

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

APPLICATION NO. A/NE-STK/21

<u>Applicant</u>	:	Sha Tau Kok Farm Organic Company Limited represented by Goldrich Planners & Surveyors Limited
<u>Site</u>	:	Lots 443 S.B RP (Part), 444 S.B RP (Part), 445 S.B RP (Part), 446 S.B RP (Part) and 447 S.B RP (Part) in D.D. 41 and Adjoining Government Land, Sha Tau Kok, New Territories
<u>Site Area</u>	:	About 2,150 m ² (including about 334 m ² of Government Land)
<u>Land Status</u>	:	(a) Block Government Lease (demised for agricultural use) (b) Government Land
<u>Plan</u>	:	Approved Sha Tau Kok Outline Zoning Plan (OZP) No. S/NE-STK/2
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Renewal of Planning Approval for Temporary Public Vehicle Park (Coaches and Private Cars Only) for a Period of 3 Years until 15.6.2024

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary public vehicle park (coaches and private cars only) for a further period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Sha Tau Kok OZP No. S/NE-STK/2. According to the Notes of the OZP, temporary uses or development of any land or buildings not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the OZP. The Site is currently used for the applied use with valid permission until 15.6.2021.
- 1.2 The Site is accessible from Sha Tau Kok Road – Shek Chung Au (**Plan A-2**). According to the applicant, 14 private car parking spaces (5m × 2.5m each) and 9 coach parking spaces (12m × 3.5m each) serving the adjacent Sha Tau Kok Farm are provided in the temporary public vehicle park. No structure will be erected on the Site. The operation hours are from 7:00 a.m. to 11:00 p.m. daily, including Sundays and public holidays. A plan showing the site layout submitted by the applicant is at **Drawing A-1**.

1.3 The Site is the subject of two previous applications. The last application No. A/NE-STK/13 was submitted by the same applicant as the current application. All the approval conditions under the last application have been complied with. Compared with the last approved application, the development parameters including site layout and number of parking spaces under the current application remain unchanged.

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

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|-----|---|---------------|
| (a) | Application Form with attachments received on 19.4.2021 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 22.4.2021 | (Appendix Ia) |
| (c) | SI received on 26.4.2021 | (Appendix Ib) |
| (d) | Further Information (FI) received on 14.5.2021^ | (Appendix Ic) |
| (e) | FI received on 21.5.2021^ | (Appendix Id) |
- ^ *accepted and exempted from publication*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the SI at **Appendix Ib**. They can be summarised as follows:

- (a) the Site is the subject of a previously approved planning application (No. A/NE-STK/13). All the approval conditions under the previous application have been complied with. As such, the approval of the current application would be in line with previous decision made by the Committee;
- (b) only private cars and coaches will be parked at the Site. No light / medium / heavy goods vehicles will be parked at the Site. Container tractors and trailers are also not allowed at the Site. Given the limited number of parking spaces provided at the Site, no significant adverse impacts in terms of traffic, drainage, landscape, visual, etc., are anticipated;
- (c) the Site is located in an area of rural landscape character. The applied use is compatible with the surrounding area; and
- (d) the existing drainage facilities and fire services installations (FSIs) implemented at the Site will be maintained in good conditions during the planning approval period.

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

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

4. Town Planning Board Guidelines

Town Planning Board Guidelines No. 34C on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB-PG No. 34C) are relevant to this application. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Previous Applications

- 5.1 The Site is the subject of two previous planning applications (No. A/NE-STK/5 and 13) submitted by the same applicant for the same use as the current application.
- 5.2 Applications No. A/NE-STK/5 and 13 were approved by the Committee on 16.1.2015 and 15.6.2018 respectively mainly on the grounds that the applied use was not incompatible with the site conditions and surrounding rural environment and would support the leisure and recreational developments in the area. For the last approved application, all approval conditions have been complied with and the planning permission is valid until 15.6.2021. Compared with the last approved application, the development parameters including site layout and number of parking spaces under the current application remain unchanged.
- 5.3 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

6. Similar Application

There is no similar application within the same “AGR” zone in the vicinity of the Site in the Sha Tau Kok area.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on **Plan A-3 and site photos on **Plans A-4a to A-4b**)**

