

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/87

<u>Applicant</u>	: Harvest China Development (Hong Kong) Limited represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lot 387 S.B ss.2 in D.D. 78, Lin Ma Hang Road, Ta Kwu Ling North, New Territories
<u>Site Area</u>	: About 270.5 m ²
<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 241.3 m ² or 89% of the Site); and (ii) “Green Belt” (“GB”) (about 29 m ² or 11% of the Site)
<u>Application</u>	: Proposed Temporary Retail Shop, Canteen and Ancillary Office for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary retail shop, canteen 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 OZP (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ and ‘Eating Place’ are Column 2 uses in “REC” zone, which require planning permission from the Town Planning Board (the Board). While there is no provision for such uses in “GB” zone, the covering Notes of the OZP state that temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Board. The Site is occupied by a temporary structure and currently used for storage (i.e. tables, chairs, refrigerators, food and alike, etc.) without valid planning permission.
- 1.2 The Site is accessible via Lin Ma Hang Road (**Plan A-2**). According to the applicant, the proposed use comprises one single-storey structure (building height of not more than 3.5 m) with a total floor area of about 255.8 m² for retail shop, canteen, kitchen, storerooms, toilet and ancillary office. No parking space and loading/unloading space will be provided at the Site. The proposed operation hours are between 8:00 a.m. and 5:00 p.m. from Mondays to Sundays, including public holidays. The proposed layout plan submitted by the applicant is shown in **Drawing A-1**.
- 1.3 The Site is the subject of two previous applications (No. A/NE-TKLN/6 and 39) for the same use as the current application with the last one submitted by the same applicant of

the current application. Details of the previous applications are provided in paragraph 6 below. The current application is largely the same as the last approved previous application (No. A/NE-TKLN/39) in terms of development parameters and layout.

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

- (a) Application Form with attachment received on 23.7.2024 **(Appendix I)**
 - (b) Further Information (FI) received on 29.8.2024* **(Appendix Ia)**
 - (c) FI received on 6.9.2024* **(Appendix Ib)**
- * 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 and FI at **Appendices I to Ib**, as summarised below:

- (a) the proposed use is intended to provide retail and catering services to cross-boundary travellers and nearby villagers and would benefit the residents in the vicinity;
- (b) the proposed use is not incompatible with the surrounding areas with shop and services and public vehicle parks;
- (c) the proposed use is a temporary use for a period of three years and would not jeopardise the long-term planning intention of the current zonings;
- (d) the Site is subject to two previous planning permissions (No. A/NE-TKLN/6 and 39) for the same use. There is a similar approved planning application (No. A/NE-TKLN/55) for shop and services use in the vicinity of the Site and same treatment should be granted to the current application;
- (e) this application is submitted by the same applicant as application No. A/NE-TKLN/39. The applicant was thinking to sell the Site and therefore he missed the chance to renew the planning permission. The tables, chairs, refrigerators, food and alike, etc. currently stored at the Site are the stocks from application No A/NE-TKLN/39. The proposed use under the current application will only be open to the public upon obtaining planning approval; and
- (f) no significant environmental, noise and traffic impacts are expected. The existing soakaway system and septic tank will be kept in good condition. The motorcycles currently parked at the Site will be removed. The applicant also undertakes to apply for Short Term Wavier (STW) to the Lands Department (LandsD) upon obtaining planning permission.

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

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

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 for Application for Development within 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**.

5. Background

The Site is not subject to any active planning enforcement action.

6. Previous Applications

6.1 The Site is the subject of two previous applications (No. A/NE-TKLN/6 and 39) for temporary retail shop, canteen and ancillary office, which were approved with conditions on review by the Board and by the Rural and New Town Planning Committee (the Committee) of the Board on 13.4.2018 and 28.5.2021 respectively for a period of three years mainly on the considerations that approval of the application on a temporary basis would not frustrate the long-term planning intentions of the “REC” and “GB” zones; the use was not incompatible with the surrounding areas; and no adverse departmental comments were received. All approval conditions of both previous applications have been complied with and the planning permission of the last approved application (No. A/NE-TKLN/39) lapsed on 28.5.2024. The current application is largely the same as the last approved application, which was submitted by the same applicant, in terms of development parameters and layout.

6.2 Details of the previous applications are summarised at **Appendix II** and their locations are shown on **Plan A-1**.

7. Similar Applications

7.1 There were ten similar applications (No. A/NE-TKLN/23, 40, 55, 57, 58, 68, 75, 76, 82 and 84) involving eight sites for proposed temporary shop and services or eating place with/without other uses falling wholly/partly within the same “REC” zone in the vicinity of the Site in the past five years. All of them were approved with conditions by the Committee between 2021 and 2024 mainly on the considerations that the proposed use was not incompatible with the surrounding areas and no adverse departmental comments were received.

