

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/666

<u>Applicant</u>	Ms. YE Na represented by Mr. HUI Kwan Yee
<u>Site</u>	Lot 1366 in D.D. 17, Lo Tsz Tin, Tai Po, New Territories
<u>Site Area</u>	About 112.9 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Recreation” (“REC”)
<u>Application</u>	Proposed Temporary Shop and Services (Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary shop and services (store) for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “REC” on the approved Ting Kok OZP No. S/NE-TK/19. According to the Notes of the OZP, ‘Shop and Services’ use in the “REC” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The proposed temporary store comprises three single-storey structures with a total floor area of about 56.55m² and building heights ranging from about 3.05m to 3.96m for a store and ancillary office and storeroom uses (**Drawing A-1**). The opening hours of the proposed store will be from 8:00 a.m. to 8:00 p.m. daily.
- 1.3 The Site is part of the subject of a previous application (No. A/NE-TK/442) submitted by another applicant for temporary shop and services (real estate agency) for a period of three years, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 19.7.2013. However, the planning permission was revoked on 19.7.2015 due to non-compliance with the approval condition regarding the provision of fire services installations (FSIs).
- 1.4 In support of the application, the applicant has submitted the following documents:

- (a) application form and attachments received on (Appendix I) 14.3.2019
- (b) further information received on 3.6.2019 providing (Appendix Ia) responses to departmental comments and a revised site layout plan (*accepted and exempted from publication and recounting requirements*)
- (c) further information received on 25.7.2019 providing (Appendix Ib) a revised site layout plan and clarifying on development schedule (*accepted and exempted from publication and recounting requirements*)

1.5 At the request of the applicant, the Committee agreed on 3.5.2019 to defer the consideration of the application for two months to allow time for the applicant to prepare further information to support the application. The applicant submitted further information on 3.6.2019 and 25.7.2019. The application is scheduled for consideration on 2.8.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application form and further information at **Appendices I, Ia and Ib**. They can be summarized as follows:

- (a) the Site is a piece of vacant land. As there are many visitors in the vicinity of the Site, the applicant wants to use the Site as a temporary store for selling drinks and snacks to the visitors. The proposed use would revitalize the Site and promote tourism;
- (b) the applicant commits to comply with all the approval conditions imposed by the Board;
- (c) a clearance of 3m will be maintained from the proposed structures to the embankment of the river nearby and no operation will be carried out within the 3m clearance area; and
- (d) the size and location of the proposed structures will be in accordance with the submitted layout plan and development schedule (**Appendix Ib**), and the existing structures on site will be removed after obtaining planning permission.

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. **Background**

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advises that the Site is not subject to any active enforcement action. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be taken.

5. **Previous Application**

5.1 The Site is part of the subject of a previous application (No. A/NE-TK/442) submitted by another applicant for temporary shop and services (real estate agency) for a period of three years, which was approved with conditions by the Committee on 19.7.2013 mainly on the considerations that the development was small in scale; not incompatible with the surrounding land uses; and there would be no adverse traffic, sewerage, drainage, fire safety and landscape impacts on the surrounding areas. However, the planning permission was revoked on 19.7.2015 due to non-compliance with the approval condition regarding the provision of FSIs.

5.2 Details of the above application are summarized at **Appendix II** and its location is shown on **Plans A-1** and **A-2**.

6. **Similar Applications**

6.1 There are nine similar applications (No. A/NE-TK/403, 457, 523, 549, 564, 592, 614, 639 and 652) for temporary shop and services use within the same “REC” zone in the vicinity of the Site.

6.2 Eight of them (applications No. A/NE-TK/403, 457, 549, 564, 592, 614, 639 and 652), covering four sites, were approved with conditions for a period of three years by the Committee between 2012 and 2018 mainly on the considerations that the proposed developments were not incompatible with the surrounding environment; would unlikely cause significant adverse impacts on the surrounding areas; and/or relatively small in scale.

6.3 The remaining application (No. A/NE-TK/523) for a proposed temporary restaurant and convenience store for a period of five years was rejected by the Committee in 2014 mainly for the reasons of being not in line with the planning intention of the “REC” zone; and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding areas.

6.4 Details of the above applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2**.

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

7.1 The Site is:

- (a) largely paved; and
- (b) partly occupied by five containers and two open sheds.

7.2 The surrounding areas are predominantly rural in character with scattered tree groups, village cluster of Lo Tsz Tin to the north, a stream course to the immediate east and Ting Kok Road to the south. On the opposite side of Ting Kok Road is the proposed Lung Mei Bathing Beach.

