

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/39

<u>Applicant</u>	: Harvest China Development (Hong Kong) Limited represented by Mr. LIT Ying-cheung, Edward
<u>Site</u>	: Lot 387 S.B RP (Part) in D.D. 78, Tsung Yuen Ha, Ta Kwu Ling, New Territories
<u>Site Area</u>	: 270.5m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
<u>Zonings</u>	: (i) “Recreation” (“REC”) (about 231.8m ² or 85.7% of the Site); and (ii) “Green Belt” (“GB”) (about 38.7m ² 14.3% of the Site)
<u>Application</u>	: Temporary Retail Shop, Eating Place and Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary retail shop, eating place and ancillary office for a period of three years at the application site (the Site). The Site falls within an area largely zoned “REC” with a minor portion zoned “GB” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ and ‘Eating Place’ are Column 2 uses in “REC” zone. Whilst there is no provision for such uses in “GB” zone, the Notes provide that temporary uses not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the uses are not provided for under the Notes of the OZP. The Site is currently used for retail shop and eating place without planning permission.
- 1.2 According to the information submitted by the applicant, there are seven single-storey structures of 3.5m in height, with a total gross floor area (GFA) of about 255.8m², within the Site. Five structures are used for retail shop (about 15.9m²), eating place (about 136.8m²), kitchen (about 51.3m²), office (about 14.6m²) and toilet (about 8.0m²) and the remaining two structures at the northern portion of the Site are used for storerooms (about 14.6m² each) respectively. The eating place provides catering services to about 100 workers. The Site is accessible via Lin Ma Hang Road in the south (**Plan A-2**). The operation hours of the proposed development are from 8:00 a.m. to 5:00 p.m. from Mondays to Fridays only.

- 1.3 The Site is the subject of a previous application No. A/NE-TKLN/6 for temporary retail shop, canteen and ancillary office submitted by a different applicant. The previous application was approved on review by the Board on 13.4.2018 for a period of three years until 13.4.2021. All approval conditions have been complied with. The current application is largely the same as its previous application in terms of the development parameters and layout. The site layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 30.3.2021 (**Appendix I**)
 - (b) Further Information (FI) received on 18 and 20.5.2021^ (**Appendix Ia**)
 - (c) FI received on 21.5.2021^ (**Appendix Ib**)

^accepted and exempted from the 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 and FIs at **Appendices I, Ia** and **Ib** respectively. They can be summarised as follows:

- (a) the Site is in close proximity to the Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) and the associated construction works in the vicinity. Despite the COVID-19 has rendered the temporary closure of LT/HYW BCP and majority of the on-going construction works are on hold, approximately 50 to 100 construction workers are working on-site for maintenance works. Given its remote location and close proximity to the works areas of Government projects, the Site is an ideal place for providing catering service and retail shop for the large number of construction workers on a temporary basis;
- (b) all approval conditions under the previous planning application No. A/NE-TKLN/6 have been satisfactorily complied with and there is no change to the site conditions;
- (c) the applicant undertakes to reinstate the land upon expiry of the planning approval;
- (d) the applicant undertakes to obtain necessary licences for the operation of the applied use should the application be approved; and
- (e) given the small scale operation, the target customers are staff and workers of the LT/HYW BCP, as well as a small number of residents from the nearby villages and bus drivers (the Site is also located opposite to a bus terminus). The proposed development had not generated any adverse impacts on the surrounding environment, and had not caused any nuisance to the nearby villagers or pedestrians.

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.

4. Town Planning Board Guidelines

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

5. Previous Application

5.1 The Site is involved in a previous application No. A/NE-TKLN/6 for temporary retail shop, canteen and ancillary office, which was approved on review by the Board on 13.4.2018 for a period of three years mainly on considerations that the applicant has demonstrated in the submission that the development would have no adverse traffic impact on the surrounding area; the development was not incompatible with the surrounding environment; the proposed use was temporary in nature and small in scale and approval of the application on a temporary basis would not frustrate the long-term planning intentions of the “REC” and “GB” zones; and there was no adverse departmental comments. All approval conditions of the previous application have been complied with and the planning application was lapsed on 14.4.2021. Unlike the previous application, the target customers under the current application includes visitors and villagers. Whilst in terms of development parameters and layout, the current application is largely the same as its previous application.

5.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plan A-1**.

6. Similar Applications

6.1 There are two similar applications (Nos. A/NE-TKLN/4 and 22) for the provision of similar temporary catering services and ancillary office for a period of three years involving the same site. Both applications were approved by the Rural and New Town Planning Committee (the Committee) mainly on that the development could provide catering services to meet the needs of the construction workers nearby during the construction periods of the works projects; the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse water quality, traffic and landscape impacts on the surrounding areas; and there was no adverse departmental comments.

6.2 Details of the similar applications are 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, aerial photo at **Plan A-3 and site photos on **Plans A-4a** and **A-4b**)**

7.1 The Site is:

- (a) currently formed and occupied by the applied use without valid planning permission; and
- (b) accessible from Lin Ma Hang Road to its south.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is situated at a boundary location;
- (b) to the immediate west of the Site is a temporary structure used as canteen and ancillary office under application No. A/NE-TKLN/22 and storage, further west is the boundary crossing facilities of LT/HYW BCP currently under defect rectification process;
- (c) to the north is unused land and the Frontier Closed Area Boundary (**Plan A-2**);
- (d) to the east is a mix of vacant and unused land, as well as fallow agricultural land; and
- (e) to the south is Lin Ma Hang Road, across which is intermixed with a car park under application No. A/NE-TKLN/33 (**Plan A-2**), vacant land and Tsung Yuen Ha Village.

8. Planning Intentions

- 8.1 The planning intention of the “REC” zone is primarily for low-density 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 low-density recreational developments may be permitted subject to planning permission.
- 8.2 The planning intention of the “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.

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 a private lot in D.D. 78 which is an Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access;
 - (b) it is noted that an unauthorised structure erected on the Site without prior approval from his office. The structure is not acceptable under the Lease concerned and he reserves the rights to take necessary enforcement actions against lease breach;

- (c) it is noted that one of the proposed structures would be built for toilet use. The applicant should note that any proposed toilet facility should meet the current health requirements;
- (d) a Short Term Waiver (STW) application was submitted by the ex-owner of the subject lot. However, as the ownership of the lot has changed on 30.6.2020, the said STW application is considered invalid; and
- (e) should the planning application be approved, the owner(s) of the lot concerned shall apply to his office for STW covering the whole lot and all the structures concerned. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW is approved, their commencement date will be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fee as considered appropriate by his office.

Traffic

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

- she has no objection to the application from the traffic engineering point of view.

Project Interface

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

- (a) the Site is likely to be in conflict with the scheme of the road widening works under PWP Item No. 854th "Widening of Eastern Section of Lin Ma Hang Road between Tsung Yuen Ha and Lin Ma Hang". Should the application be approved, the applicant should be advised that land resumption/clearance at any time before expiry of the planning permission might be required for the portion of land falling within the road widening works; and
- (b) the construction works under PWP Item No. 863th "Widening of Western Section of Lin Ma Hang Road between Ping Yuen River and Ping Che Road" has commenced in February 2020. Upon review of the FI submission (**Appendix Ia**), he has no comment on the application.

9.1.4 Chief Architect/Central Management Division (2), Architectural Services Department (CA/CMD(2), ArchSD):

- (a) he has no comment from architectural and visual impact point of view; and
- (b) LT/HYW BCP is currently under defect rectification process and the number of construction workers for the LT/HYW BCP project is about 50 on average daily.

Environment

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

- (a) he has no adverse comment on the application considering all the approval conditions under the previous planning application no. A/NE-TKLN/6 have been complied with, including the design and provision of septic tank and soakaway system and/or other wastewater treatment facilities;
- (b) the applicant should be reminded to follow EPD's ProPECC PN 5/93 for the provision and operation of septic tank and soakaway system and/or other waste water treatment facilities, and that it is the applicant's responsibility to ensure proper and full implementation of all precautionary and mitigation measures including regular maintenance of the existing septic tank to keep it in good operating condition. The applicant is also reminded to observe strictly all relevant pollution control ordinance such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc. during the operation of the project; and
- (c) there was no substantiated environmental complaint received 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 the landscape planning point of view;
- (b) based on the latest aerial photo in 2019 (**Plan A-3**) and the site photos in 2021 (**Plans A-4a and 4b**), the Site is mostly occupied by a temporary structure without existing vegetation. It is situated at the northwestern fringe of an area of rural landscape character predominated by vacant lands, open car parks, temporary structures, tree groups and village houses while built-up area of institutional landscape character of the LT/HYW BCP is at the further west of the Site;
- (c) there is a similar approved planning application No. A/NE-TKLN/22 to the west of the Site in the same "GB" zone. Compared to the layout plan of the approved planning application No. A/NE-TKLN/6, there is no substantial change to the proposed layout under the current application; and
- (d) the proposed development is not entirely incompatible with the surrounding environment and significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. Therefore, should the application be approved, it is considered not necessary to impose a landscape condition.

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 the public drainage viewpoint;
- (b) should the application be approved, approval conditions on the submission of the condition record of the existing drainage facilities for the Site and the maintenance of the existing drainage facilities at the Site at all times during the approval period are recommended; and
- (c) the Site is in an area where no public sewerage connection is available.

Building Matters

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

- there is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application. His advisory comments are at **Appendix VI**.

Fire Safety

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

- (a) he has no in-principle objection to the application subject; and
- (b) having reviewed the FI submission (**Appendix Ia**), should the application be approved, approval condition on the maintenance of existing FSIs implemented on the site in efficient working order at all times is recommended.

