

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

**APPLICATION NO. A/NE-TKLN/35**

<b><u>Applicant</u></b>	:	Ho Nam Kai Tso represented by Man Chi Consultants and Construction Limited
<b><u>Site</u></b>	:	Lot 356 (Part) in D.D. 78, Tsung Yuen Ha, Ta Kwu Ling North, New Territories
<b><u>Site Area</u></b>	:	About 1,116.05 m <sup>2</sup>
<b><u>Land Status</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
<b><u>Zoning</u></b>	:	“Village Type Development” (“V”)
<b><u>Application</u></b>	:	Proposed Temporary Eating Place and Shop and Services with Ancillary Office/Store Room for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for a proposed temporary eating place and shop and services with ancillary office/store room for a period of 3 years at the application site (the Site). The Site falls within an area zoned “V” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2 (**Plan A-1**). According to the Notes of “V” zone of the OZP, ‘eating place’ and ‘shop and services’<sup>1</sup> are Column 2 uses requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the Site is accessible from Lin Ma Hang Road via a local road (**Plan A-1**). A single-storey temporary structure (about 3.5 m in height) with a total floor area of about 200 m<sup>2</sup> would be used for eating place (about 136 m<sup>2</sup>), shop and services (i.e. a local convenience store) (about 20 m<sup>2</sup>) and an ancillary office/store room (about 44 m<sup>2</sup>) on the Site (**Drawing A-1**). The proposed eating place can provide catering services for about 50 to 60 persons in 8 to 10 medium size tables. Five ancillary car parking spaces for private car (5 m x 2.5 m each) and one loading / unloading space (7 m x 3.5 m) for light goods vehicle are provided at the eastern and northern parts of the Site respectively. The operation hours of the temporary eating

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<sup>1</sup> According to the Notes of the OZP for the “V” zone, only ‘eating place’ and ‘shop and services’ on the ground floor of a New Territories Exempted House are always permitted.

place and local convenience store are from 9:00 a.m. to 9:00 p.m. daily. A site layout plan and drainage plan submitted by the applicant are at **Drawings A-1 and A-2** respectively. The Site is currently vacant.

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

- (a) Application Form with attachments received on 20.5.2020 (Appendix I)
- (b) Supplementary Planning Statement received on 20.5.2020 (Appendix Ia)
- (c) Supplementary Information received on 22.5.2020 (Appendix Ib)
- (d) Letter dated 24.6.2020 requesting for deferment of consideration of the application (Appendix Ic)
- (d) Further Information (FI) received on 19.8.2020 # (Appendix Id)
- (e) Letter dated 16.9.2020 requesting for deferment of consideration of the application (Appendix Ie)
- (e) FI received on 17.11.2020 ^ (Appendix If)
- (f) FI received on 22.12.2020 ^ (Appendix Ig)  
*#accepted but not exempted from publication and recounting requirements*  
*^accepted and exempted from publication*

1.4 At the request of the applicant (**Appendices Ic and Ie**), the Committee agreed on 10.7.2020 and 9.10.2020 to defer making a decision on the application for two months each pending the preparation of further information to address the departmental comments. The applicant submitted further information on 17.11.2020 and 22.12.2020 (**Appendices If and Ig**) and the application is re-scheduled for consideration by the Committee on 8.1.2021.

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the supplementary information attached to the Application Form and FIs at **Appendices Ia, Ib, Id and If**. They can be summarized as follows:

- (a) in view of the development of Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) and the opportunity of developing New Territories North (NTN), the proposed development could utilize the Site to boost the local economy and to serve visitors;
- (b) the proposed development is also in line with the planning intention of “V” zone, serving the dining needs and providing daily necessities to the nearby villagers;
- (c) the proposed development is small in scale and is considered compatible with surroundings, which mainly occupied by village houses;
- (d) the applicant undertakes that the catering and retail activities would be conducted within the proposed structure only. No paving and outside sitting accommodation are proposed on Site (**Appendices If and Ig**);
- (e) the applicant indicates no intention to build Small House on the Site; and

- (f) traffic impact assessment (TIA) and drainage impact assessment (DIA) are submitted (**Appendix Id**) to demonstrate that there would be no adverse traffic, drainage, sewage and environmental impacts to the surrounding area.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

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

4.1 The Town Planning Board Guidelines for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) is relevant to this application. The relevant assessment criteria are summarised as follows:

- (a) the eating place use should not create any environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may also be given to any application which would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a NTEH or as a free-standing development, the eating place use should not adversely affect the land availability for village type development;
- (e) for a village located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given to eating place use which will provide catering facilities to serve the visitors and tourists. In such circumstances, adequate car-parking spaces should be provided to serve the eating place use as required by the Transport Department (TD). If it is impossible to provide car-parking spaces at the application site, the applicant should demonstrate that there are adequate car-parking facilities conveniently located in the vicinity to serve the eating place use; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

4.2 According to paragraph 1(c) of TPB PG-No. 15A, even if a proposal is acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the Site and to cater

for changing circumstances in future.

**5. Previous Application**

There is no previous application for the Site.

