information on the trip generation arising from the proposed use, the impact on the nearby road network, strong justification for nil parking

spaces for visitors and to demonstrate that there is sufficient manoeuvring space within the Site. DEP does not support the application as insufficient information in the applicant's submission to address the sewage and wastewater impacts arising from the proposed use. Besides, there are concerns on the noise nuisance and odour impact to the nearby residents. CE/MN of DSD comments that there is insufficient information in the submission to demonstrate the proposed use will not cause adverse drainage impact on the surrounding area.

- 11.4 The application does not meet the TPB Guidelines (TPB PG No. 10) in that there are adverse comments from C for T, DEP, DAFC and CTP/UD&L of PlanD as the applicant fails to demonstrate that the proposed use would not have adverse traffic, noise, sewage, wastewater, odour and landscape impacts on the surrounding areas.
- 11.5 The Committee has not approved any application for barbecue area within the subject "GB" zone. Approval of the application would set an undesirable precedent for similar uses to proliferate into the "GB" zone. The cumulative effect of approving such similar applications, even on a temporary basis, would result in a general degradation of the rural environment and landscape quality of the area.
- 11.6 There are five adverse public comments received against the application, mainly on the grounds stated in paragraph 10 above. Planning assessments in paragraphs 11.1 to 11.5 are relevant to these public comments.

12 Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
- (a) The proposed use is not in line with the planning intention of the "GB" zone, which is for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the proposed use is not in line with the Town Planning Board Guidelines for 'Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance' (TPB PG-No. 10) in that the applicant fails to demonstrate that the proposed use would not generate adverse traffic, noise, sewage, wastewater, odour and landscape impacts on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the "GB" zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 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 **15.11.2022**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 11:00 p.m. and 11:00 a.m. is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the public roads at any time during the planning approval period;
- (c) the submission of the fire services installation 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 15.5.2020;
- (d) in relation to (c) above, the implementation of fire services installation proposal 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 15.8.2020;
- (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 15.5.2020;
- (f) in relation to (e) 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 15.8.2020;
- (g) the submission of sewerage and wastewater proposal 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 15.5.2020;
- (h) in relation to (g) above, the implementation of sewerage and wastewater 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 15.8.2020;
- (i) in relation to (f) and (h) above, the implemented drainage, sewerage and wastewater facilities shall be maintained at all times during the planning approval period;
- (j) if any of the above planning conditions (a), (b) or (i) 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;
- (k) if any of the above planning conditions (c), (d), (e), (f), (g) or (h) 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.
- (l) upon the expiry of the planning permission, the reinstatement of the application 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 V**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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 date when the validity of the permission should expire.

14 Attachments

Appendix I	Application form received on 16.9.2019
Appendix Ia	Applicant's email dated 20.9.2019
Appendix Ib	Applicant's letter dated 30.9.2019
Appendix Ic	Applicant's email dated 30.10.2019
Appendix II	Town Planning Board Guidelines TPB PG-No. 10
Appendix III	Detailed Departmental Comments
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3d	Aerial Photos
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2019**