

RNTPC Paper No. A/NE-TK/675A
For Consideration by the
Rural and New Town Planning
Committee on 30.326.5.2020

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

APPLICATION NO. A/NE-TK/675

<u>Applicant</u>	Mr. Henry Wong represented by Land Supreme Surveyors Limited
<u>Site</u>	Lot 1615 RP in D.D. 17, Ting Kok Road, Tai Po, New Territories
<u>Site Area</u>	About 479 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>	Temporary Shop and Services (Real Estate Agency and Convenience Store) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (real estate agency and convenience store) for a period of three years at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ use within “REC” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently used for a convenience store without valid planning permission.
- 1.2 The Site is located near Lo Tsz Tin Village, Tai Po and is accessible via Ting Kok Road. The applied use will be accommodated in a single-storey structure with a covered area of about 95.75m² and building height of about 4m, with about 20m² for real estate agency and 75.75m² for convenience store (**Drawing A-1**). Two parking spaces (5m x 2.5m) are also provided. The opening hours of the use are from 10:00 a.m. to 11:00 p.m. daily. The layout plan, tree preservation and landscape proposal, drainage proposal, and fire services installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.
- 1.3 The Site is involved in three previous planning applications (No. A/NE-TK/457, 549 and 639) for temporary shop and services. The last application No. A/NE-TK/639, submitted by the same applicant of the current application and for the same use with same development parameters, was approved with conditions by

the Rural and New Town Planning Committee (the Committee) for a period of 3 years on 15.6.2018. The approval was revoked on 4.4.2019 for non-compliance with approval conditions on the submission and implementation of tree preservation and landscape proposal and FSIs proposal.

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

- (a) application form and attachments received on **(Appendix I)** 13.9.2019
- (b) further information received on 30.12.2019 **(Appendix Ia)** providing responses to departmental comments *(accepted and exempted from publication and recounting requirements)*
- (c) further information received on 3.2.2020 providing **(Appendix Ib)** reason for non-compliance with the approval conditions in the previous planning approval *(accepted and exempted from publication and recounting requirements)*

1.5 At the request of the applicant, the Committee agreed on 1.11.2019 to defer the consideration of the application for two months to allow time for him to prepare further information to support the application. The applicant submitted further information on 30.12.2019 and 3.2.2020 and the application is scheduled for consideration by the Committee on 21.2.2020. In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 21.2.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. ***Again, the meeting on 30.3.2020 has been rescheduled and the application is now scheduled for consideration by the Committee at this meeting.***

2. Justifications from the Applicant

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

- (a) all the development parameters of the current application will be the same as those of the previous approved application No. A/NE-TK/639;
- (b) the Site is in the vicinity of Small House developments and other recreational activities. The applied use can support the recreational facilities;
- (c) the proposed development is only a one-storey structure. It is compatible with the surrounding environment and does not generate any adverse noise, dust or drainage impacts; and
- (d) regarding the non-compliance with approval conditions of the previous

application No. A/NE-TK/639, the applicant explains that it was caused by the failure of his former agent to duly follow up its services and also owing to the difficulty in hiring sufficient construction workers to carry out the works. To address the relevant Government departments' concerns, he has submitted tree preservation and landscaping, FSIs and drainage proposals in support of the application.

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

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

4. Previous Applications

4.1 The Site is the subject of three previous applications (Nos. A/NE-TK/457, 549 and 639) for various temporary shop and services uses. Application No. A/NE-TK/457 for temporary shop and services (pet supplies shop and ancillary veterinarian clinic) for a period of 3 years, submitted by a different applicant, was approved with conditions by the Committee on 2.8.2013. It was subsequently revoked on 2.2.2015 due to non-compliance with approval conditions on the submission and implementation of FSIs and water supplies for fire-fighting proposal.

4.2 Application No. A/NE-TK/549 for temporary shop and services (real estate agency and convenience store) for a period of 3 years, submitted by the same applicant of current application, was approved by the Committee with conditions on 3.7.2015. All approval conditions were complied with, and this approval has already expired. The last previous application No. A/NE-TK/639 was for renewal of planning approval of Application No. A/NE-TK/639, submitted by the same applicant, which was approved with conditions by the Committee for a period of 3 years on 15.6.2018 and revoked on 4.4.2019 for non-compliance with approval conditions on the submission and implementation of tree preservation and landscape proposal and FSIs proposal.

4.3 Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plans A-1** and **A-2**.

5. Similar Applications

5.1 There are nine similar applications for temporary shop and services use within the same “REC” zone in the vicinity of the Site. Eight of them (Nos. A/NE-TK/403, 442, 564, 592, 614, 652, 655 and 666) were approved with conditions for a period of 3 years by the Committee between 2012 and 2019, mainly on considerations that the proposed developments were of relatively small scale; not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. However, Applications Nos. A/NE-TK/442 and 592 were subsequently revoked due to non-compliance with approval conditions. The remaining application (No. A/NE-TK/523) for a

temporary restaurant and convenience store 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 adverse environmental and landscape impacts on the surrounding areas.

