

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/704

<u>Applicant</u>	Mr. MAK Ho Bong represented by Mr. HUI Kwan Yee
<u>Site</u>	Various Lots in D.D. 17 and adjoining Government Land, Ting Kok, Tai Po, New Territories
<u>Area</u>	About 8,360 m ² (including 58 m ² of Government Land)
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Temporary Barbecue Site for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary barbecue site at the application site (the Site) for a period of three years. The Site falls within an area zoned “AGR” on the approved Ting Kok OZP No. S/NE-TK/19 (**Plan A-1**). According to the Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently occupied for the applied use without valid planning permission.
- 1.2 The proposal comprises 28 one-storey structures with a total covered area of about 2,321.14 m² and a height ranging from 2.14 m to 4.57 m, including six barbecue areas (about 1459.56 m²) and remaining structures for reception, shelters, kitchen, frozen food cabinet, storage, kiosks, performance platform, playing area and toilets. The Site is accessible via a track on Government land and private lots branching off Ting Kok Road to its north. A car park with 26 private car parking spaces, 5 coach/heavy goods vehicle parking spaces and loading/unloading area are proposed. A layout plan showing the structures and car park is at **Drawing A-1**. The operation hours of the applied use are between 8:00 a.m. and 11:00 p.m. daily.

- 1.3 The Site is part of the subject of eight previous applications for various uses. The latest one for temporary barbecue site use (No. A/NE-TK/628) was submitted by the same applicant of the current application and was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 18.5.2018 for a period of three years up to 18.5.2021. Compared with this previous application, there is an increase in site area from 8,039 m² to 8,360 m², number of structures from 21 to 28 and total covered area from 1,834.3 m² to 2,321.14 m² under the current application. There is no change in the number and layout of parking spaces.
- 1.4 In support of the application, the applicant submitted the following documents:
- (a) an application form with attachments received (**Appendix I**) on 8.4.2021
 - (b) supplementary information received on (**Appendices Ia to Ic**) 13.4.2021, 14.4.2021 and 15.4.2021
 - (c) further information received on 18.5.2021 (**Appendix Id**) clarifying the size of car parking spaces (*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 Part 7 of the application form and supplementary information at **Appendices I, Ia to Ic**. They can be summarized as follows:

- (a) the previous planning application for temporary barbecue site use was approved with conditions on 18.5.2018 and all the approval conditions have been complied with; and
- (b) since there is a change in the number of structures and site area, a new planning application is submitted for the Board's permission. The applicant will continue to comply with all requirements imposed by the Board.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "current land owner" 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 notices and sending notice to Tai Po Rural Committee. Detailed information would be deposited at the meeting for Members' inspection. For the Government land within the Site, the said TPB PG-No. 31A is not applicable.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), an Enforcement Notice (EN) (No. E/NE-TK/144) against unauthorized development (UD) involving storage use (including deposit of containers) at part of the Site (about 7.7% of total site area) was issued on 25.10.2019 requiring the said use to be discontinued on 25.1.2020 (**Plan A-2a**). The UD was not discontinued upon expiry of the EN. Prosecution action was taken and the defendants were convicted and fined on 10.2.2021. Recent inspection revealed that the UD has been discontinued. The site will be closely monitored and further enforcement action would be taken if necessary.

