

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/705

<u>Applicant</u>	Mr. CHUNG Kwai Fong
<u>Site</u>	Lots 1605 RP (Part) and 1606 (Part) in D.D. 17, Lo Tsz Tin Village, Tai Po, New Territories
<u>Site Area</u>	About 561 m ²
<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>	“Recreation” (“REC”)
<u>Application</u>	Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary eating place for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “REC” on the approved Ting Kok OZP No. S/NE-TK/19 (**Plan A-2**). According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use in “REC” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use without valid planning permission.
- 1.2 The applied use comprises five single-storey structures converted from containers with a total floor area of about 66.9m² and building height of about 2.5m for seating area, food storage, food preparation area and toilet uses (**Drawings A-1 and A-2**). The remaining area will be uncovered and part of it will be used for outdoor sitting area. No car parking space is provided. According to the applicant, the eating place will provide not more than 44 seats and will operate from 11:00am to 11:00pm daily.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) application form and attachments received on (**Appendix I**)
30.4.2021

- (b) further information (FI) received on 12.5.2021 (**Appendix Ia**) providing a revised floor plan[^]
- (c) FI received on 3.6.2021 clarifying the access of car drivers to the eating place[^]
- (d) FI received on 10.6.2021 and 11.6.2021 providing a revised layout plan and clarification on the maximum number of customers to be accommodated at the eating place[^]

[^]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 Part 7 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the provision of eating place could cater for the increase in number of visitors to Tai Mei Tuk;
- (b) the number of visitors will be further increased upon the opening of Lung Mei Bathing Beach in the vicinity; and
- (c) there is an existing car park operated by the applicant adjacent to the Site under an approved application No. A/NE-TK/684 (**Plan A-2**), which could serve the parking need of visitors to the eating place. Hence, the eating place will not result in adverse traffic impact on the surrounding areas.

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

The applicant is not the “current land owner”. He 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 notices in local newspapers and on the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is part of the subject of a current planning enforcement case (No. E/NE-TK/150) against unauthorized development (UD) involving parking of vehicles, storage use (including deposit of containers) and use for eating place (**Plan A-2**). Enforcement Notice was issued on 14.7.2020 requiring discontinuation of the UD by 14.10.2020. Planning permission (No. A/NE-TK/684) was subsequently granted for car park use at part of the enforcement site. As the remaining part of the UD still continues upon expiry of the notice, prosecution action may be undertaken.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

- 6.1 There is one similar application (No. A/NE-TK/523) for a proposed temporary restaurant and convenience store for a period of five years within the same “REC” zone. The application was rejected by the Committee on 31.10.2014 mainly for the reasons of being not in line with the planning intention of the “REC” zone and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding areas.
- 6.2 Details of the above application is summarized at **Appendix II** and its location is shown on **Plans A-1** and **A-2**.

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

- 7.1 The Site is:
- (a) hard-paved, partially fenced off; and
 - (b) currently used for an eating place with parking spaces without valid planning permission.
- 7.2 The surrounding areas are predominantly rural in character with village houses, barbecue areas, shops and services, car parks, vacant land and tree groups. To the north of the Site is the village proper of Lo Tsz Tin. To the south on the opposite side of Ting Kok Road is Lung Mei Bathing Beach.

8. Planning Intention

The planning intention of the “REC” zone is primarily for 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 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 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 two private lots which are held under the Block Government Lease demised for agricultural purpose. No structure shall be erected thereon without the prior approval from LandsD. The applicant is required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate enforcement would be taken in due course;
- (c) should the Board approve the application, the lots owner is required to submit an application for Short Term Waiver (STW) to LandsD should he wish to erect structures on the private lots. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is 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 fee as considered appropriate; and
- (d) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) the existing village access connecting to the Site is not managed by Transport Department (TD). The land status, management and maintenance responsibilities of the road and footpath should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

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

- (a) no comment on the application, noting that no parking spaces or loading/unloading spaces are proposed and hence there will be no vehicular access for the Site.

Environment

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

- (a) no in-principle objection to the application;
- (b) the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses” issued by the DEP to minimize any potential environmental nuisance; and
- (c) he is also reminded to strictly observe and comply with relevant environmental pollution control ordinances (including Noise Control Ordinance and Air Pollution Control Ordinance), and carry out pollution abatement measures in relevant Guidelines, including “Control of Oily Fume and Cooking Odour from Restaurants and Food Business” to avoid creating any nuisance.

Hygiene

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

- (a) proper license / permit issued by his department is required for any food business / catering service / activities regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Detailed advice in relation to the issue of licence are in paragraph (f) of **Appendix IV**; and
- (b) an application for Light Refreshment Restaurant Licence at the Site has been received on 11.5.2021 and is under processing by his department.

Drainage

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

- (a) 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;
- (b) while there are DSD’s public stormwater drains in this area, the applied use should have its own stormwater collection and discharge system 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 applied use should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify/modify the systems if they are found to be inadequate or ineffective to accommodate the additional runoff arisen from the development of the Site. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure or ineffectiveness of the modified drainage systems caused by their works;

- (c) there are existing public sewers in the vicinity of 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.