7.2 There was no similar application within the same “GB” zone in the vicinity of the Site in the past five years.

7.3 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

8.1 The Site is:

- (a) formed, currently occupied by a temporary structure for storage (i.e. tables, chairs, refrigerators, food and alike, etc.); and
- (b) accessible via Lin Ma Hang Road.

8.2 The surrounding areas are of rural character mainly comprising public vehicle parks, vacant land and tree clusters. Heung Yuen Wai Boundary Control Point (HYW BCP) is located to the west of the Site (Plan A-1**).**

9. Planning Intentions

- 9.1 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.
- 9.2 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 with this zone.

10. Comments from Relevant Government Departments

All departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices V** and **VI** respectively.

11. Public Comments Received During Statutory Publication Period

On 30.7.2024, the application was published for public inspection. During the statutory public inspection period, six comments were received (**Appendix VII**). One comment from a member of the North District Council indicates no comment on the application. The other comments from five individuals object to the application mainly on the grounds of adverse environmental, drainage and traffic impacts on the surrounding areas and nearby residents; concerns on fire safety; affecting the rural character of the neighbourhood and quality of life of the nearby residents; and the Site is being used as parking of vehicles instead of the proposed use.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary retail shop, canteen and ancillary office for a period of three years at the Site zoned “REC” (89%) and “GB” (11%) on the OZP. The proposed use is not entirely 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 the “GB” zone which 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 and there is a general presumption against development within the “GB” zone. Notwithstanding the above, given the small scale of the proposed use and taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.

- 12.2 The Site is located in an area of rural character mainly comprising public vehicle parks, vacant land and tree clusters, with HYW BCP located to the west. The proposed use is considered not entirely incompatible with the surrounding areas. The Chief Town Planner/Urban Design and Landscape of Planning Department advises that significant adverse impact on the landscape character and existing landscape resources within the Site is not anticipated and she has no objection to the application from the landscape planning perspective.
- 12.3 Relevant government departments consulted, including the Commissioner for Transport, Director of Environmental Protection, Chief Engineer/Mainland North of Drainage Services Department, Director of Fire Services, Chief Engineer/Construction of Water Supplies Department and Director of Agriculture, Fisheries and Conservation have no objection to or no adverse comment on the application. In response to the District Land Officer/North of LandsD’s comment regarding the presence of unauthorised structure within the private lot covered by the current application, the applicant advises that he will rectify the matter by applying STW accordingly. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 12.4 A small portion of the Site (about 29 m² or 11%) falls within the “GB” zone. The application is considered not in conflict with TPB PG-No. 10 in that the scale and intensity of the proposed use is compatible with the character of the surrounding areas, and concerned departments have no objection to or no adverse comment from traffic, drainage, environmental, water supply and landscape planning perspectives.
- 12.5 The Site is subject to two previous applications (No. A/NE-TKLN/6 and 39) for the same use as the current application. Both applications were approved with conditions by the Board/the Committee in 2018 and 2021 mainly on the considerations as detailed in paragraph 6.1 above. All approval conditions of both applications have been complied with and the planning permission of the last application lapsed on 28.5.2024. Compared with the last approved application, the current application is largely the same in terms of development parameters and layout.
- 12.6 There were ten similar applications falling wholly/partly within the same “REC” zone in the vicinity of the Site in the past five years. All of them were approved with conditions by the Committee between 2021 and 2024 mainly on the considerations as detailed in paragraph 7.1 above. The planning circumstances of the current application are similar to those of the approved applications. As such, approval of the current application is in line with the Committee’s previous decisions.
- 12.7 Regarding the public comments on the application as detailed in paragraph 11, government departments’ comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department considers that the proposed use could be tolerated for a period of three years.
- 13.2 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 three years until 20.9.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the submission of a record of the existing drainage facilities on the Site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.12.2024;
- (b) the maintenance of the existing drainage facilities at the Site at all times during the planning approval period;
- (c) the submission of a fire service installations 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 20.3.2025;
- (d) in relation to (c) above, the implementation of the fire service installations 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 20.6.2025;
- (e) if the above planning condition (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (f) if any of the above planning condition (a), (c) or (d) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (g) upon the expiry of the planning permission, the reinstatement of the "GB" 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 at **Appendix VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed 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. It encourages the development of active and/or passive recreation and tourism/eco-tourism. It is also not in line with the planning intention of the "GB" zone which 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 and there is a

general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 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.
- 14.3 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.

15. Attachments

Appendix I	Application Form with Attachment received on 23.7.2024
Appendix Ia	FI received on 29.8.2024
Appendix Ib	FI received on 6.9.2024
Appendix II	Relevant Extracts of TPB PG-No. 10
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VIa	Map showing existing water mains and proposed fresh water mains
Appendix VII	Public Comments
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-4c	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2024**