5. **Previous Applications**

- 5.1 The Site is part of the subject of eight previous applications for various uses (No. A/NE-TK/181, 207, 228, 257, 316, 427, 628 and 682). Of them, three were rejected, including applications No. A/NE-TK/181 for temporary horse riding school, No. A/NE-TK/682 for temporary open storage of building materials and No. A/NE-TK/207 for temporary barbecue site use. Application No. A/NE-TK/207 was rejected by the Committee on 21.7.2006 mainly on the considerations that the approval of the application would set an undesirable precedent for similar developments within the “AGR” zone; and there was insufficient information to demonstrate the proposed development would not cause adverse impact on the mangrove habitat in the Ting Kok Site of Special Scientific Interest (SSSI) to the south of the application site.
- 5.2 The remaining five applications (No. A/NE-TK/228, 257, 316, 427 and 628) were all for temporary barbecue site uses, and approved with conditions by the Committee between 2007 and 2018, mainly on the considerations that the application was not incompatible with the surrounding area; approval of the application would unlikely frustrate the long-term planning intention of the “AGR” zone; and the proposed use would unlikely cause adverse environmental, traffic, landscape, drainage and sewerage impacts on the surrounding area. Applications No. A/NE-TK/228 and 316 were subsequently revoked due to non-compliance with approval conditions.
- 5.3 The latest previous application No. A/NE-TK/628 was submitted by the same applicant and approved with conditions on 18.5.2018 for a period of 3 years up to 18.5.2021. All approval conditions have been complied with. Compared with this previous application, there is an increase in site area (from 8,039m² to 8,360m²), total covered area (from 1,834.3m² to 2,321.14m²), and number of structures (from 21 to 28) under the current application. There is no change in the parking provision.
- 5.4 Details of the applications are shown in **Appendix II** and their locations are shown on **Plan A-2a**.

6. Similar Applications

- 6.1 There are 14 similar applications (No. A/NE-TK/147, 208, 235, 265, 281, 360, 456, 494, 565, 624, 625, 661, 697 and 698) for temporary barbecue site use in the vicinity of the Site within the same “AGR” zone. All applications were approved with conditions by the Committee between 2002 and 2021 on similar considerations in approving the previous applications for temporary barbecue site use at the Site as mentioned in paragraph 5.2 above.
- 6.2 Details of the applications are shown in **Appendix III** and their locations are shown on **Plan A-2b**.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3, A-4a to A-4d)

- 7.1 The Site is:
- (a) largely paved and occupied by temporary structures for barbecue site use; and
 - (b) located to the south of Ting Kok Road and is accessible via a track on Government land and private lots branching off Ting Kok Road.
- 7.2 The surrounding areas are predominantly rural in character with fallow and active agricultural land intermixing with temporary structures, barbecue sites and tree groups. To the south of the Site are the “Coastal Protection Area” (“CPA”) zone along the coastline of Plover Cove and the Ting Kok SSSI which covers a habitat of mangrove and coastal deposits of mud and silt. To the further north across Ting Kok Road is Ting Kok Village.

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 summarized as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;

- (b) the Site consists of 48 private lots held under Block Government Lease demised for agricultural purpose and one piece of Government land in D.D. 17. No structures shall be erected without prior approval from LandsD. Regarding the Government land, neither occupation nor works of any kind thereon is allowed without the prior approval from LandsD;
- (c) site inspection in December 2020 revealed that there are temporary structures found on the Site without the prior approval from LandsD. As no valid Short Term Waiver (STW) application had been submitted by the lot owners, lease enforcement action was taken against these unauthorized structures. The applicant subsequently submitted STW applications to LandsD for the structures. Should the Board approve the application, LandsD will continue to process the STW applications. However, there is no guarantee at this stage that the STW applications would be approved. If the STW applications are approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fees as considered appropriate;
- (d) the applicant is required to submit an application for Short Term Tenancy (STT) in respect of the piece of Government land under the planning application. Should the Board approve the application, LandsD will consider the STT application (if submitted). However, there is no guarantee at this stage that the STT application would be approved. Such approval, if given, will be subject to such terms and conditions as may be imposed by LandsD including the payment of rental and administrative fees as considered appropriate;
- (e) the access leading to the Site to its northwest comprises unallocated Government land. As such, no tress thereon shall be interfered with unless prior approval is obtained from LandsD. The maintenance and management responsibility of the said Government land and any other Government land leading to the Site should be sorted out with the relevant Government departments, prior to making use of them for access purpose. Further, neither occupation nor works of any kind thereon is allowed without the prior approval from LandsD. Moreover, it seems the proposed ingress/egress will fall on adjoining Lots 384 RP and 385 RP in D.D.17 (outside the Site). The applicant should sort out the relevant issues with the lot owners concerned;
- (f) the applicant is required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate land control and lease enforcement action will be taken in due course;

- (g) it is the responsibility of the applicant to obtain prior approval from relevant departments in operating the barbecue site; and
- (h) there is no guarantee to the grant of a right of way to the Site or approval of the EVA thereto.

Environment

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

- (a) no objection to the application subject to approval conditions on the submission and implementation of sewerage impact assessment (SIA);
- (b) it is understood that the Site is adopting septic tank and soakaway system for sewage treatment and disposal according to the finalized SIA under the previous application (No. A/NE-TK/628);
- (c) the Site is about 15m away from Ting Kok SSSI and compared with the previous application, there is an increase in site area and two more toilet structures have been proposed among other changes. Therefore, it is suggested to retain approval conditions in the current application on the submission of SIA and the implementation of sewerage facilities identified in the SIA;
- (d) the applicant should be advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisance; and
- (e) according to his record, there is no substantial environmental complaint related to the Site in the past three years.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering viewpoint subject to the provision of 26 private car parking spaces of 2.5 m x 5 m and 5 coach/heavy goods vehicle parking spaces of 3.5 m x 12 m as proposed by the applicant; and
- (b) the access road is not under Transport Department (TD)’s management. It is suggested that the land status, management and maintenance responsibilities of the access should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid any potential dispute.

Landscape

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is located in an area of rural coastal plains landscape character surrounded by temporary structures, farmlands and scattered tree groups. According to the applicant's submission, besides a few additional structures (i.e. storages, shading structures and barbecue area etc.) proposed within the Site, the layout is generally similar to that under the previous application (No. A/NE-TK/628). Significant adverse landscape impact arising from the applied use is not anticipated;
- (c) there are approved planning applications in close proximity to the Site within the same "AGR" zone for barbecue site use. The applied use under this application is considered not entirely incompatible with the surrounding environment of the Site; and
- (d) should the application be approved, an approval condition to maintain the existing trees within the Site at all times during the approval period is recommended.

Agriculture and Nature Conservation

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

- (a) the Site is located in an "AGR" zone and currently comprises a barbecue site, with vacant land and temporary structures. There are active agricultural activities in the vicinity. Agricultural infrastructure such as road access and water source is available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view; and
- (b) the Site is about 15m to the north of Ting Kok SSSI of mangrove interest. It is noted that the applicant has implemented precautionary/protective measures for protecting the SSSI, including separating the Site and the SSSI by the installation and maintenance of chain-link fences, and putting up banners to remind the public about nature protection. Should the application be approved, the applicant should continue the said measures to minimise human disturbance to the SSSI. An approval condition to this effect is recommended.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) there is no existing DSD maintained public drains available for connection in the area. The applicant should have his own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant/owner shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (c) public sewerage is not available near the Site;
- (d) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought; and
- (e) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas.

Building Matter

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

- advisory comments under the Building Ordinance are provided at paragraph (f) of **Appendix V**.

Fire Safety

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

- (a) no in-principle objection to the application subject to the fire service installations (FSIs) being provided to his satisfaction;

- (b) the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. The following points should be noted:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123) or license is required for the proposed barbecue site, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Food and Environmental Hygiene

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

- (a) no objection to the application; and
- (b) proper licence/permit issued by this Department is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Detailed advisory comments are provided in paragraph (h) of **Appendix V**.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (d) Project Manager/North, Civil Engineering and Development Department;
- (e) Director of Electrical and Mechanical Services;
- (f) Commissioner of Police; and
- (g) District Officer/Tai Po, Home Affairs Department.