Public Hygiene and Licensing

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

- (a) he has no objection to the application provided that relevant food licence/restricted food permit should be obtained if food business is involved;
- (b) according to his office record, no food licence/permit has been granted to the Site;
- (c) if food business is involved, the operation of any eating place should be under a food licence issued by the Food and Environmental Hygiene Department (FEHD). If the operator intends to operate a restaurant business, a general restaurant/light refreshment restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132); and
- (d) the operation of the temporary eating place must not cause any environmental nuisance to the surroundings.

District Officer's Comments

9.1.11 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) and Resident Representative (RR) of Tsung Yuen Ha support the proposal. The 1st Vice-Chairman of Ta Kwu Ling District Rural Committee, the incumbent North District Councillor of the subject constituency; the IIR and RR of Chuk Yeun and Heung Yuen Wai; have no comment on the application.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Comments of the Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period (Appendix V)

On 9.4.2021, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee has no comment on the application. An individual objects to the application mainly on the grounds that following the completion of the construction of the LT/HYW BCP, the applied use which is primarily to provide catering services to the staff and workers of the BCP, is no longer necessary.

11. Planning Considerations and Assessments

11.1 The application is for temporary retail shop, eating place and ancillary office for a period of three years at the Site zoned "GB" and "REC" on the OZP. About 85.7% of the Site falls within the "REC" zone with the remaining portion encroached onto the adjoining "GB" zone. The applied use is not in line with the planning intention of the "REC" zone which is primarily for low-density recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. It is also not in line with the planning intention of "GB" zone which is primarily for defining the limits of urban and sub-urban development areas, as well as to provide passive recreational outlets and there is a general presumption against development within this zone. Nevertheless, given the small scale of the development to serve the staff and workers at the LT/HYW BCP which is still undergoing defect rectification, as well as the nearby villagers and visitors, 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 intentions of the "REC" and "GB" zones.

11.2 CTP/UD&L, PlanD advises that the applied use is considered not incompatible with the surrounding environment which is rural in character with mainly vacant land and temporary structures (**Plan A-2**). She has no objection to the application as the development is not expected to have significant adverse impacts on the existing

landscape resources. CHE/NTE, HyD advised that the Site is likely to be in conflict with the scheme of the road widening works under PWP Item No. 854th “Widening of Eastern Section of Lin Ma Hang Road between Tsung Yuen Ha and Lin Ma Hang”. Should the application be approved, the applicant would be advised that land resumption/clearance at any time before the expiry of the planning permission might be required. Other relevant Government departments consulted, including C for T, DEP, D of FS, DFEH, CA/CMD(2) of ArchSD, CE/MN of DSD and C of P, have no objection to/no adverse comment/no strong view on the application.

- 11.3 Unlike the previous application No. A/NE-TKLN/6, the target customers under the current application includes visitors and villagers. Whilst in terms of development parameters and layout, the current application is largely the same as its previous application.
- 11.4 There are two similar applications (Nos. A/NE-TKLN/4 and 22) for the provision of similar temporary catering services and ancillary office involving the same site within the “GB” zone in the vicinity of the Site. Both applications were approved mainly on similar considerations that the development could provide catering services to meet the needs of the construction workers nearby during the construction periods of the works projects; the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse water quality, traffic and landscape impacts on the surrounding areas; and there was no adverse departmental comments. The planning circumstances of the current application are similar to the previously approved and similar applications.
- 11.5 Regarding the adverse public comment as detailed in paragraph 10 above, the Government department’s comments and the planning assessment above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the proposed temporary use under application could be tolerated for a period of three 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 three years until 28.5.2024. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 8:00 a.m. on weekdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing FSIs implemented on the Site should be maintained in efficient working order at all times;
- (d) the maintenance of the existing drainage facilities at the Site at all times during the approval period;

- (e) the submission of a record of the existing drainage facilities on the Site within 3 months from date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 28.8.2021;
- (f) if any of the above planning conditions (a), (b), (c) or (d) 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
- (g) if the above planning condition (e) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.
- (h) upon the expiry of the planning permission, the reinstatement of the “Green Belt” portion of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members’ reference:

- the development is not in line with the planning intention of the “REC” which is primarily for low-density recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. It is also not in line with the planning intention of “GB” zone which is primarily for defining the limits of urban and sub-urban development areas as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification provided in the submission to justify a departure from the planning intentions, 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), 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 30.3.2021
Appendix Ia	Further Information (FI) received on 18 and 20.5.2021
Appendix Ib	FI received on 21.5.2021
Appendix II	Relevant Extract of TPB Guidelines No. 10 for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance
Appendix III	Previous s.16 Application
Appendix IV	Similar s.16 Applications for Retail Shop or Eating Place within/partly within the “Green Belt” and/or “Recreation” zone in the vicinity of the Application Site in the Ta Kwu Ling North Area
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Proposed Site 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
MAY 2021**