**6. Similar Application**

There is no similar application for temporary eating place and/or shop and services within the same “V” zone.

**7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photo on Plan A-4)**

7.1 The Site is:

- (a) flat, hard-paved and vacant; and
- (b) accessible from Lin Ma Hang Road via a local road (**Plans A-1 and A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to its east are some vacant land and fallow agricultural land;
- (b) to its south is the village cluster of Tsung Yuen Ha (**Plan A-2**); and
- (c) to its immediate north is a local track and to its further north across the nullah are mostly some vacant land and fallow agricultural land.

**8. Planning Intention**

The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

**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 a private lot which is an Old Schedule Lot held under Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;
  - (b) no Small House application regarding the Site has been received. The numbers of outstanding Small House application and 10-year Small House demand of Tsung Yuen Ha are 36 and 95 respectively; and
  - (c) should the application be approved, the owners of the lot concerned shall apply to his office for Short Term Waiver (STW) to cover all actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW application is approved, the commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee 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 FI submitted by the applicant (**Appendix If**), he has no further comment on the application from traffic engineering point of view; and
  - (b) the village access of Tsung Yuen Ha is not managed by TD (**Plan A-2**). The applicant shall seek agreement/ comment from the responsible party.
- 9.1.3 Comments of the Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD):
- (a) he has no comment on the application; and
  - (b) the access road leading from Lin Ma Hang Road to the Site is not maintained by his department.

### **Environment**

- 9.1.4 Comments of the Director of Environmental Protection (DEP):
- (a) he has no objection on the application from environmental point of

view;

- (b) as the application is temporary in nature, the applicant is advised to follow EPD's latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses (CoP)";
- (c) should the application be approved, approval condition on the submission and implementation of the design of septic tank and soakaway system and/or other wastewater treatment facilities for the proposed development is recommended;
- (d) it is noted that the existing public sewerage in the vicinity of the Site reaches its capacity and it is not available for the connection of sewage discharge from the Site. For the proposed septic tank and soakaway system, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93. The Percolation Test and Minimum clearance requirements stated in ProPECC PN 5/93 should be fully complied with and duly certified by consulting engineer/Authorised Person (AP);
- (e) the applicant should be reminded that it is the applicant's obligation to strictly comply with all environmental protection/pollution ordinances, in particular Water Pollution Control Ordinance and Waste Disposal Ordinance, and to follow relevant measures given in the EPD's latest CoP during the construction and operation stages of the proposed development;
- (f) the applicant should be reminded that the design of drainage inside the Site should make reference to the good practices stated in ProPECC PN 5/93; and
- (g) the applicant should also be reminded that necessary precautionary/pollution control measures should be put in place to prevent any pollution of nearby watercourse. There was no substantiated environmental complaints against the Site in the past three years.

### **Public Hygiene and Licensing**

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

- (a) he has no comment on the application;
- (b) the operation of any eating place should be under a food licence issued by Food and Environmental Hygiene Department (FEHD). If the operator intends to operate any food business at the Site, 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 proposed development should not cause any environmental nuisances and/or hygienic 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.

### **Landscape**

9.1.6 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 landscape planning point of view;
- (b) based on the aerial photo of 2019 (**Plan A-3**), the Site is located in an area with landscape character of rural inland plains, which typically comprises of village houses, vegetated areas and some temporary structures. According to the site photo (**Plan A-4**), the Site is mainly gravel paved and partly fenced;
- (c) the proposal does not involve any landscape issue and there is no significant landscape resources within the Site, no significant landscape impact is anticipated; and
- (d) since there is no major public frontage along the site boundary, should the application be approved, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

### **Drainage**

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

- (a) having reviewed the FI submitted by the applicant (**Appendix Id**), he has no objection to the application; and
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area. His other advisory comments are at **Appendix III**.

### **Fire Safety**

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

- (a) he has no in-principle objection to the application subject to fire services installations (FSIs) being provided to the satisfaction of his department;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also be advised on the

following points:

- (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
- (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Water Supply**

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

- (a) he has no objection to the application; and
- (b) for the provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### **Nature Conservation**

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

- (a) as the Site is paved, she has no adverse comment on the application from the nature conservation point of view; and
- (b) channelized watercourse is located to the northwest and south of the Site (**Plan A-2**). Should the planning application be approved, the applicant should be reminded to perform good site practice so as not to pollute the watercourses nearby.

### **Building Matters**

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

- (a) there is no submission record by the Building Authority for the proposed buildings/structures at the Site;
- (b) before any new building works are to be carried out on the Site, prior approval and consent of the Building Authority (BA) should be obtained unless they are exempted building works or commenced under



the simplified requirement under the Minor Works Control System. Otherwise they are Unauthorized Buildings Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Building Ordinance (BO); and

- (c) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be given at building plan submission stage. His advisory comments are at **Appendix III**.

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

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

- (a) he has consulted the locals regarding the application. The 1<sup>st</sup> Vice-Chairman of Ta Kwu Ling District Rural Committee objects to the application on the grounds that the Site should be reserved for future Small House developments; the proposed development would create adverse traffic impact and environmental hygiene issues;
- (b) the incumbent North District Council member, the Resident Representatives (RRs) of Tsung Yuen Ha and Chuk Yuen, the Indigenous Inhabitant Representatives (IIRs) of Heung Yuen Wai and Chuk Yuen have no comment on the application;
- (c) the RR of Tsung Yuen Ha supports the application; and
- (d) the RR of Heung Yuen Wai does not reply to the consultation.

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

- (a) Commissioner of Police (C of P); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

## **10. Public Comments Received During Statutory Publication Period**

On 29.5.2020 and 28.8.2020 the application was published for public inspection. During the statutory public inspection periods, five public comments on the application were received (**Appendix II**). The Chairman of NDC objects to the application on the grounds that the proposed development would create adverse noise, traffic, hygiene and sewage impacts to the nearby villagers currently living in a tranquil environment. Two comments submitted by a NDC member indicate no comment on the application. The other two comments submitted by an individual raise concerns on the application that the scale of the proposed eating place is not in line with the village setting; the intention for the proposed development is for unauthorized use; vegetation clearance would be involved; and the Board should ensure no adverse environmental impact.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for a proposed temporary eating place and shop and services with ancillary office/store room for a period of 3 years within an area zoned “V” on the OZP (**Plan A-1**). The planning intention of the “V” zone is for development of Small Houses by indigenous villagers. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board. DLO/N of LandsD has no objection to the application and advises that no Small House application has been received for the Site. Furthermore, based on the latest estimates by PlanD, sufficient land (about 3.84 ha or equivalent to 153 Small House sites) is available within the “V” zone to meet the 36 outstanding Small House applications as well as the 10-year Small House demand forecast of 95 small houses in Tsung Yuen Ha. The approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of “V” zone.
- 11.2 The Site is hard paved and situated in an area of rural inland plains comprising village houses, vegetated areas and some temporary structures (**Plan A-2**). Significant adverse impacts on the surrounding area is not expected. In this regard, CTP/UD&L of PlanD has no objection to the application as there is no significant landscape resources within the Site.
- 11.3 The application is generally in line with the TPB PG-No. 15A. The proposed development is to serve the local villagers and visitors in the vicinity. The proposed development on a temporary basis for three years will not affect the land availability for Small House development. The Site is readily accessible from Lin Ma Hang Road via a local road without passing through the nearby village houses. Upon review of the TIA and FI submitted by the applicant (**Appendices Id and If**), C for T has no further comment on the application from traffic engineering point of view. CE/MN of DSD also has no objection to the application upon review of the DIA submitted by the applicant (**Appendix Id**). As the application is temporary in nature, DEP has no objection to the application and advises that the applicant shall strictly comply with all environmental protection/pollution ordinances, in particular Water Pollution Control Ordinance and Waste Disposal Ordinance, and to follow relevant measures given in the EPD’s latest CoP during the construction and operation stages of the proposed development. DFEH has no comment on the application and advises that any eating place should obtain a food licence and its operation should not cause any environmental nuisances and/or hygienic problems at the Site and the surroundings. Other relevant Government departments consulted, including PM(N) of CEDD, CE/C of WSD, CHE/NTE of HyD, D of FS and C of P have no objection to or no comment on the application.
- 11.4 Regarding the local objection conveyed from DO(N) of HAD and adverse public comments as mentioned in paragraphs 9.1.12 and 10 above, the relevant Government departments’ comments and 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 local

objection conveyed by DO(N) of HAD and public comments mentioned in paragraphs 9.1.12 and 10 above, the 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 8.1.2024. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m. daily, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 8.7.2021;
- (c) in relation to (b) above, the provision of the 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 8.10.2021;
- (d) the submission of the design of septic tank and soakaway system and/or other wastewater treatment facilities 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 8.7.2021;
- (e) in relation to (d) above, the provision of septic tank and soakaway system and/or other wastewater treatment facilities 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 8.10.2021;
- (f) the submission of proposals for water supplies for fire-fighting and fire service installations within 6 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 8.7.2021;
- (g) in relation to (f) above, the implementation of the provision of water supplies for fire-fighting and fire service installations within 9 months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 8.10.2021;
- (h) if the above planning condition (a) 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
- (i) if any of the above planning 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 be revoked immediately without further notice.

Advisory Clauses

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

12.3 There is no strong planning reason to recommend rejection of the application.

### **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 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.

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**

<b>Appendix I</b>	Application form with attachments received on 20.5.2020
<b>Appendix Ia</b>	Supplementary Planning Statement received on 20.5.2020
<b>Appendix Ib</b>	Supplementary Information received on 22.5.2020
<b>Appendix Ic</b>	Letter dated 24.6.2020 requesting for deferment of consideration of the application
<b>Appendix Id</b>	FI received on 19.8.2020
<b>Appendix Ie</b>	Letter dated 16.9.2020 requesting for deferment of consideration of the application
<b>Appendix If</b>	FI received on 17.11.2020
<b>Appendix Ig</b>	FI received on 22.12.2020
<b>Appendix II</b>	Public Comments
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Proposed Site Layout Plan
<b>Drawing A-2</b>	Proposed Drainage Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photo