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

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

6.1 The Site is:

- (a) hard paved with fencing;
- (b) abutting Ting Kok Road; and
- (c) currently occupied by a single-storey structure used for convenience store. Along the southern boundary of the Site is an open seating area under movable canopies, which does not form part of the applied use under current application.

6.2 The surrounding areas are predominantly rural in character with village houses, barbecue areas, vehicle parking facilities, temporary structures and vacant land. To the north of the Site is the village proper of Lo Tsz Tin. To the south on the opposite side of Ting Kok Road is Lung Mei Beach.

7. Planning Intention

The planning intention of the “REC” zone is intended 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.

8. Comments from Relevant Government Departments

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

Land Administration

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

- (a) no in-principle objection to the application;
- (b) the Site consists of a private lot 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) the Site is partly covered by a Short Term Waiver (STW) No. 785 for the purpose of “a temporary shop and services (Real Estate Agency and Convenience Store)” (**Plan A-2**). The STW is for a fixed term from 4.7.2014 to 31.3.2017 and thereafter quarterly. The total built-over-area (BOA) permitted is about 119m² with height of structures not exceeding 4.75m;
- (d) a recent site inspection revealed that the BOA of the Site conforms to that permitted under the STW, except that a movable canopy straddling on the Site, the adjoining Government land and Lot 1617 RP in D.D. 17 was found. The applicant is required to clarify this issue and clear any existing structure not covered by the STW or encroaching onto the Government land immediately. Otherwise, appropriate enforcement action will be taken in due course; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of Emergency Vehicular Access thereto.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) the applicant should seek comments from the maintenance responsibility parties for the approaching road if necessary.

Environment

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

- (a) in view of the small scale of the proposed development, it will unlikely cause major pollution; and
- (b) the applicant is advised to follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” issued by DEP.

Drainage

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

- (a) no adverse comment on the drainage proposal submitted in

relation to the application;

- (b) the applicant is required to maintain such 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;
- (c) for works to be undertaken outside the Site, prior consent and agreement from DLO/TP, LandsD and/or relevant private lot owners should be sought;
- (d) public sewerage connection is available in the vicinity of the Site. Environmental Protection Department should be consulted regarding the sewerage treatment/ disposal aspects of the proposed development; and
- (e) the applicant should be reminded to follow the established procedures and requirements for connecting sewers from the Site to the public sewerage system. A connection proposal should be submitted to DSD via DLO/TP, LandsD for approval beforehand. Moreover, the sewerage connection will be subject to DSD's technical audit, for which an audit fee will be charged.

Water Supply

8.1.5 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 applied 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

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

- (a) the FSIs proposal in the application is acceptable; and
- (b) the applicant is advised that the installation/maintenance/modification/repair work of FSIs shall be undertaken by an Registered FSIs Contractor (RFSIC). The RFSIC shall after completion of the installation/maintenance/modification/repair

work issue a certificate (FS 251) to the person on whose instruction the work was undertaken and forward a copy of the certificate to D of FS.

Landscape

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

- (a) no objection to the application;
- (b) the Site is situated in an area of rural landscape character comprising scattered tree groups, village houses and vacant land. Applications with similar land use approved by the Board are found in close proximity within the same “REC” zone. Given the nature of applied use and its proximity to the village settlement, it is not incompatible with the surrounding landscape character;
- (c) seven existing *Ficus microcarpa* (細葉榕) in fair condition are found within the Site. Referring to the submitted layout plan, the proposed layout is not in direct conflict with the existing trees. Significant adverse impact on landscape resources due to the applied use is not anticipated;
- (d) should the application be approved, the applicant is required to implement the accepted landscape proposal to the satisfaction of the Director of Planning. The applicant should also be advised that should there be any revision to the accepted landscape proposal, prior approval for the revised landscape proposal would have to be obtained before implementation of the landscape works; and
- (e) referring to the approval condition of previous application (No. A/NE-TK/549), the applicant is required to maintain nine existing *Ficus microcarpa* (細葉榕) within the Site during approval period. However, only seven trees are recorded during the site visit. The applicant should seek comments from the administrative party on tree replacement.

Building Matter

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

- (a) no objection to the application;
- (b) 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;

- (c) there is also no record of submission of the proposed building/structure to the BA for approval; and
- (d) the applicant should note the following points under the Buildings Ordinance (BO):
 - (i) before any new building works 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 coordinator for the proposed building works in accordance with the BO;
 - (ii) 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;
 - (iii) any temporary shelters or converted containers for storage/washroom/first-aid room/site office or other uses are considered as temporary buildings are subject to the control of Part VII of the Building (Planning) Regulations;
 - (iv) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access (EVA) shall be provided under the Building (Planning) Regulation 41D;
 - (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; and
 - (vi) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.

Environmental Hygiene

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

proper licence/permit issued by the Food and Environmental Hygiene Department (FEHD) is required if food business is involved. For the operation of any types of food business, relevant food licences or permits should also be obtained from FEHD in accordance with the Public

Health and Municipal Services Ordinance (Cap. 132).

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

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

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

On 20.9.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from two individuals. One of them objects to the application as planning approvals for commercial use on the Site had been revoked twice for non-compliance with approval conditions. The other commenter raises that the Site should not be converted to a barbecue area upon approval as there have already been three barbecue sites nearby.

10. Planning Considerations and Assessments

10.1 The application is for temporary shop and services uses (real estate agency and convenience store) for a period of three years at the Site zoned "REC" on the approved Ting Kok OZP No. S/NE-TK/19 (**Plan A-1**). The "REC" zone is primarily intended for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. Although the applied use is not in line with the planning intention of the "REC" zone, approval of it on a temporary basis for 3 years would not jeopardize the long-term planning intention of the "REC" zone.

10.2 The Site is hard paved with fencing abutting Ting Kok Road, and is currently occupied by a convenience store in a single-storey structure of a built-over area of about 95.72m² and building height of about 4m. The surrounding areas are predominantly rural in character with village houses, barbecue areas, vehicle parking facilities, temporary structures and vacant land (**Plan A-2**). CTP/UD&L of PlanD advises that given the nature of applied use and its proximity to the village settlement, it is not incompatible with the surrounding landscape character. DEP has no adverse comment on the application as the applied use is small in scale and will unlikely cause major pollution. Other relevant departments including C for T, CE/MN of DSD, CE/C of WSD, D of FS and DFEH have no adverse comment on or no objection to the application.

- 10.3 The Site was the subject of three previous applications (Nos. A/NE-TK/457, 549 and 639) for various temporary shop and services uses, which were all approved with conditions by the Committee on a temporary basis of 3 years in the period between 2013 and 2018 (**Plans A-1 and A-2**). The applied use under current application is largely the same as the latest approved one (Application No. A/NE-TK/639) in terms of use, development parameters and layout. This previous application, submitted by the same applicant of current application, was approved on 15.6.2018 mainly on considerations that the applied use was not incompatible with the surrounding rural developments, and the technical concerns of relevant departments could be addressed by imposing approval conditions. However, the approval was subsequently revoked as the applicant did not make submission for compliance with the concerned conditions. In support of the current application, the applicant has submitted tree preservation and landscape, FSIs and drainage proposals (**Drawings A-2 to A-4**). Relevant departments including CTP/UD&L of PlanD, D of FS and CE/MN of DSD have no adverse comment on the proposals.
- 10.4 There are nine similar applications for temporary shop and services use within the same “REC” zone in the vicinity of the Site (**Plans A-1 and A-2**). Eight of them (Nos. A/NE-TK/403, 442, 564, 592, 614, 652, 655 and 666) were approved with conditions for a period of 3 years by the Committee between 2012 and 2019, mainly on considerations that the proposed developments were of relatively small scale; not incompatible with the surrounding environment; and would unlikely cause significant adverse impacts on the surrounding areas. The remaining application (No. A/NE-TK/523) for a temporary restaurant and convenience store 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 adverse environmental and landscape impacts on the surrounding areas. The circumstances of the eight approved cases are applicable to the current application.
- 10.5 Having regard to the above and taking into account that there is no significant change in planning circumstances, it is considered that the current application could be given sympathetic consideration. Should the application be approved by the Committee, shorter compliance periods are recommended with a view to closely monitoring the progress on compliance with approval conditions. Furthermore, the applicants should be advised that if there is further non-compliance with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 10.6 Regarding the public comments as detailed in paragraph 9, Government departments’ comments and the planning assessment above are relevant.

11. **Planning Department’s Views**

- 11.1 Based on the assessment made in paragraph 10 and having taken into account the public comments in paragraph 9, Planning Department has no objection to the application.

- 11.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until ~~30.3.2023~~ 26.5.2023. The following conditions of approval with shorter compliance periods and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no night-time operation between 11:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing drainage facilities on the Site should be properly maintained at all times during the planning approval period;
- (c) the implementation of tree preservation and landscape proposal, as proposed by the applicant, within 6 months from the date of commencement of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 30.9.2020;
- (d) the implementation of fire service installations proposal, as proposed by the applicant, within 6 months from the date of commencement of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 30.9.2020;
- (e) if any of the above planning conditions (a) or (b) 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
- (f) if any of the above planning conditions (c) or (d) 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**.

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

The applied use 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 and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to

grant or refuse to grant permission.

- 12.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 12.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

13. Attachments

Appendix I	Application form and attachments dated 13.9.2019
Appendix Ia	Further information received on 30.12.2019
Appendix Ib	Further information received on 3.2.2020
Appendix II	Previous applications
Appendix III	Similar applications
Appendix IV	Public comments
Appendix V	Recommended advisory clauses
Drawings A-1	Site plan submitted by the applicant
Drawings A-2	Tree preservation and landscape proposal submitted by the applicant
Drawings A-3	Drainage proposal submitted by the applicant
Drawings A-4	Fire service installations proposal 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
MARCH/MAY 2020**