

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/712

<u>Applicant</u>	Mr. CHI Yiu Wang
<u>Site</u>	Lots 396 RP (Part) and 398 (Part) in D.D. 17, Lots 323 S.C (Part), 1015 RP, 1016 RP, 1030 (Part), 1031, 1032, 1034, 1035, 1037 S.A, 1037 S.B, 1038, 1039 (Part), 1040 (Part), 1045 (Part), 1046, 1047, 1048 S.B (Part), 1049 (Part), 1050 (Part) and 1056 in D.D. 29, Ting Kok Road, Tai Po, New Territories
<u>Area</u>	About 4,042 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>Zonings</u>	“Agriculture” (“AGR”) (about 92% of the Site) and area shown as ‘Road’ (about 8% of the Site)
<u>Application</u>	Temporary Barbecue Site and Car Park for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary barbecue site and car park at the application site (the Site) for a period of 3 years. The Site comprises two parts with the southern part falling within “AGR” zone and the northern part within an area partly zoned “AGR” and partly shown as ‘Road’ on the OZP (**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 by the applied use without valid planning permission.
- 1.2 According to the applicant’s submission, the southern part of the Site comprises eight one-storey structures with a total gross floor area (GFA) of about 1,762 m² and a height of 4.8 m for barbecue areas, rest area, storage, play area, reception/kiosk, and toilet uses. The northern part is for car park use with 6 private car parking spaces each of 5m x 2.5m and a loading/unloading space of 7m x 3.5m. The operation hours are from 11:00 a.m. to 10:00 p.m. daily. The Site is accessible via Ting Kok Road. A layout plan of the applied use is at **Drawing A-1**. The applicant has also submitted a drainage proposal,

sewerage impact assessment report and fire services installations proposal to support the application.

- 1.3 The Site is part of the subject of eight previous applications. The last one (No. A/NE-TK/661) which was submitted by the same applicant of current application for temporary barbecue site and car park use was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 1.2.2019 for a period of 3 years until 1.2.2022. The planning permission was subsequently revoked on 1.5.2021 due to non-compliance with approval conditions relating to the implementation of sewerage facilities and the submission and implementation of drainage proposal. Compared with that previous application, the proposal under current application involves a slightly larger site (increased from 4,032 m² to 4,042 m²) and total GFA (increased from 1,626.5 m² to 1,762 m²), and changes in layout, dimension and use of some structures. The number and layout of parking and loading/unloading spaces remain the same.
- 1.4 In support of the application, the applicant submitted the following documents:
- (a) application form with attachments received on (**Appendix I**) 27.7.2021 and supplementary information received on 30.7.2021
 - (b) Further Information (FI) received on 6.8.2021[^] (**Appendix Ia**)
 - (c) FI received on 31.8.2021 (**Appendix Ib**)
 - (d) FI received on 21.10.2021[^] (**Appendix Ic**)
 - (e) FI received on 5.11.2021[^] (**Appendix Id**)
 - (f) FI received on 19.11.2021[^] (**Appendix Ie**)
 - (g) FI received on 24.11.2021[^] (**Appendix If**)
 - (h) FI received on 26.11.2021[^] (**Appendix Ig**)
- [^]*accepted and exempted from the publication and recounting requirements*
- 1.5 On 29.10.2021, the Board agreed to the applicant's request to defer making a decision on the application for two months to allow time for the preparation of FI to address departmental comments. The applicant submitted the FIs subsequently as detailed in paragraph 1.4 above. The application is scheduled for consideration by the Committee at this meeting.

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** and FI at **Appendices Ia to Ig**. They can be summarized as follows:

- (a) the barbecue site and car park have been in operation for many years, with the last planning permission (Application No. A/NE-TK/661) obtained on 1.2.2019. The applicant had made efforts to comply with the approval conditions but due to the COVID-19 pandemic, he was unable to comply with some approval conditions in time, and the planning permission was subsequently revoked. The

current application is submitted with a view to continuing the previously approved use for barbecue site and car park;

- (b) the Site is accessible from Ting Kok Road via a local track on private lots partly owned by the applicant and partly by others. Consent have been obtained from the concerned lot owners for the use of their land; and
- (c) a drainage proposal, sewerage impact assessment report and fire services installations proposal are submitted to address the concerns of relevant government departments raised in the previous application.

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 notice and sending notice to Tai Po Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications

- 4.1 The Site is part of the subject of eight previous applications (**Plan A-2a**). Six of them (No. A/NE-TK/208, 235, 281, 360, 456 and 661) for temporary barbecue site and car park use were approved with conditions by the Committee between 2006 and 2019, mainly on the considerations of being unlikely to frustrate the long-term planning intention of the “AGR” zone; not incompatible with the surrounding environment; and not causing adverse environmental, traffic, landscape, drainage and sewerage impacts on the surrounding area.
- 4.2 The last planning application (No. A/NE-TK/661) submitted by the same applicant of the current application was approved with conditions by the Committee on 1.2.2019 for a period of 3 years until 1.2.2022. The application was subsequently revoked on 1.5.2021 due to non-compliance with approval conditions on the implementation of sewerage facilities and the submission and implementation of drainage proposal. Compared with that previous application, the proposal under current application involves a slightly larger site (increased from 4,032 m² to 4,042 m²) and total GFA (increased from 1,626.5 m² to 1,762 m²), and minor changes in the layout, dimension and use of some structures. The number and layout of parking and loading/unloading spaces remain the same.
- 4.3 For the remaining two applications, one was for temporary shop and services (fresh provision shop and food factory) (No. A/NE-TK/285), which was rejected by the Board on review on 11.12.2009. The other one was for temporary organic farm and fresh provision shop (No. A/NE-TK/321), which was approved by the Committee on 29.10.2010 for a period of 3 years.

- 4.4 Details of the applications are shown in **Appendix II** and their locations are shown on **Plan A-2a**.

5. Similar Applications

- 5.1 There are 15 similar applications (No. A/NE-TK/147, 207, 228, 257, 265, 316, 427, 494, 565, 624, 625, 628, 697, 698 and 704) for temporary barbecue site use in the vicinity of the Site within the same “AGR” zone. Except Application No. A/NE-TK/207, 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 4.1 above.
- 5.2 Application No. A/NE-TK/207 was rejected by the Committee on 21.7.2006 for reasons of insufficient information to demonstrate no adverse impact on the mangrove habitat in the Ting Kok Site of Special Scientific Interest (SSSI) and setting of undesirable precedent.
- 5.3 Details of the applications are shown in **Appendix III** and their locations are shown on **Plan A-2b**.

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

- 6.1 The Site is:
- (a) paved and largely occupied by temporary structures for barbecue site use and car park area; and
 - (b) accessible from Ting Kok Road via a local track on private lots.
- 6.2 The surrounding areas are predominantly rural in character with temporary barbecue sites, village houses, farmlands, temporary structures and clusters of trees. About 50m and 80m to the south of the Site are the “Coastal Protection Area” (“CPA”) zone along the coastline of Plover Cove and the Ting Kok SSSI respectively. To the north across Ting Kok Road is Ting Kok Village.

7. Planning Intention

- 7.1 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.
- 7.2 Area shown as ‘Road’ on the OZP is for road purpose.

8. Comments from Relevant Government Departments

8.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

8.1.1 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 in D.D. 17 and 20 private lots in D.D. 29, which are held under Block Government Lease demised for agricultural purpose. No structures shall be erected on the lots without prior approval from LandsD;
- (c) a recent inspection revealed that there are temporary structures found on the Site without prior approval from LandsD. These structures largely follow the layout submitted under the application. Warning letters were issued against these temporary structures;
- (d) recently, the applicant has submitted new STW applications to LandsD pending lot owners' consent. 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; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto.

Environment

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

- (a) no in-principle objection to the application;
- (b) according to his record, no environmental complaint related to the Site was received in the past three years; and
- (c) according to the applicant's submission, septic tank and soakaway (ST/SA) system is used for sewage treatment and the said system is designed, constructed, operated and maintained in accordance with the ProPECC PN 5/93 with Authorised Person's certification. Having considered the technical constraints for the Site to connect to the existing public sewer,

and the fact that the ST/SA system has been used on site for years, he has no adverse comments on the adoption of ST/SA system. The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Use and Open Storage Sites” to minimize any potential environmental nuisance.

Traffic

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

- (a) no objection to the application; and
- (b) the access road to the Site is not under Transport Department’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 potential land disputes.

Landscape

8.1.4 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 village houses, farmlands, temporary structures and clusters of trees. According to the applicant’s submission, the layout of the applied use is generally similar to that under the previous application (No. A/NE-TK/661). Significant adverse landscape impact arising from the applied use is not anticipated;
- (c) there are several approved planning applications surrounding the Site within the same “AGR” zone for the same use. The applied use under this application is considered not entirely incompatible with the surrounding environment of the Site;
- (d) since there is no major public frontage along the site boundary, and existing trees/vegetation are observed along the northern boundary of the Site, should the application be approved by the Board, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent; and
- (e) the applicant should be advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant is reminded

to seek approval for any proposed tree works from relevant departments prior to commencement of the works.

Agriculture

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

- the Site falls partially within an “AGR” zone generally comprising barbecue sites, vegetable fields, vacant land and temporary structures. There are active agricultural activities in the vicinity of the Site. Agricultural infrastructure such as road access and water source is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Drainage

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

- (a) he has no adverse comment on the application from public drainage viewpoint;
- (b) the applicant should refine the drainage proposal to fully address his previous comments. Should the application be approved, an approval condition on submission and implementation of drainage proposal should be included to ensure that the proposed development will not cause adverse drainage impact to the adjacent areas; and
- (c) advisory comments are provided at paragraph (g) of **Appendix V**.

