

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-STK/22

<u>Applicant</u>	:	Mr. LAM Ma Yau represented by Mr. WONG Sun Wo William
<u>Site</u>	:	Lots 360 RP (Part), 392 S.A, 394 S.A (Part), 394 S.B ss.1 (Part) and 394 S.B RP (Part) in D.D. 41 and Adjoining Government Land, Sha Tau Kok, New Territories
<u>Site Area</u>	:	About 1,360 m ² (including Government land of about 64 m ²)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Sha Tau Kok Outline Zoning Plan (OZP) No. S/NE-STK/2
<u>Zoning</u>	:	“Recreation (1)” (“REC(1)”)
<u>Application</u>	:	Proposed Temporary Eating Place with Ancillary Vehicle Parking for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a proposed temporary eating place with ancillary vehicle parking for a period of 5 years (**Plan A-1**). The Site falls within an area zoned “REC(1)” on the approved Sha Tau Kok OZP No. S/NE-STK/2. According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use in “REC(1)” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently partly vacant and partly deposited with two converted containers and some construction materials.
- 1.2 According to the applicant, the proposed development involves 2 single-storey structures of about 4.5 m to 6 m in height with a total floor area of about 300 m² for eating place, kitchen, storage and toilet uses (**Drawing A-1**). The Site is accessible from Sha Tau Kok Road – Shek Chung Au (**Plan A-2**). 13 private car parking spaces (measuring 5 m x 2.5 m each) and 1 loading/unloading bay for light good vehicles not exceeding 5.5 tonnes (measuring 7 m x 3.5 m each) would be provided within the Site. The operation hours are between 8:00 a.m. to 9:00 p.m. daily, including public holidays. The proposed site layout plan, proposed parking spaces, drainage and landscape proposals submitted by the applicant are at **Drawings A-1 to A-4** respectively.

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

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|-----|--|---------------|
| (a) | Application Form with attachments received on 25.11.2021 | (Appendix I) |
| (b) | Supplementary Information received on 30.11.2021 | (Appendix Ia) |
| (c) | Further Information received on 22.12.2021^ | (Appendix Ib) |
| (d) | Further Information received on 20.1.2022^ | (Appendix Ic) |
| (e) | Further Information received on 7.2.2022^ | (Appendix Id) |
| (f) | Further Information received on 8.2.2022^ | (Appendix Ie) |
| (g) | Further Information received on 1.3.2022^ | (Appendix If) |
| | <i>(^accepted and exempted from publication)</i> | |

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) the Starling Inlet is located to the east of the Site, which offers a picturesque view during sunrise period for visitors' enjoyment. The proposed development would provide eating facility for the convenience of visitors and villagers in the surrounding areas;
- (b) the development would provide 13 private car parking spaces for visitors through pre-booking arrangement. Staff would be deployed at the entrance to manage traffic. Visitors may also take public transport to access the Site, with the nearest bus stop located next to the Site entrance;
- (c) should the Board approve the application, relevant food licence would be sought from the Food and Environmental Hygiene Department prior to the operation of the eating place; and
- (d) sewage generated by the proposed development would be properly discharged to the public sewer via the existing drains so that the Starling Inlet would not be adversely affected.

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

The applicant is one of the “current land owners”. In respect of the other “current land owner”, the applicant 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. Detailed information would be deposited at the meeting for Members’ inspection. For the government land portion within the Site, TPB PG-No.31A is not applicable.

4. **Background**

Part of the Site is the subject of an active enforcement case involving unauthorized storage use (including deposit of containers). Enforcement Notice was issued on 15.11.2021 requiring discontinuation of the unauthorized use. Site conditions will be closely monitored according to the established procedures.

5. Previous Application

- 5.1 The Site is the subject of a previous application (No. A/NE-STK/18) for the same use submitted by a different applicant. That application was rejected by the Committee on 18.9.2020 mainly on the ground that the applicant failed to demonstrate that the proposed development would not result in adverse traffic impacts on the surrounding area.
- 5.2 Details of the previous application are summarised at **Appendix II** and the location is shown on **Plan A-1**.

6. Similar Application

- 6.1 There is a similar application (No. A/NE-STK/7) for temporary eating place (restaurant) with ancillary vehicle park for a period of three years partly within the same “REC(1)” zone. The application was approved with conditions by the Committee on 19.2.2016 mainly on the grounds that the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse departmental comments. The planning permission was revoked on 19.11.2017 due to non-compliance with timely-limited approval conditions.
- 6.2 Details of the similar application are summarised at **Appendix III** and the location is shown on **Plan A-1**.