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

On 16.4.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from an individual objecting to the application mainly on concerns of adverse impacts on environment, traffic, public safety and neighbourhood relationship.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary barbecue site for a period of three years within an area zoned “AGR” on the OZP. The applied 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 retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application as the Site possesses potential for agricultural rehabilitation. Nevertheless, the applied use which is temporary in nature would unlikely frustrate the planning intention of the Site in the long run.
- 11.2 The Site is largely paved and occupied by temporary structures for barbecue site use. The surrounding areas are predominantly rural in character with temporary structures, barbecue sites and tree groups. The applied use is considered not incompatible with the surrounding areas. According to DEP, there was no environmental complaint pertaining to the Site received in the past three years. DAFC advises that the Site is close to the Ting Kok SSSI of mangrove interest and should the application be approved, a condition requiring the applicant to implement precautionary/protective measures for protecting the SSSI should be imposed. Other government departments consulted, including CE/C of WSD, CHE/NTE of HyD, H(GEO) of CEDD, PM/N of CEDD, DEMS, DO/TP of HAD and C of P have no objection to/no adverse comment on the application.
- 11.3 The Site is part of the subject of eight previous applications for various uses (No. A/NE-TK/181, 207, 228, 257, 316, 427, 628 and 682) (**Plan A-2a**). Of them, six were for temporary barbecue site use. Except the first one (Application No. A/NE-TK/207) which was rejected by the Committee on 21.7.2006 mainly for insufficient information in the applicant’s submission to demonstrate no adverse impact on the mangrove habitat in the Ting Kok SSSI, the remaining five applications (No. A/NE-TK/228, 257, 316, 427 and 628) were all approved with conditions by the Committee between 2007 and 2018, mainly on the considerations that the application was not incompatible with the surrounding area; approval of the application would unlikely frustrate the long-term planning intention of the “AGR” zone; and the proposed use would unlikely cause adverse environmental, traffic, landscape, drainage and sewerage impacts on the surrounding area. The latest previous application No. A/NE-TK/628 was submitted by the same applicant and approved with conditions on 18.5.2018 for a period of 3 years up to 18.5.2021. All approval conditions have been complied with. Compared with this previous application, there is an increase in site area (from 8,039m² to 8,360m²), total covered area (from 1,834.3m² to 2,321.14m²) and number of structures (from 21 to 28) and no change in car parking provision under the current application. The increase in site area does not involve any extension of site boundary towards nor encroachment upon the SSSI.

- 11.4 There are 14 similar applications (No. A/NE-TK/147, 208, 235, 265, 281, 360, 456, 494, 565, 624, 625, 661, 697 and 698) for temporary barbecue site use in the vicinity of the Site within the same “AGR” zone. All applications were approved with conditions by the Committee between 2002 and 2021 on similar considerations as mentioned in paragraph 11.3 above. The circumstances for approval of these similar applications are largely applicable to the current one.
- 11.5 Regarding the public comment objecting to the application on the grounds as detailed in paragraph 10, Government departments’ comments and the planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11, Planning Department considers that the development 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 a period of three years until 28.5.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the maintenance of the existing trees on the application site at all times during the planning approval period;
- (b) the maintenance of precautionary/protective measures on the application site at all times during the planning approval period to ensure no adverse impacts on the nearby “Coastal Protection Area” zone and Ting Kok Site of Special Scientific Interest;
- (c) 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 28.11.2021;
- (d) in relation to (c) above, the implementation 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 28.2.2022;
- (e) the submission of fire service installations and water supplies for firefighting proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 28.11.2021;
- (f) in relation to condition (e) above, the implementation of fire service installations and water supplies for firefighting proposal within 9 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 28.2.2022;

- (g) the submission of sewerage impact assessment (SIA) within 6 months from the date of the planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 28.11.2021;
- (h) in relation to condition (g) above, the implementation of sewerage facilities identified in the SIA within 9 months from the date of the planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 28.2.2022;
- (i) if the above planning conditions (a) or (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;
- (j) if any of the above planning conditions (c), (d), (e), (f), (g) or (h) is not complied with within the specified time limit, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (k) upon expiry of the planning application, 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 attached 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 development 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. It is also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification given 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 the planning permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses 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 and attachments
Appendices Ia to Ic	Supplementary information submitted by the applicant received on 3.4.2021, 14.4.2021 and 15.4.2021
Appendix Id	Further information submitted by the applicant received on 18.5.2021
Appendix II	Previous applications
Appendix III	Similar applications
Appendix IV	Public comment
Appendix V	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plans A-2a to A-2b	Site plans
Plan A-3	Aerial photo
Plans A-4a to A-4c	Site photos

**PLANNING DEPARTMENT
MAY 2021**