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) the applicant is advised to submit layout plans incorporated with the proposed FSIs for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the locations of the proposed FSIs to be installed should be clearly marked; and
- (c) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123) or licence is required for the subject eating place, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Nature Conservation

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

- (a) no comment on the application noting that the Site is largely paved; and
- (b) there is a stream course to the west of the Site. Should the application be approved, the applicant is advised to follow Buildings Department Practice Note for Authorised Persons and Structural Engineers No. ADV-27 "Protection of natural streams/rivers from adverse impact arising from construction works", in particular Appendix B "Guidelines on Developing Precautionary Measures during the Construction Stage", so as to

avoid disturbance to the stream and causing water pollution.

Landscape

9.1.9 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 located in an area of rural coastal plains landscape character surrounded by village houses, temporary structures and vehicle parks. The Site is hard paved with no significant landscape resource observed, hence, significant adverse impact on existing landscape resources arising from the applied use is not anticipated;
- (c) the applied use is considered not entirely incompatible with the landscape character within and surrounding the Site; and
- (d) noting that there is no major public frontage along the site boundary, should the Board approve the application, it is considered not necessary to impose landscape condition as its effect on enhancing the quality of public realm is not apparent.

Building Matters

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

- for any new proposed buildings, the advisory comments at paragraph (j) of **Appendix IV** should be observed.

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

- (a) Chief Engineer/Construction Division, Water Supplies Department (CE/C,WSD) ;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H/GEO, CEDD);
- (c) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Commissioner of Police(C of P); and
- (f) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

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

- 10.1 On 7.5.2021, 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 for the reason that the applied use is not in line with the planning intention of “REC” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary eating place for a period of 3 years within the “REC” zone on the OZP. The applied use is not entirely in line with the planning intention of the “REC” zone which is primarily for the recreational developments for the use of the general public. Nevertheless, the applied use would support the recreational facilities in the vicinity such as the Lung Mei Bathing Beach to the south of the Site across Ting Kok Road. The approval of the application on a temporary basis for 3 years would not frustrate the long-term planning intention of the “REC” zone.
- 11.2 The Site is hard-paved and located in an area surrounded by village houses, temporary structures and vehicle parks. CTP/UD&L, PlanD has no objection to the application as the applied use is not incompatible with the landscape character of the surrounding area and no significant adverse landscape impact is anticipated. DAFC advises that the applicant should undertake measures to avoid disturbance to the stream to the west of the Site and causing water pollution. DEP advises that the applicant should follow the relevant mitigation measures and requirements and strictly observe and comply with relevant environmental pollution control ordinances and carry out pollution abatement measures to avoid creating any environmental nuisance.
- 11.3 No car parking space is proposed for the applied use. According to the applicant, the adjoining temporary public vehicle park operated by himself with valid planning permission (under application No. A/NE-TK/684) will serve the visitors of the eating place. C for T has no in-principle objection to the application from traffic engineering point of view. Other government departments consulted including DLO/TP of LandsD, DFEH, CHE/NTE of HyD, CE/MN of DSD, D of FS, CBS/NTW of BD, CE/C of WSD, H(GEO) and PM/N of CEDD, DEMS, C of P and DO/TP of HAD have no objection to nor adverse comment on the application.
- 11.4 The Site is not subject of any previous planning application. There is one similar application No. A/NE-TK/523 for a temporary restaurant and convenience store within the same “REC” zone, which was rejected by the Committee in 2014 mainly for the reasons of being not in line with the planning intention of the “REC” zone and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding area. For the subject application, there are no adverse comments from all concerned departments. The circumstances of the rejected application is not relevant to the current application.

- 11.5 Regarding the public comment as detailed in paragraph 10 above, 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 and having taken into account the public comment mentioned in paragraph 10, 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 3 years until 25.6.2024. The following conditions of approval and advisory clauses are also suggested for Member's 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 25.12.2021;
- (b) in relation to (a) 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 25.3.2022;
- (c) the submission of fire service installations (FSIs) and water supplies for fire-fighting 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 25.12.2021;
- (d) in relation to (c) above, the implementation of FSIs and water supplies for fire fighting 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 25.3.2022; and
- (e) if any of the above planning conditions (a), (b), (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.

Advisory clauses

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

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

- the proposed development under application is not in line with the planning intention of the “REC” zone which is primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong justification in the submission for a departure from the 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.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) 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 received on 30.4.2021
Appendix Ia	Further information received on 12.5.2021
Appendix Ib	Further information received on 3.6.2021
Appendix Ic	Further information received on 10.6.2021 and 11.6.2021
Appendix II	Similar application within the same “REC” zone on the approved Ting Kok Outline Zoning Plan No. S/NE-TK/19
Appendix III	Public comment
Appendix IV	Recommended advisory clauses
Drawings A-1 & A-2	Layout Plans submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos