

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/TM-SKW/112**

<b><u>Applicant</u></b>	:	Ms. CHUNG Yuk Ying represented by Mr. WAN Kai Leung
<b><u>Premises</u></b>	:	G/F, No.305 So Kwun Wat, 18.5 Miles, Castle Peak Road, Tuen Mun, New Territories
<b><u>Floor Area</u></b>	:	About 40m <sup>2</sup>
<b><u>Land Status</u></b>	:	Government Land partly covered by Government Land Licence No. M1474 - Restricted to the use as latrine/storage
<b><u>Plan</u></b>	:	Approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13
<b><u>Zoning</u></b>	:	“Green Belt” (“GB”)
<b><u>Application</u></b>	:	Proposed Temporary Eating Place for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed temporary eating place for a period of 3 years. The Premises falls within an area zoned “GB” on the approved So Kwun Wat OZP No. S/TM-SKW/13 (**Plan A-1**). Although the proposed use is neither Column 1 nor Column 2 use in the “GB” zone, according to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of 3 years requires permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Premises is currently largely vacant. There is no previous application covering the Premises.
- 1.2 According to the applicant, the proposed temporary eating place with a total floor area of about 40m<sup>2</sup> would be located on the ground floor of an existing two-storey structure. The operation hours of the proposed use would be from 7:00 a.m. to 5:00 p.m. daily. No parking space will be provided. Loading and Unloading activities will be undertaken in front of the Premises. The floor plan submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following

documents:

- (a) Application form with plans received on 24.5.2021 (Appendix I)
- (b) Supplementary information (SI) received on 27.5.2021 providing clarification and replacement pages (Appendix Ia)
- (c) Further information (FI) received on 2.7.2021 providing responses to comments of the Director of Environmental Protection (DEP) (Appendix Ib)
- (d) Further information (FI) received on 12.7.2021 providing responses to comments of the Commissioner for Transport (C for T) (Appendix Ic)
- (e) Further information (FI) received on 15.7.2021 providing clarification and responses to comments of the C for T (Appendix Id)  
*[(c), (d) and (e) above 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 at **Appendices I, Ia and Id**. They can be summarised as follows:

- (a) The Premises is located along a path leading to the entry point of MacLehose Trail. The proposed eating place will be a resting place and bring convenience to the hikers.
- (b) The Premises is located in an existing structure used by the Castle Peak So Kwun Wat Farming Association with sufficient electricity and freshwater supply. The proposed use will only utilize the existing resources and will not cause any adverse environmental impacts.

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

As the Premises involves Government land only, the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to the application.

## 4. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development (other than redevelopment) in a "GB" zone;
- (b) an application for new development in a "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

## **5. Background**

The site which the Premises is located is currently not subject to active enforcement action. However, the building to the immediate east and area to the south of the Premises are subject to planning enforcement action against unauthorized development (UD) involving use for eating place. Enforcement Notice (EN) was issued on 9.5.2018 requiring the discontinuance of the UD. Since the UD has not been discontinued upon expiry of the EN, the EN recipients were prosecuted and convicted on 26.6.2019. Compliance Notice (CN) was issued on 29.10.2020. Reinstatement Notice (RN) was issued on 1.3.2021.

## **6. Previous Application**

There is no previous application covering the Premises.

## **7. Similar Application**

There is no similar application for the same use within the same "GB" zone.

## **8. The Site and Its Surrounding Areas (Plan A-1 to Plan A-4)**

8.1 The Premises is:

- (a) situated on the ground floor of an existing 2-storey structure; and
- (b) accessible from So Kwun Wat Road via a local track.

8.2 The surrounding area have the following characteristics:

- (a) predominately rural in character with scattered agricultural activities intermixed with residential dwellings, fallow/cultivated agricultural land and vacant land set against green and vegetated land/ hillslopes; and
- (b) about 450m to the north of the Premises is Tai Lam Country Park.

## **9 Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

## **10 Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

10.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The Site is the G/F of a temporary structure (T/S) on Government Land. The T/S is partly covered by Government Land Licence (GLL) and partly on Government land and the structure is restricted to the use as latrine/storage. The size of the structure also exceeds that permitted under the GLL. Other temporary structures including fence and gate are found on the adjoining Government Land.
- (b) No permission has been given for the change of use of the structure concerned nor for the erection of the structure mentioned in paragraph 10.1.1(a) above. The licence is not transferrable and the applicant has not provided any information on the relationship with the licensee.
- (c) The Site is accessible from So Kwun Wat Road via an unnamed road. His office does not carry out maintenance works for the access nor guarantee that right-of-way will be given to the Site.
- (d) The licensee is required to submit a formal application to his office for change of use from latrine/storage under the GLL to temporary eating place after planning permission is given by the Board. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the

application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of administration fee and licence fee etc.

- (e) His office reserves the right to take enforcement actions as considered appropriate against any unauthorised erection/extension/alternations of structures on the Site or any unauthorised occupation of Government land irrespective of whether planning permission will be given or not.

### **Traffic**

#### 10.1.2 Comments of the C for T:

He has no in-principle objection to the proposed use from traffic engineering point of view based on the FI dated 12.7.2021 (**Appendix Ic**) and 15.7.2021 (**Appendix Id**).

#### 10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

The existing access adjacent to the Site is not and will not be maintained by HyD.

### **Environment**

#### 10.1.4 Comments of the DEP:

- (a) She is unable to support the application at this stage.
- (b) FI dated 2.7.2021 (**Appendix Ib**) has not properly addressed the potential environmental impact arising from the proposed use, in particular water quality and wastewater impacts. She also opines that the eating place may cause odour and noise impacts to nearby residents.

#### Water Quality and Wastewater

- (c) In the further information, the applicant did not indicate whether grease trap following requirements of ProPECC PN 5/93 would be installed. The applicant fails to demonstrate technical feasibility of proposed tanker away and thus no adverse water quality impact. There is no estimation of the amount of wastewater generated daily from the proposed eating place. The applicant should advise how the proposed storage tank has adequate capacity and weekly frequency of tanker away is adequate.
- (d) Treatment and disposal facility with adequate capacity should be proposed and implemented to demonstrate no adverse water quality impact. The applicant should install the grease trap for the kitchen and follow the requirements of ProPECC PN 5/93 and/or EPD's Guideline on Grease Trap for Restaurant and Food Processors for the design and maintenance of grease trap.

Odour and Noise

- (e) Mitigation measures should be proposed to avoid any nuisance. The applicant is reminded to strictly observe and comply with relevant environmental pollution control ordinances.

**Nature Conservation and Agriculture**

10.1.5 Comments of the Director of Agriculture, Fisheries and Conversation (DAFC):

The Site is paved, with an existing structure present on site. Considering the proposed eating place will be located within the existing structure, he has no comment on the application from nature conversation and agricultural development perspectives.

**Landscape**

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

As the application only involves conversion of use within an existing building, significant change to the landscape character is not envisaged.

**Drainage**

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

- (a) There is insufficient information in the submission to demonstrate the proposed use will not cause adverse drainage impact on the surrounding area.
- (b) Notwithstanding the above, should the application be approved, a condition should be included to require the applicant to submit and implement the drainage proposal as well as maintain the drainage facilities for the Site to ensure that it will not cause adverse drainage impact to the adjacent area.

**Building Matters**

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

There is no record of approval by the Building Authority (BA) for the existing structure at the Site. The applicant should be reminded of the detailed comments at **Appendix III**.

**Fire Safety**

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

(a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.

(b) The applicant is advised to submit relevant layout plans incorporating the proposed FSIs to his department for approval. The applicant should note his detailed comments at **Appendix III**.

### **District Officer's Comments**

10.1.10 Comments of District Officer/Tuen Mun, Home Affairs Department (DO/TM, HAD): (pending)

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct.

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

- (a) Commissioner of Police;
- (b) Director of Electrical and Mechanical Services;
- (c) Project Manager (West), Civil Engineering and Development Department;
- (d) Chief Engineer/Construction, Water Supplies Department;
- (e) Director of Food and Environmental Hygiene; and
- (f) Executive Secretary (Antiquities & Monuments), Antiquities and Monuments Office.

## **11 Public Comments Received During Statutory Publication Period**

On 1.6.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received. One individual (**Appendix II-1**) indicated support to the application as there was no eating place/shop in the area and the proposed use could provide a resting place for the villagers and hikers. The Kadoorie Farm and Botanic Garden and two individuals (**Appendices II-2 to II-4**) raised objection to the application mainly on the grounds that the proposed use would cause environmental and fire safety impacts, the right to use the government land was questionable, approval of this application will set an undesirable precedent for similar applications, and it is a 'destroy first, develop later' application.

## **12 Planning Considerations and Assessment**

12.1 The application is for proposed temporary eating place for a period of 3 years on the ground floor of an existing 2-storey structure falling within an area zoned "GB" on the approved So Kwun Wat OZP (**Plan A-1**). 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. The proposed use is not in line with the planning intention of the "GB" zone and there is a general presumption against development within this zone. No strong planning justifications have been provided in the submission for a departure from the planning intention, even on a

temporary basis.

- 12.2 The proposed use is not entirely incompatible with the surrounding areas which is predominantly rural in nature with scattered agricultural activities intermixed with residential dwellings, fallow/cultivated agricultural land, vacant land and vegetated land/hillslopes linking to Tai Lam Country Park (**Plan A-2**).
- 12.3 DEP does not support the application as the applicant fails to address the potential environmental impact, in particular water quality and wastewater impacts, arising from the proposed use. Besides, the eating place may cause odour and noise impacts to the nearby residents. In addition, CE/MN, DSD considers that there is insufficient information in the submission to demonstrate the proposed use will not cause adverse drainage impact on the surrounding area.
- 12.4 According to TPB PG-No.10, there is a general presumption against development within the “GB” zone and an application for new development within “GB” zone will only be considered in exceptional circumstances and it must be justified with very strong planning grounds. Taking into account paragraph 12.3 above, the proposed development does not comply with TPB-PG No. 10 in that the applicant fails to demonstrate that the proposed use would not have adverse environmental impacts on the surrounding areas.
- 12.5 Other concerned government departments, including C for T and CTP/UD&L, PlanD, have no objection to or no adverse comment on the application.
- 12.6 There are no previous or similar applications within the subject “GB” zone on the OZP. Approval of the application would set an undesirable precedent for similar uses to proliferate into the “GB” zone. The cumulative effect of approving such similar applications, even on a temporary basis, would result in a general degradation of the rural environment of the area.
- 12.7 Four public comments were received during the statutory public inspection period as mentioned in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.6 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 mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:
  - (a) the proposed use is 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 intention, even on a temporary basis;
  - (b) the proposed use is not in line with the Town Planning Board Guidelines No.10 for Application for Development within the Green Belt zone in that



the applicant fails to demonstrate that the proposed use would not generate adverse environmental and drainage impacts on the surrounding areas; and

- (c) the approval of the application would set an undesirable precedent for similar application within the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

13.2 Alternatively, 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 **23.7.2024**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the submission of 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 23.1.2022;
- (c) in relation to (b) above, the implementation of drainage proposal 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 23.4.2022;
- (d) the submission of 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 23.1.2022;
- (e) in relation to (d) 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 23.4.2022;
- (f) the submission of sewage and wastewater treatment/disposal proposal within **6** months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 23.1.2022;
- (g) in relation to (f) above, the implementation of sewage and wastewater treatment/disposal proposal within **9** months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 23.4.2022;
- (h) in relation to (c) and (g) above, the implemented drainage, sewage and wastewater treatment/disposal facilities shall be maintained at all times during the planning approval period;
- (i) if any of the above planning conditions (a) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and

- (j) if any of the above conditions (b), (c), (d), (e), (f) or (g) 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 attached at **Appendix III**.

**14 Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

**15 Attachments**

<b>Appendix I</b>	Application form with plans received on 24.5.2021
<b>Appendix Ia</b>	SI received on 27.5.2021
<b>Appendix Ib</b>	FI received on 2.7.2021
<b>Appendix Ic</b>	FI received on 12.7.2021
<b>Appendix Id</b>	FI received on 15.7.2021
<b>Appendices II-1 to II-4</b>	Public comments
<b>Appendix III</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Proposed floor plan submitted by the applicant
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
JULY 2021**