Building Matter

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

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

Fire Safety

8.1.8 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 for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location 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), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Food and Environmental Hygiene

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

- (a) no objection to the application; and
- (b) advisory comments at paragraph (j) of **Appendix V** should be observed.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD); and
- (d) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

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

On 3.8.2021 and 10.9.2021, the application and FI submitted by the applicant were published for public inspection respectively. During the statutory public inspection periods, two public comments were received from individuals objecting to the application mainly on the grounds of failing to comply with approval conditions in relation to provision of drainage and sewerage facilities under the previous application and causing environmental pollution and potential fire hazard which will affect villagers' safety and living quality.

10. Planning Considerations and Assessments

10.1 The application is for a temporary barbecue site and car park for a period of 3 years within an area largely zoned "AGR" (about 92%) and partly shown as 'Road' (about 8%) on the OZP (**Plan A-1**). 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, as the applied use is on a temporary basis for 3 years, approval of the application would not jeopardize the long-term planning intention of the “AGR” zone.

- 10.2 The Site is paved and largely occupied by temporary structures for barbecue site use. The surrounding areas are predominantly rural in character with temporary barbecue sites, village houses, farmlands, temporary structures and clusters of trees. The applied use is considered not incompatible with the surrounding areas. CTP/UD&L of PlanD has no objection to the application as significant adverse landscape impact arising from the applied use is not anticipated. DEP has no objection to the application and advises that no environmental complaint pertaining to the Site was received in the past three years. Other government departments consulted, including C for T, CE/MN of DSD, CE/C of WSD, CHE/NTE of HyD, PM/N of CEDD and DO/TP of HAD have no objection to/no adverse comment on the application.
- 10.3 The Site is part of the subject of six previous applications (No. A/NE-TK/208, 235, 281, 360, 456 and 661) for temporary barbecue site and car park use, which were all approved with conditions by the Committee between 2006 and 2019, mainly on the considerations of being unlikely to frustrate the long-term planning intention of the “AGR” zone; not incompatible with the surrounding environment; and not causing adverse environmental, traffic, landscape, drainage and sewerage impacts on the surrounding area. The last one (No. A/NE-TK/661) submitted by the same applicant of the current application was approved with conditions by the Committee on 1.2.2019 for a period of 3 years until 1.2.2022. The planning permission was revoked on 1.5.2021 due to non-compliance with approval conditions relating to the implementation of sewerage facilities and the submission and implementation of drainage proposal. The applicant explains that he was unable to comply with the concerned conditions in time mainly because of COVID-19 pandemic. In support of the current application, the applicant has submitted a drainage proposal and sewerage impact assessment to address DSD’s and EPD’s concerns. Both departments have no adverse comment on the application. Having regard to the above and taking into account that there is no significant change in planning circumstances, it is considered that the current application could be given sympathetic consideration. Should the application be approved by the Committee, shorter compliance periods for approval conditions are recommended with a view to closely monitor the progress on compliance with conditions. Furthermore, the applicants should be advised that if there is further non-compliance with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration would not be given to any further application.
- 10.4 There are 15 similar applications (No. A/NE-TK/147, 207, 228, 257, 265, 316, 427, 494, 565, 624, 625, 628, 697, 698 and 704) for temporary barbecue site use in the vicinity of the Site within the same “AGR” zone. Except Application No. A/NE-TK/207 rejected in 2006 for reason of insufficient information to demonstrate no adverse impact on the mangrove habitat in the Ting Kok SSSI, all other applications were approved with conditions by the Committee between 2002 and 2021 on similar considerations as mentioned in

paragraph 10.3 above. The circumstances for approving these similar applications are largely applicable to the current one.

- 10.5 Regarding the public comments as detailed in paragraph 9, government departments' comments and the planning assessments above are relevant.

11. Planning Department's Views

- 11.1 Based on the assessment made in paragraph 10, and having taken into account the public comments mentioned in paragraph 9, Planning Department considers that the development could be tolerated for a period of 3 years.
- 11.2 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 24.12.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of a drainage proposal 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 24.3.2022;
- (b) in relation to (a) above, the implementation of drainage facilities 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 24.6.2022;
- (c) the submission of a proposal for fire service installations and water supplies for fire-fighting within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 24.3.2022;
- (d) in relation to (c) above, the implementation of fire service installations and water supplies for fire-fighting 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 24.6.2022;
- (e) if any of the above planning conditions (a), (b), (c) or (d) 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
- (f) upon the 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**.

11.3 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.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for the planning permission.
- 12.2 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.
- 12.3 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.

13. Attachments

Appendix I	Application form and attachments received on 27.7.2021 and supplementary information received on 30.7.2021
Appendix Ia	FI submitted by the applicant received on 6.8.2021
Appendix Ib	FI submitted by the applicant received on 31.8.2021
Appendix Ic	FI submitted by the applicant received on 21.10.2021
Appendix Id	FI submitted by the applicant received on 5.11.2021
Appendix Ie	FI submitted by the applicant received on 19.11.2021
Appendix If	FI submitted by the applicant received on 24.11.2021
Appendix Ig	FI submitted by the applicant received on 26.11.2021
Appendix II	Previous applications
Appendix III	Similar applications
Appendix IV	Public comments
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-4d	Site photos