

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-STK/18

- Applicant** : Cenfore Contraction Limited represented by New Creation Consultant Engineering Co. Ltd.
- Site** : Lots 356 RP (Part), 359 (Part), 360 RP, 392 S.A, 394 S.A (Part), 394 S.B ss.1 (Part), 394 S.B RP (Part) in D.D. 41 and Adjoining Government Land, Sha Tau Kok, New Territories
- Site Area** : About 1,403m² (including Government land of about 33m²)
- Land Status** : Block Government Lease (all demised for agricultural use except Lot 359 in D.D. 41 demised for house and agricultural uses)
- Plan** : Approved Sha Tau Kok Outline Zoning Plan (OZP) No. S/NE-STK/2
- Zoning** : “Recreation (1)” (“REC(1)”)
- Application** : Proposed Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a proposed temporary eating place for a period of three years (**Plan A-1**). The Site falls within an area zoned “REC(1)” on the approved Sha Tau Kok OZP No. S/NE-STK/2. According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use in the “REC(1)” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the proposed development involves three structures with a total floor area of about 238m² (**Drawing A-1**). The larger structure (with a floor area of about 208m² and 6m in height) located at the central of the Site would be used for eating place with toilet. The remaining two structures (with a total floor area of about 30m² and 3m in height) located at the north-eastern part of the Site would be used as storage area.
- 1.3 The Site is directly accessible via Sha Tau Kok Road – Shek Chung Au Section (**Plan A-2**). A total of six private car parking spaces (measuring 5m x 2.5m each) and one parking space for vehicles not exceeding 5.5 tonnes (measuring 7m x 3.5m each) will be provided at the south-western part of the Site. The operation hours of the Site are between 8:00 a.m. and 10:00 p.m. from Mondays to Thursdays and 8:00 a.m. and 11:00 p.m from Fridays to Sundays including public holidays. The site layout plan, drainage and landscape proposals submitted by the applicant are at **Drawings A-1 to A-3** respectively.

The Site is largely vacant with some temporary structures.

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

- (a) Application form with attachments received by the Board on 12.2.2020 (Appendix I)
- (b) Letter dated 1.4.2020 requesting for 1st deferment of consideration of the application (Appendix Ia)
- (c) Further Information providing response to departmental comments[^] (Appendix Ib)

[^] *accepted but exempted from publication and recounting requirements*

1.5 At the request of the applicant (Appendix Ia), the Committee agreed on 26.5.2020 to defer making a decision on the application for two months pending the preparation of further information to address the departmental comments. The applicant subsequently submitted the further information (Appendix Ib) and the application is re-scheduled for consideration by the Committee on 18.9.2020.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 7 of the Application Form at Appendix I. They can be summarized as follows:

- (a) Starling Inlet is located to the east of the Site which offers a picturesque view during sunrise period for visitors' enjoyment. The proposed development would provide eating facility for the convenience of the visitors of the Site. The nearby restaurants are located in Sha Tau Kok Town, which is restricted to visitors;
- (b) there is no proper eating place in the vicinity and the proposal will provide services to the villagers and visitors. If the Board approves the application, relevant food licence will be obtained from the Food and Environmental Hygiene Department prior to the operation of the eating place;
- (c) the proposal provides one parking space for light goods vehicle not exceeding 5.5 tonnes. The loading/unloading activities will be arranged in the morning period (i.e. after 10:00 a.m) daily and thus will not generate any adverse traffic impact on Sha Tau Kok Road; and
- (d) there is a total of six private car parking spaces in which two spaces are reserved for staff and the remaining four spaces are available for visitors through pre-booking arrangement. Other visitors must use public transport to access to the Site.

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

The applicant is not a "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 taking reasonable steps to obtain the consent of or give notification to the owners including sending a notice to the Sha Tau Kok District Rural Committee and posting site notice. For the adjoining Government land, TPB GB-No.31A is not applicable. 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 suspected unauthorized development (i.e. storage use) on the Site may be subject to planning enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorized development under the Town Planning Ordinance, relevant action would be taken.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Application**

6.1 There is one similar application (No. A/NE-STK/7) for temporary eating place (restaurant) with ancillary vehicle park for a period of three years partly within the same "REC(1)" zone. The application was approved with conditions by the Board on 19.2.2016 mainly on the grounds that the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse departmental comments. The planning permission was revoked on 19.11.2017 due to non-compliance of approval conditions on the provision of boundary fencing; implementation of tree preservation and landscape proposals; provision of drainage facilities; submission and implementation of proposals for water supplies for fire-fighting and fire service installations; and submission and provision of design of septic tank and soakaway pit system.

6.2 Details of the similar application are at **Appendix II** and its location is shown on **Plan A-1**.

7. **The Site and Its Surrounding Areas (Plans A-1 to A-3 and A-4a & A-4b)**

7.1 The Site is:

- (a) flat and hard-paved;
- (b) largely vacant with some canopy structures erected at the south-western portion of the Site and two converted containers at the north-eastern portion of the Site; and
- (c) accessible directly via Sha Tau Kok Road – Shek Chung Au Section.

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate north and west are the cluster of village houses and Sha Tau Kok Road – Shek Chung Au Section;
- (b) to the south and southeast are some fallow agricultural land and unused land;
- (c) to the further north and west across Sha Tau Kok Road - Shek Chung Au Section are the cluster of village houses of the San Tsuen village environ (**Plan A-2**); and

(d) to the further east, south and southeast are Starling Inlet (**Plan A-2**).

8. Planning Intention

The planning intention of the “REC(1)” zone is intended primarily for low-intensity recreational developments to promote agri-tourism and eco-tourism. Major recreational facilities and 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/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots and adjoining Government land. The lots are Old Schedule lots held under the Block Government lease (demised for agricultural use) (except Lot 359 in D.D. 41 being demised for house and agricultural uses) without any guarantee of right of access. The applicant should make its own arrangement for acquiring access and there is no guarantee that any adjoining Government land (GL) will be allowed for the vehicular access of the proposed use;
- (b) the submission indicates that (i) 3 temporary structures will be erected on the Site; and (ii) a front gate will be erected on GL within the Site. Please note that any structures erected on the application lots and occupation of the GL within the Site without prior approval from his office are not acceptable. His office reserves the right to take enforcement actions as appropriate;
- (c) the submission also indicates that there is an existing toilet on Site and more toilet facilities will be erected on Site. The applicant should note that any toilet facilities should meet current health requirements; and
- (d) should the application be approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by Government in its landlord’s capacity and there is no guarantee that they will be approved. If the STW and STT are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his office.

Traffic

9.1.2. Comments of the Commissioner for Transport (C for T):

- (a) having reviewed the further information as submitted by the applicant (**Appendix Ib**), she does not support the application from traffic engineering point of view;
- (b) in particular, the applicant has not substantiated the traffic generation and attraction rate and the adequacy of the proposed parking spaces. Without adequate parking spaces provided, it is anticipated that the visitors to the Site would be illegally parked on the public road in the vicinity; and
- (c) the applicant did not demonstrate that the vehicles could be safely and efficiently manoeuvred within the Site.

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

- (a) the proposed access to the Site will pass through a strip of area between Sha Tau Kok Road - Shek Chung Au Section and the Site, which is an unallocated government land. The applicant is required to sort out the land issues with relevant land authority (**Plan A-2**);
- (b) if the application is approved, the applicant is required to construct a proper ingress and egress for the Site according to HyD's Standard Drawings and upon termination of the proposed temporary uses, the applicant is required to reinstate the ingress and egress to their original state and to HyD's satisfaction at his own cost; and
- (c) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) he has no objection to the application;
- (b) given the subject application is for temporary use, the applicant is advised to follow the EPD's latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)";
- (c) there is existing public sewer in the vicinity of the Site. The applicant is advised that any sewage/wastewater arising from the operation of the applied use shall be discharged to public sewer. The applicant should also be reminded to observe relevant pollution control legislations such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc. during construction and operation stages of the proposed use; and
- (d) there is no environmental complaint against the Site in the past three years.

Landscape Aspect

- 9.1.5. Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) she has no objection to the application from the landscape planning perspective;
 - (b) according to aerial photo of 2019 (**Plan A-3**), the Site is situated in an area of rural coastal plains landscape character surrounded by village houses and vegetated areas. Based on aerial photos of 2011 to 2018, the Site was gradually hard paved since 2015, no significant landscape resource is found within the Site, hence, significant adverse landscape impact arising from the proposed temporary use is not anticipated. The proposed use under this application is considered not entirely incompatible with the surrounding environment of the Site; and
 - (c) since existing vegetated areas are found in close proximity to the Site, should the application be approved, 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.

Drainage

- 9.1.6. Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
- (a) he has no objection to the application from the public drainage point of view;
 - (b) should the application be approved, an approval condition to request the applicant to submit and implement a drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent area; and
 - (c) should the application be approved, an approval condition on submission and implementation of sewerage proposal is recommended.

Building Matters

- 9.1.7. Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
- (a) there is no record of approval by the Building Authority (BA) for the existing buildings/ structures at the Site and he is not in a position to offer comments on their suitability for the proposed use;
 - (b) there is no record of submission of the proposed building/ structure to the BA for approval. For any new proposed buildings, his advisory comments under the Buildings Ordinance (BO) are at **Appendix IV**.

Water Supply

9.1.8. Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) existing water mains inside the Site will be affected (**Plan A-2**). The applicant is required to either divert or protect the water mains found on Site. His advisory comments are at **Appendix IV**.

Fire Safety

9.1.9. Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Nature Conservation

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

- he has no comment on the application from nature conservation point of view as the Site is largely paved. A concrete pond was located at the southwest of the Site (**Plan A-2**). Nonetheless, mangrove are found along the coast to the southeast of the Site. Should the application be approved, the applicant should be reminded the need to perform good site practice so as not to disturb the mangrove and pollute the coastal water nearby.

Food and Environmental Hygiene

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

- (a) he has no objection to the application;
- (b) the operation of any eating place should be under a food licence issued by FEHD. If the operator intends to operate any food business at the premises, relevant food licence/ restricted food permit should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation; and
- (c) the operation of the business should not cause any environmental nuisances and/or hygiene problems at the Site and its vicinities. The operator of the Site is responsible for the removal and disposal of any trade waste generated from the commercial activities at their expenses.

District Officer's Comments

9.1.12. Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) he has consulted the locals regarding the application. The Chairman of Sha Tau Kok District Rural Committee (STKDRC) and the Indigenous Inhabitant Representative (IIR) of San Tsuen object to the application mainly on the grounds that the proposed development would cause adverse impacts on sewerage, noise, traffic and pedestrian flow to the surrounding areas;
- (b) the incumbent North District Council (NDC) member of the subject constituency has no comment on the application and advises that adequate parking spaces should be provided to visitors; and
- (c) the Resident Representative (RR) of San Tsuen supports the application.

9.2 The following Government department has no comment on / no objection to the application:

- Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

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

On 21.2.2020, the application was published for public inspection. During the statutory public inspection period, six public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The four public comments submitted by STKDRC, Kadoorie Farm and Botanic Garden, Indigenous Inhabitant Representative of San Tsuen and an individual raise objection to the application mainly on the grounds that it is a 'destroy first, apply later' case and vegetation within the Site had been cleared; the proposal will cause adverse impacts on sewerage, noise, traffic and pedestrian flow to the surrounding areas; the proposal will adversely affect the mangrove mudflat; and the application seems to legitimize an existing brownfield operation. The remaining public comment submitted by an individual supports the application provided that the concerns on sewerage, waste management, fire safety, traffic and noise pollution are properly addressed.

11. Planning Considerations and Assessments

11.1 The application is for a proposed temporary eating place for a period of 3 years on an area zoned "REC(1)" on the OZP (**Plan A-1**). Although the proposed development is not entirely in line with the planning intention of the "REC(1)" zone for low-intensity recreational developments to promote agri-tourism and eco-tourism, uses like the proposed eating place in support of recreational and tourism developments may be permitted subject to its compatibility with surrounding environment and no adverse traffic, environmental and other impacts on the area.

11.2 The Site is situated in an area of rural coastal plains landscape character surrounded by village houses and vegetated areas. The Site is hard-paved and significant adverse landscape impact arising from the proposed temporary use is not anticipated. The proposed development is considered not entirely incompatible with the surrounding

environment of the Site. CTP/UD&L of PlanD has no objection to the application from the landscape planning perspective. DAFC has no adverse comment on the application and the applicant is advised to perform good site practice so as not to disturb the mangrove and pollute the coastal water nearby. DEP also has no objection to the application and advises that the applicant should follow the EPD's latest CoP.

- 11.3 Nevertheless, C for T does not support the application as the applicant has not provided sufficient information to substantiate the traffic generation and attraction rate and the adequacy of the proposed parking spaces. Without adequate parking spaces provided, it is anticipated that the visitors to the site would be illegally parked on the public road in the vicinity. The applicant also did not demonstrate that the vehicles could be safely and efficiently manoeuvred within the Site. In this regard, the applicant fails to demonstrate in the submission that there is no adverse traffic impact arising from the proposed development. Other relevant Government departments consulted, including CHE/NTE of HyD, PM(N) of CEDD, D of FS, D of WS and DFEH have no adverse comment on or no objection to the application.
- 11.4 The Site is not subject to any previous planning application, whereas one similar application for temporary eating place (restaurant) with ancillary vehicle park for a period of three years (No. A/NE-STK/7) was approved in 2016 mainly on the grounds that the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse traffic, landscape and environmental impacts on the surrounding areas; and there was no adverse departmental comments. The planning permission was revoked in 2017 due to non-compliance of approval conditions. Since there are adverse departmental comments from TD on the traffic impact arising from the proposed development, the planning circumstances of the current application are different from that approved similar application.
- 11.5 Regarding the adverse public comments as detailed in paragraph 10 and the local objections conveyed by DO(N) in paragraph 9.1.12 above, the relevant Government departments' comments and the planning assessment above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account local comments conveyed by DO(N) of HAD and the public comments in paragraph 9.1.12 and 10 respectively, the Planning Department does not support the application for the following reasons:
 - the applicant fails to demonstrate in the submission that the proposed development would not result in adverse traffic impact on the surrounding areas.
- 12.2 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 **18.9.2023**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:00 p.m. to 8:00 a.m. from Mondays to Thursdays, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no operation between 11:00 p.m. to 8:00 a.m. from Fridays to Sundays including public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) only private car and light goods vehicle as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) a notice should be posted at a prominent location of the Site to indicate that only private car and light goods vehicle as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (e) 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 18.3.2021;
- (f) in relation to (e) above, the provision 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 18.6.2021;
- (g) the submission of a sewerage proposal for connection to public sewer 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 18.3.2021;
- (h) in relation to (g) above, the provision of sewerage facilities for connection to public sewer 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 18.6.2021;
- (i) the submission of proposals for 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 18.3.2021;
- (j) in relation to (i) above, the implementation of proposals for fire service installations 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 18.6.2021;
- (k) the submission of a traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 18.3.2021;
- (l) in relation to (k) above, the implementation of traffic improvement measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 18.6.2021;
- (m) the submission of the design of vehicular run-in/ run-out to the Site along Sha Tau Kok Road – Sheuk Chung Au within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 18.3.2021;

- (n) in relation to (m) above, the provision of vehicular run-in/ run-out to the Site along Sha Tau Kok Road – Shek Chung Au within 9 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 18.6.2021;
- (o) if any of the above planning conditions (a), (b), (c) or (d) 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
- (p) if any of the above planning conditions (e), (f), (g), (h), (i), (j), (k), (l), (m) or (n) 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**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 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.

14. Attachments

Appendix I	Application Form with attachments received on 12.2.2020
Appendix Ia	Letter dated 1.4.2020 requesting for 1 st deferment of consideration of the application
Appendix Ib	Further Information received on 3.8.2020
Appendix II	Similar s.16 Application within “REC(1)” on the approved Sha Tau Kok Outline Zoning Plan No. S/NE-STK/2
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Drainage Plan
Drawing A-3	Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo taken in 2019
Plans A-4a and A-4b	Site Photos