- 7.1 The Site is:
 - (a) fenced off, flat and formed;
 - (b) currently occupied by the applied use with valid planning permission; and
 - (c) accessible from Sha Tau Kok Road – Shek Chung Au.
- 7.2 The surrounding areas have the following characteristics:
 - (a) areas to the immediate north, southwest across a local track and southeast across Sha Tau Kok Road form parts of the Sha Tau Kok Farm operated by the applicant;
 - (b) to the immediate west and south are domestic structures; and
 - (c) to the northeast and further northwest are scattered with domestic structures, unused land and active/fallow agricultural land.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

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/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises Lot Nos. 443 S.B RP, 444 S.B RP, 445 S.B RP, 446 S.B RP and 447 S.B RP and adjoining Government land (GL) in D.D. 41. The lots are Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining GL will be allowed for the vehicular access to the Site for the applied use;
- (b) the actual occupation area does not tally with the Site and portions of the adjoining Lot Nos. 1321 and 1323 RP in D.D. 41 are fenced off. It is noted that GL adjoining the application lots is occupied without prior approval from her office. Portion of an unauthorised wall was erected on adjoining GL and extended to Lot No. 447 S.B RP in D.D. 41. Please note that any occupation of GL and structure erected on the application lot without prior approval from her office are not acceptable. Her office reserves the right to take enforcement actions as appropriate; and
- (c) should the application be approved, the owners of the lots concerned should apply to her office for a Short Term Tenancy (STT) and a Short Term Waiver (STW) covering all the actual occupation area and structure (if any). The application for STT and STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STT/STW are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of rent/waiver fee and administrative fees as considered appropriate by her office.

Traffic

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

- she has no objection to the renewal application and the previous approval conditions shall apply.

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

- should the renewal application be approved, the applicant is required to reinstate the ingress on Sha Tau Kok Road – Shek Chung Au to its original state to his satisfaction and at the applicant's own cost upon termination of the temporary public vehicle park.

Agriculture

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

- considering that the previous application for the same use as the current application was approved by the Board, he has no strong view against the renewal application.

Environment

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

- (a) she does not support the application as there are domestic structures in the vicinity of the Site; the closest one is located to the immediate southwest of the Site (**Plan A-2**);
- (b) should the application be approved, the applicant is advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (COP) to minimise the potential environmental impacts on the surrounding areas; and
- (c) there is no environmental complaint against the Site in the past three years.

Landscape

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

- (a) she has no objection to the application from landscape planning perspective;
- (b) there is no significant change to the surrounding landscape setting to the west of Sha Tau Kok Road since the application was last approved. In view that the proposed layout is the same with that of the last application and all existing trees within the Site will be preserved, further adverse impact due to the renewal of the proposed use is not anticipated; and
- (c) in view that no further landscape or visual impact is anticipated arising from the application, landscape condition is considered not necessary to be imposed should the application be approved by the Board.

Drainage

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

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit drainage condition record for the Site to ensure that there will be no adverse drainage impact to the adjacent area. If the existing drainage system is found to be inadequate or ineffective during operation, the applicant is required to rectify the system to the satisfaction of the relevant government departments and also at his own cost;
- (c) the applicant is reminded to maintain his system properly and rectify any inadequacies or defects found during operation. In addition, the applicant shall be liable for and shall indemnify claims and demands arising out of damage or nuisance due to failure of the system; and
- (d) the Site is in an area where no public sewerage connection is available.

Fire Safety

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

- he has no in-principle objection to the renewal application subject to the existing FSIs on the Site being maintained in efficient working order at all times.

Building Matters

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

- there is no proposed building/structure in the application. For any proposed new buildings (if any), detailed advisory comments under the Buildings Ordinance are appended in **Appendix V**.

District Officer's Comments

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

- he has consulted the locals regarding the application. The Indigenous Inhabitant representative (IIR) of Tong To and the Chairman of Sha Tau Kok District Rural Committee object to the application on the grounds that “destroy first, apply later” and illegal excavation/filling of land in the vicinity are involved; the applicant has not obtained full ownership of the lots concerned and consent of other land owners; and the commercial vehicle park would induce adverse traffic impact and pose road safety risk

to the villagers by using the narrow road within the village. The incumbent North District Council member of the subject constituency has no comment.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department; and
- (b) Chief Engineer/Construction, Water Supplies Department.

10. Public Comments Received During Statutory Publication Period (Appendix IV)

On 27.4.2021, the application was published for public inspection. During the statutory public inspection period, three public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. A comment submitted by the Chairman of Sha Tau Kok District Rural Committee and the IIR of Tong To object to the application on the grounds that “destroy first, apply later” and illegal excavation/filling of land in the vicinity are involved; the applicant has not obtained full ownership of the lots concerned and consent of other land owners; and the commercial vehicle park would induce adverse traffic impact and pose road safety risk to the villagers by using the narrow road within the village. An individual indicates that the vehicle park, being a brownfield use, has been in operation for years and should not be approved.