8. Planning Intention

The planning intention of the “REC” zone is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of a private lot (Lot No. 1366 in DD. 17, Lo Tsz Tin) which is held under the Block Government Lease demised for agricultural purpose. No structure shall be erected on the lot without prior approval from LandsD;
- (c) a recent site inspection revealed that five containers were on the Site and some of them were suspected converted to unauthorized structures. Besides, all the containers partly encroached onto the adjoining Government land;
- (d) the applicant is required to submit a Short Term Waiver (STW) application to LandsD should he wish to erect any structure on the Site. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD

acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered appropriate;

- (e) there is no guarantee of right-of-way to the Site or approval of Emergency Vehicular Access (EVA) thereto; and
- (f) as regards the suspected illegal occupation of Government land and suspected unauthorised structures erected on the Site, LandsD will consider taking land control action and lease enforcement action as appropriate.

Environment

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

- (a) no comment on the application;
- (b) the applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites'; and
- (c) there was no environmental complaint related to the Site received in the past three years.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, approval conditions on submission and implementation of drainage proposal for the Site and maintaining a clearance of 3m from the proposed structures to the top of the embankment of the existing natural stream course during the planning approval period are recommended;
- (c) there is no existing DSD maintained public drain available for connection in the area. The applicant should have his own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the

existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;

- (d) there is existing public sewerage available for connection in the vicinity of the Site; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

Water Supply

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

- (a) no objection to the application; and
- (b) for the provision of water supply to the proposed use, 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.

Fire Safety

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

- (a) no in-principle objection to the application subject to FSIs being provided to his satisfaction;
- (b) in consideration of the design/nature of the application, FSIs are anticipated to be required. Therefore, the applicant is advised to submit the relevant layout plans incorporated with the proposed FSIs for approval. The applicant should also be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the locations of the proposed FSIs to be installed should be clearly marked 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.

Nature Conservation

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

- (a) the Site falls within the “REC” zone and is largely paved. He has no comment on the application; and
- (b) there is a stream course to the east of the Site. Should the application be approved by the Board, the applicant should be advised to follow Buildings Department’s Practice Note for Authorised Persons and Registered Structural Engineers No. ADV-27 “Protection of natural streams/rivers from adverse impacts arising from construction works”, in particular Appendix B “Guidelines on Developing Precautionary Measures during the Construction Stage”, so as to avoid disturbance to the stream and causing water pollution.

Landscape

9.1.7 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 situated in an area of rural landscape character comprising of scattered tree groups and village houses. The proposed development is considered not incompatible with the surrounding environment;
- (c) the Site is vacant and paved. Two existing trees (*Grevillea robusta* (銀樺) and *Bauhinia sp.* (羊蹄甲屬)) are found near to the western and northern boundary respectively. With reference to the layout plan (**Drawing A-1**), the proposed layout is not in direct conflict with the existing trees. Adverse impact arising from the proposed development on significant landscape resources within the Site is not anticipated; and
- (d) should the application be approved by the Board, since there is inadequate space for meaningful landscaping within the Site to benefit the public realm, the condition for submission and implementation of landscaping proposal is not recommended.

Building Matters

9.1.8 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 BD is not in a position to offer comments on their suitability for the proposed use; and
- (b) the applicant should note the followings related to the Buildings

Ordinance (BO):

- (i) if any existing structures are erected on leased land without approval of the BD not being a New Territories Exempted House, they are unauthorized under the BO and should not be designated for any approved use under the application;
- (ii) before any new building works (including any containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (iii) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (iv) in connection with (ii) above, the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and EVA shall be provided under the Building (Planning) Regulation 5 and 41D; and
- (v) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at building plan submission stage.

Food and Environmental Hygiene

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

- (a) proper licence/permit issued by the Food and Environmental Hygiene Department (FEHD) is required if there is any food business / catering service/activities regulated by DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislations for the public. Under the Food Business Regulation (Cap. 132X), a food business licence is required for the operation of the relevant type of food business listed in the Regulation. For any premises intended to be used for food business (e.g. a restaurant, a food factory, a fresh provision shop), a food business licence from the FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) shall be obtained. The application for licence, if acceptable by the FEHD, will be referred to relevant government departments such as the BD, FSD and PlanD for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for

compliance and the licence will be issued upon compliance of all the requirements;

- (b) depending on the mode of operation, generally there are several types of food business licence/permits that the operator of a grocery store may apply for under the Food Business Regulation :
 - (i) if food is sold to customers for consumption on the premises, a restaurant licence should be obtained;
 - (ii) if food is only prepared for sale for consumption off the premises, a food factory licence should be obtained;
 - (iii) if fresh, chilled or frozen meat is sold, a fresh provision shop licence should be obtained; and
 - (iv) if milk, frozen confections, non-bottled drinks, cut fruit etc. are to be sold, relevant restricted food permits should be obtained; and
- (c) the operator of related shop or store should take measures to prevent the existence of nuisance such as noise nuisance, pest nuisance and accumulation of refuse at the Site. The refuse generated by the proposed use are regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.