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) flat and paved;
 - (b) largely vacant at the southern portion and partly deposited with two converted containers and some construction materials at the northern portion; and
 - (c) accessible from Sha Tau Kok Road – Shek Chung Au via a local track.
- 7.2 The surrounding areas have the following characteristics:
- (a) to the immediate north is a cluster of village houses;
 - (b) to the southeast and southwest are vacant/unused land and fallow agricultural land, and to the further east is the Starling Inlet; and
 - (c) to the further west across Sha Tau Kok Road is the village proper of San Tsuen.

8. Planning Intention

The planning intention of the “REC(1)” zone is intended primarily for low-intensity recreational developments to promote agri-tourism and eco-tourism. Major recreational facilities and 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 summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises Lots No. 360 RP, 392 S.A, 394 S.A, 394 S.B ss.1 and 394 S.B RP in D.D. 41. The lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement to acquire access to the Site, and there is no guarantee that any adjoining government land (GL) will be allowed for vehicular access to the Site for the proposed use;
- (b) it is noted that there are unauthorised structures erected on the application lots without approval from her office. She reserves the right to take necessary lease enforcement actions against the structures on private lots as appropriate;
- (c) according to the proposed development, toilet would be erected on the Site. The applicant should note that any proposed toilet facility should meet current health requirements; and
- (d) if the planning application is approved, the owners of the lots concerned shall apply to her office for a Short Term Waiver (STW) and a Short Term Tenancy (STT) to cover all the proposed structures and occupation area concerned. The applications for STW and STT will be considered by the government in its landlord’s capacity and there is no guarantee that it will be approved. If the STW and STT are approved, its commencement date will be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by her office.

Traffic

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

- (a) based on the FI submitted by the applicant, there would be adequate parking, loading/unloading and manoeuvring spaces at the Site, and the provision and management of facilities to avoid illegal parking and ensure pedestrian

safety i.e. staff would be deployed at site entrance and signage would be erected at the entrance of the Site, he has no further comment on the application from traffic engineering point of view and considers that the traffic impact induced by the proposed development is tolerable; and

- (b) should the application be approved, a condition should be included to request the applicant to implement the traffic management measures to ensure that it will not cause adverse traffic impact to the surrounding area.

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

- (a) the section of Sha Tau Kok Road – Shek Chung Au adjacent to the Site is under HyD’s maintenance purview. However, the proposed access to the Site will pass through a strip of land between Sha Tau Kok Road – Shek Chung Au and the Site, which is not maintained by HyD. The applicant is required to sort out the land issues with relevant land authorities;
- (b) if the application is approved, the applicant is required to construct a proper ingress and egress for the Site according to HyD’s Standard and upon termination of the proposed temporary uses, the applicant is required to reinstate the ingress and egress to their original state and to HyD’s satisfaction at his own cost; and
- (c) 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) no objection to the application;
- (b) given the application is for temporary use, the applicant is advised to follow the EPD’s latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ (COP) and “Control of Oily Fume and Cooking Odour from Restaurant and Food Business”;
- (c) it is noted from the applicant’s submission that the Site would be connected to the existing public sewer in the vicinity, and all sewage would be discharged through public sewer. The applicant is advised that any sewage/wastewater arising from the operation of the applied use shall be discharged to public sewer. The applicant should also be reminded to observe relevant pollution control legislations such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, etc. during construction and operation stages of the proposed use; and
- (d) there is no environmental complaint against the Site in the past three years.

Landscape

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

- (a) no objection to the application from landscape planning perspective;
- (b) the Site is currently a hard paved area with some temporary structures observed within the Site. Some existing trees (**Plan A-2**) along the southern boundary of the site are observed and they are not in conflict with the proposed development. The Site is situated in an area of rural coastal plain landscape character predominated by village houses, vegetated area and clusters of trees. Significant adverse landscape impact on existing landscape resources within the Site is not anticipated; and
- (c) in view that no significant adverse landscape impact arising from the development is anticipated, a landscape condition is considered not necessary should the application be approved by the Board.

Drainage

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

- (a) no objection to the application from public drainage viewpoint;
- (b) should the application be approved, the applicant is required to submit and implement a drainage proposal for the Site to ensure that it will not cause any adverse drainage impact to the adjacent area. Detailed comments are appended in **Appendix V**; and
- (c) the Site is in an area where public sewerage connection is available.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service 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,
 - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans;

- (iii) licensing requirement would be formulated upon receive of formal application via the licensing authority; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Nature Conservation

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

- the Site is largely paved. He has no comment on the application from nature conservation point of view. Nevertheless, mangrove were found along the coast to the southeast of the Site. Should the application be approved, the applicant should be reminded to perform good site practice so as not to disturb the mangrove and pollute the coastal water nearby.