11. Planning Considerations and Assessments

- 11.1 The application is for the renewal of planning permission for temporary public vehicle park (coaches and private cars only) for a further period of three years. While the temporary use is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes, DAFC has no strong view against the renewal application. It is considered that the approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “AGR” zone.
- 11.2 The temporary public vehicle park is considered not incompatible with the surrounding rural landscape setting comprising Sha Tau Kok Farm, scattered farmland patches and tree groups, domestic structures and unused land (**Plan A-2**). In view that all existing trees within the Site will be preserved, further adverse landscape impact due to the renewal of the temporary use is not anticipated. As such, CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective.
- 11.3 The Site is accessible from Sha Tau Kok Road – Shek Chung Au. C for T has no objection to the renewal application from traffic engineering viewpoint. DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures, in the vicinity of the Site (**Plan A-2**). To address DEP’s concerns on the possible environmental nuisance generated by the temporary use, relevant approval condition restricting the operation hours is recommended. Moreover, the applicant will be advised to follow the latest COP issued by DEP in order to minimise any potential environmental nuisance. Other relevant Government departments consulted, including CHE/NTE of HyD, CE/MN

of DSD, CE/C of WSD and D of FS, have no objection to or no adverse comment on the renewal application.

- 11.4 The Site is the subject of two previously approved applications No. A/NE-STK/5 and 13 submitted by the same applicant for the same use as the current application. They were approved by the Committee in 2015 and 2018 respectively mainly on the grounds that the public vehicle park was not incompatible with the site conditions and surrounding rural environment; it would support the leisure and recreational developments in the area; no major adverse department comments had been received; and other departmental concerns could be addressed by relevant approval conditions. For the last approved application No. A/NE-STK/13, all approval conditions have been complied with and the planning permission is valid until 15.6.2021. There has been no major change in the planning circumstances for the area since the approval of the last application.
- 11.5 The application generally complies with the TPB-PG No. 34C (**Appendix II**) on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ in that there has not been any material change in planning circumstances since the approval of the last application; there are no major adverse departmental comments; all the approval conditions for the last application have been complied with; and the approval period sought which is the same as the last approval granted by the Board is not unreasonable.
- 11.6 Regarding the local objection conveyed by DO(N), HAD and the adverse public comments in paragraphs 9.1.10 and 10 above, the Government department’s comments and the planning assessments above are relevant. Regarding the issue of obtaining consent of other land owners as mentioned in a public comment, it should be noted that the applicant, not being a “current land owner”, has taken reasonable steps to give notification to the owner(s) as set out in the TPB PG-No. 31A. For the suspected unauthorised excavation/filling of land in the vicinity of Tong To, it is being closely monitored by the Planning Authority and appropriate enforcement action would be taken. While the excavation/filling of land is not related to the Site, it was referred to relevant Government departments for parallel follow-up actions.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local comments conveyed by DO(N), HAD and public comments mentioned in paragraphs 9.1.10 and 10 respectively, the Planning Department considers that the temporary use could be tolerated for a further period of 3 years.
- 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 16.6.2021 to 15.6.2024**. 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 7:00 a.m. daily, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no vehicle without valid licence issued under the Road Traffic Ordinance is allowed to be parked/stored on the Site at any time during the planning approval period;
- (c) only coaches and private cars as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked on the Site at any time during the planning approval period;
- (d) a notice should be posted at a prominent location of the Site to indicate that only coaches and private cars as defined in the Road Traffic Ordinance are allowed to be parked on the Site at any time during the planning approval period;
- (e) the peripheral fencing on the Site shall be maintained at all times during the planning approval period;
- (f) the existing trees and landscape plantings within the Site shall be maintained at all times during the planning approval period;
- (g) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (i) the submission of a record of the existing drainage facilities on the Site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.9.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g) or (h) 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 the above planning condition (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; and
- (l) upon 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 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 "AGR" zone which is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation

for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such 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 for renewal of the planning 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 19.4.2021
Appendix Ia	SI received on 22.4.2021
Appendix Ib	SI received on 26.4.2021
Appendix Ic	FI received on 14.5.2021
Appendix Id	FI received on 21.5.2021
Appendix II	Relevant Extract of TPB-PG No. 34C on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development'
Appendix III	Previous s.16 Applications
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2021**