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

- (a) Commissioner for Transport;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Commissioner of Police;
- (d) Project Manager/North, Civil Engineering and Development Department;
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (f) Director of Leisure and Cultural Services;
- (g) Director of Electrical and Mechanical Services; and
- (h) District Officer/Tai Po, Home Affairs Department.

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

On 22.3.2019, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received objecting to the application mainly for reasons of being not in line with the planning intention of "REC" zone; and being the subject of a previous application

which was revoked due to non-compliance with the approval condition on the provision of FSIs.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary shop and services (store) for a period of three years on the Site falling within an area zoned “REC” on the OZP. The proposed development is not in line with the planning intention of the “REC” zone which is primarily for recreational developments for the use of the general public. Nevertheless, as the proposed store is intended to serve the visitors in the vicinity and is on a temporary basis for three years, it is not expected to jeopardize the long-term planning intention of the “REC” zone.
- 11.2 Situated at the southern fringe of Lo Tsz Tin Village, the proposed temporary store with a total floor area of about 56.55m² is small in scale and not incompatible with the surrounding areas predominantly rural in character comprising scattered tree groups and village houses (**Plans A-2 and A-3**). It is also not anticipated to cause significant adverse traffic, sewerage, drainage and landscape impacts on the surrounding areas. Concerned Government departments, including C for T, DEP, CE/C of WSD, CE/MN of DSD, D of FS, DFEH, CBS/NTW of BD and CTP/UD&L of PlanD have no objection to or no adverse comment on the application.
- 11.3 The Site is part of the subject of a previous application (No. A/NE-TK/442) submitted by another applicant for temporary shop and services (real estate agency) for a period of three years which was approved with conditions by the Committee on 19.7.2013 mainly on the considerations that the development was small in scale, not incompatible with the surrounding land uses and no adverse traffic, sewerage, drainage, fire safety and landscape impacts on the surrounding areas. However, the planning permission was revoked on 19.7.2015 due to non-compliance with the approval condition on the provision of FSIs. The current application is for a different use submitted by a different applicant.
- 11.4 There are nine similar applications (No. A/NE-TK/403, 457, 523, 549, 564, 592, 614, 639 and 652) covering five sites for temporary shop and services use within the same “REC” zone in the vicinity of the Site. Except for Application No. A/NE-TK/523 for a temporary restaurant and convenience store, which was rejected by the Committee in 2014 mainly for the reasons of being not in line with the planning intention of the “REC” zone and failing to demonstrate that the proposed development would not have adverse environmental and landscape impacts on the surrounding areas, all other eight applications (No. A/NE-TK/403, 457, 549, 564, 592, 614, 639 and 652) were approved with conditions by the Committee for a period of three years between 2012 and 2018 mainly on considerations that the proposed developments were not incompatible with the surrounding environment; would unlikely cause significant adverse impacts on the surrounding areas; and/or relatively small in

scale. The circumstances of the current application are similar with those approved cases.

- 11.5 Regarding the public comment raising objection to the application on the grounds as detailed in paragraph 10 above, Government departments' comments and the planning assessments in above paragraphs are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, 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 2.8.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the proposed development should maintain a clearance of 3m from the top of the embankment of the existing natural stream course during the planning approval period;
- (c) 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 2.2.2020;
- (d) in relation to (c) 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 2.5.2020;
- (e) the submission of fire service installations and water supplies for fire-fighting proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.2.2020;
- (f) in relation to (e) above, the implementation of fire service installations and water supplies for fire-fighting proposal 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 2.5.2020;

- (g) if approval conditions (a) or (b) is not complied with at any time during the planning approval, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (h) if any of the above planning conditions (c), (d), (e) or (f) 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 V**.

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

- The proposed development is not in line with the planning intention of the "REC" zone which is intended primarily for recreational developments for the use of the general public. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 14.3.2019 with attachments
Appendix Ia	Further information received on 3.6.2019
Appendix Ib	Further information received on 25.7.2019
Appendix II	Previous Application
Appendix III	Similar Applications
Appendix IV	Public Comment
Appendix V	Recommended Advisory Clauses

Drawing A-1	Site plan and development parameters submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**