Food and Environmental Hygiene

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

- no adverse comments on the application. His advisory comments are appended at **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 Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Councillor of the subject Constituency have no comments. The Indigenous Inhabitant Representative (IIR) of San Tsuen objects to the proposal on the grounds that the proposed development would generate noise and induce adverse impacts to the living condition of the local residents. The Resident Representative (RR) of San Tsuen supports the proposal on the grounds that there is a need of leisure facilities and eating place in the vicinity to cope with the increasing demand.

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 (PM(N), CEDD); and
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

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

On 3.12.2021, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Kadoorie Farm & Botanic Garden Corporation and two individuals raise objection to the application mainly on the grounds that there was a rejected application in the past; and the proposed development would cause adverse drainage, sewage, traffic and fire safety impacts and affect the living quality of the villagers.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary eating place with ancillary parking facilities for a period of 5 years at the Site zoned “REC(1)” on the OZP. The proposed development is not in conflict with the planning intention of the “REC(1)” zone, which is primarily for low-intensity recreational developments to promote agri-tourism and eco-tourism. Uses in support of the recreational developments may be permitted subject to its compatibility with surrounding environment and no adverse traffic, environmental and other impacts on the area.
- 11.2 The Site is situated in area of rural landscape character comprising vacant and fallow agricultural land, village houses, etc. The proposed eating place with 2 single-storey structures is considered not entirely incompatible with the surrounding areas. As the Site has been hard-paved and significant adverse landscape impact on the existing landscape resources arising from the proposed development is not anticipated, CTP/UD&L of PlanD has no objection to the application from landscape planning perspective.
- 11.3 Having reviewed the FI submitted by the applicant and noting that the applicant undertakes to implement relevant traffic/pedestrian management measures, C for T has no further comment on the application from traffic engineering point of view and considers that the traffic impact induced by the development is tolerable. DAFC has no adverse comment on the application and advises that the applicant should perform good site practice so as not to disturb the mangrove and pollute the coastal water nearby. Other relevant government departments consulted, including DEP, CE/MN of DSD, D of FS, CE/C of WSD and DFEH, have no objection to or no adverse comment on the application.
- 11.4 The Site is the subject of a previous planning application (No. A/NE-STK/18) for the same use submitted by a different applicant as the current application. The application was rejected by the Committee in September 2020 mainly for the reason that the applicant failed to demonstrate in the submission that the proposed development would not result in adverse traffic impact on the surrounding areas. For the current application, the applicant has submitted the proposals with adequate parking, loading/unloading and manoeuvring spaces at the Site, and the provision and management of facilities to avoid illegal parking and ensure pedestrian safety, and C for T has no further comments on the traffic management proposals as submitted by the applicant.
- 11.5 There is a similar application No. A/NE-STK/7 for temporary eating place (restaurant) with ancillary vehicle park for a period of 3 years to the northeast, approved in 2016 mainly on the considerations that the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse

departmental comments. The planning circumstances of the current application are similar to the approved application.

- 11.6 Regarding the local objection conveyed by DO(N), HAD and adverse public comments mentioned in paragraphs 9.1.10 and 10 above respectively, the government departments' comments and the planning assessments above are relevant.

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 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 5 years until 18.3.2027. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of a 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 18.9.2022;
- (b) in relation to (a) above, the provision of drainage facilities within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 18.12.2022;
- (c) the submission of proposals for fire service installations and water supplies for firefighting 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 18.9.2022;
- (d) in relation to (c) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 18.12.2022;
- (e) the submission of a run-in/out proposal within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 18.9.2022;
- (f) in relation to (e) above, the implementation of the run-in/out proposal within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 18.12.2022;
- (g) the implementation of traffic management measures, as proposed by the applicant, within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 18.12.2022; and

- (h) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

12.3 There is no strong reason to recommend rejection of the application.

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 period of which the permission should be valid on a temporary basis.

14. Attachments

Appendix I	Application Form with attachments received on 25.11.2021
Appendix Ia	Supplementary Information received on 30.11.2021
Appendix Ib	Further Information received on 22.12.2021
Appendix Ic	Further Information received on 20.1.2022
Appendix Id	Further Information received on 7.2.2022
Appendix Ie	Further Information received on 8.2.2022
Appendix If	Further Information received on 1.3.2022
Appendix II	Previous Application
Appendix III	Similar Application
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Parking Spaces
Drawing A-3	Proposed Drainage Plan
Drawing A-4	Proposed Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos