

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/NE-TKLN/22

- Applicant** : Mr. HO Yan Sum represented by Mr. LIT Ying Cheung Edward
- Site** : Lots 410 S.B ss.2 and 410 S.B RP in D.D. 78, Tsung Yuen Ha, Ta Kwu Ling, New Territories
- Site Area** : 465 m² (about)
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
- Zoning** : “Green Belt” (“GB”)
- Application** : Renewal of Planning Approval for Temporary Canteen and Ancillary Office for a Period of 3 Years until 14.9.2022

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary canteen and ancillary office for a further period of three years until 14.9.2022. The Site falls within an area zoned “GB” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2 (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “GB” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the Plan. The Site is currently used for the applied use with valid planning permission until 14.9.2019.
- 1.2 According to the applicant, the development scheme submitted under the current renewal application is largely same as the previous application No. A/NE-TKLN/4, except for the minor change in the layout and the total gross floor area (GFA). The structure proposed mainly for canteen and site office covered by a roof-top structure under the previous scheme has been divided into two separate structures so that an access could be provided in the middle of the Site in compliance with relevant approval conditions for fire safety requirements under the previous application (**Drawing A-2**). Whilst there is a minor change in the layout resulting in a reduction of the total GFA from about 200 m² to 134.6 m² (i.e. - 65.4 m²), the uses at different

structures (i.e. canteen, office, toilet, etc.) remain the same (**Drawing A-2**). No car parking and loading / unloading space is provided within the Site. The operation hours of the temporary canteen are from 7:00 a.m. to 3:00 p.m. during Mondays and Fridays, and no operation on Saturdays, Sundays and public holidays. A site layout plan and fire service installations (FSIs) proposal showing the revised layout submitted by the applicant is at **Drawings A-1 and A-2**.

1.3 The Site is the subject of a previous application No. A/NE-TKLN/4 for the same use submitted by the same applicant. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 14.9.2016 for a period of three years up to 14.9.2019. As compared to the previous application, the development scheme submitted under the current renewal application has slightly revised the layout resulting in a minor reduction of GFA from about 200 m² to 134.6 m² (i.e. - 65.4 m²) (**Drawings A-1 and A-2**). The applicant has complied with all the approval conditions of the last approved application.

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

- (a) Application Form with attachments received on 15.7.2019 (**Appendix I**)
- (b) Supplementary Information received on 19.7.2019 (**Appendix Ia**)
- (c) Further Information (FI) received on 8.8.2019 (**Appendix Ib**)
- (d) FI received on 26.8.2019 (**Appendix Ic**)
- (e) FI received on 28.8.2019 (**Appendix Id**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form at **Appendices I to Ic**. They can be summarized as follows:

- (a) the Site is surrounded by a number of Government projects including the Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) and public vehicle park on Lin Ma Hang Road. Given its remote location and close proximity to the works areas of these government projects, the Site is an ideal place for providing catering service for a large number of construction workers on a temporary basis;
- (b) after the completion of the LT/HYW project by the end of 2019, a few hundreds of workers would remain working on the project site during the defects liability period of about six months to one year. As such, there is still a need for temporary canteen in the area;
- (c) the development under application is temporary in nature for three years. The Site would be reinstated to an amenity area upon approval period is expired;
- (d) no adverse environmental and traffic impacts to the surrounding area are anticipated;
- (e) all approval conditions have been complied in the previous application No. A/NE-TKLN/4 and the site condition including the layout and the use remains unchanged since the last approval; and

- (f) the applicant has recently applied for the food factory license to regularize the applied use on the Site and indicated that he has been waiting for the reply from Lands Department regarding the Short Term Waiver (STW) application.

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

The applicant is one of the “current land owners” and 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 obtaining consent from the other “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant planning criteria are summarized in **Appendix II**.
- 4.2 The Town Planning Board Guidelines No. 34C (TPB-PG No. 34C) on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ is relevant to this application. The relevant planning criteria are summarized in **Appendix III**.

5. Previous Application

- 5.1 The Site is the subject of a previous application No. A/NE-TKLN/4 submitted by the same applicant for the same use as the current application. The application was approved with conditions by the Committee on 14.9.2016 for a period of three years mainly on the grounds that the development could provide catering services to meet the needs of the construction workers nearby during the construction periods of the works projects; the development was not incompatible with the surrounding environment; the development was not expected to generate significant adverse water quality, traffic and landscape impacts on the surrounding areas; and there was no adverse departmental comments.
- 5.2 The development scheme submitted under the current renewal application is largely same as the previous application No. A/NE-TKLN/4, except for the minor change in the layout and the total gross floor area (GFA). The structure proposed mainly for canteen and site office covered by a roof-top structure under the previous scheme has been divided into two separate structures so that an access could be provided in the middle of the Site in compliance with relevant approval conditions for fire safety requirements under the previous application (**Drawing A-2**). Whilst there is a minor change in the layout resulting in a reduction of the total GFA from about 200 m² to 134.6 m² (i.e. - 65.4 m²), the uses at different structures (i.e. canteen, office, toilet, etc.) remain the same (**Drawing A-2**). All the approval conditions have been complied with and the planning permission is valid until 14.9.2019.
- 5.3 Details of the previous application are summarized at **Appendix IV** and the location

is shown on **Plan A-1**.

6. **Similar Application**

- 6.1 There is one similar application (No. A/NE-TKLN/6) for temporary retail shop, canteen and ancillary office for a period of three years within the “Recreation” (“REC”) and GB zones in the Ta Kwu Ling North area. The application was approved by the Board on review on 13.4.2018 mainly on the considerations that the applicant has demonstrated in the submission that the development would have no adverse traffic impact on the surrounding area; the development was not incompatible with the surrounding environment; the proposed use is temporary in nature and small in scale and approval of the application on a temporary basis would not frustrate the long-term planning intentions of the REC and GB zones; and there was no adverse departmental comments. That planning permission is still valid until 13.4.2021.
- 6.2 Details of the similar application are summarized at **Appendix V** and the location is shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) currently occupied by canteen comprises temporary structures for catering area, kitchen, ancillary office and toilet; and
 - (b) accessible from Lin Ma Hang Road to its south (**Plan A-2**).
- 7.2 The surrounding areas have the following characteristics:
- (a) the Site is situated at a boundary location with the Shenzhen City to its north and mainly surrounded by the works areas / construction sites of a number of major Government projects (**Plans A-2 and A-3**);
 - (b) to the west of the Site is the works area of the LT/HYW BCP;
 - (c) to the immediate north is vacant land and the works site;
 - (d) to the east is an access road and across the road are temporary structures for canteen, retail shop and office under approved application No. A/NE-TKLN/6 (**Plan A-2**); and
 - (e) to the south is Lin Ma Hang Road, vacant land, a car park and site office under approved application No. A/NE-TKLN/8 and Tsung Yuen Ha Village to its further south.

8. Planning Intention

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

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 which are Old Schedule lots held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. The applicant should make his own arrangement, and there is no guarantee that any adjoining Government land (GL) will be allowed for the vehicular access of the applied use;
- (b) the existing structures were erected on the Site without approval from his office. The aforesaid structures are not acceptable under the lease concerned. His office reserves the right to take enforcement actions against the existing structures;
- (c) one of the existing structures was erected for toilet use, the applicant should note that any proposed septic tank and soakaway pit system should meet current health requirements, and that he should apply for certificates for building works and drainage works from his office before erection;
- (d) the total built-over area of the existing structures does not tally with the one mentioned in the planning application;
- (e) after the applied use was approved by the Committee on 14.9.2016, the applicant and the then owner of Lot 410 S.B RP in D.D. 78 jointly submitted the Short Term Waiver (STW) application on 19.12.2018. However, the STW application, could not be processed because the ownership of the Lot has been changed on 20.12.2018 according to land search records. Further, the new owner of the Lot failed to raise any STW application in respect of the applied use; and
- (f) if the planning application is approved, the owners of the lots concerned shall apply to his office for STW to cover all the existing structures on Site. The STW application and certificates for building works and drainage works will be considered by Government in its landlord’s and relevant capacities and there is no guarantee that they

will be approved. If the STW is approved, it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee 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 Ia**), he has no further comment and no objection to the application; and
- (b) the local track connecting with Lin Ma Hang Road (**Plan A-2**) leading to the Site is not managed by TD. The land status, management and maintenance responsibility of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

Environment

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

- (a) having reviewed the application including the condition record of the existing septic tank, he has no adverse comment on the application;
- (b) the applicant should be reminded that it is the applicant's responsibility to ensure proper and full implementation of all precautionary and mitigation measures including regular maintenance of the existing septic tank to keep it in good operating condition. The applicant is also reminded to observe strictly all relevant pollution control ordinance such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc during the operation of the project; and
- (c) no environmental complaint related to the Site was received for the past three years.

Landscape

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

- (a) there is no change in the landscape aspect of this renewal application, and no significant landscape impact arising from the renewal is identified;
- (b) since existing trees are already found within the Site and there is no major public frontage along the site boundary, should the Board approve this application, 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; and
- (c) in view of some existing trees are found within the Site (**Plan A-2**), the applicant should be reminded that all existing trees shall be

maintained at all time during the approval period.

Drainage

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

- (a) the condition of the existing stormwater drainage facility at the Site is up to his satisfaction; and
- (b) the applicant is reminded to maintain his system properly and rectify any inadequacies or defects found during operation. In addition, the owner shall be liable for and shall indemnify claims and demands arising out of damage or nuisance due to failure of the system.

Building Matters

9.1.6 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 for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application;
- (b) if the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;
- (c) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent from BD should be obtained, otherwise they are UBW. An authorized person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (d) for UBW erected on leased land, enforcement action may be taken by the BD 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;
- (e) if the applied use under application is subject to the issue of a license, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
- (f) the Site should be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Building (Planning) Regulations (B(P)Rs) 5 and 41D respectively;

- (g) if the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under B(P)R 19(3) at the building plan submission stage; and
- (h) detailed comments under the BO will be provided at the building plan submission stage.

Fire Safety

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

he has no in-principle objection to the renewal application subject to the existing FSIs implemented on the Site being maintained in efficient working order at all times.

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) 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

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

the Site is paved and, in this connection, he has no comment on the application from the nature conservation point of view.

Project Interface

9.1.10 Comments of the Chief Project Manager, Architectural Services Department (CPM, ArchD):

- (a) BCP building works (under Contract No. SS C505) are targeted to be completed by end of 2019 for end-users' moving-in; and
- (b) after the completion, there may be about 300-400 workers to proceed on outstanding works/defect rectification works in the beginning, and the labour force will be reduced gradually along the one year defects liability period.

Public Hygiene and Licensing

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

- (a) he has no comment on the application;
- (b) proper licence/permit issued by his Department is required if there is any food business/catering service/ activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation 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 businesses listed in the Regulation. The operation of the canteen should not cause any environmental nuisances and/or hygienic problems at the Site and its vicinities; and
- (c) according to his office record, no food licence/restricted food permit has been granted to the staff canteen on the Site, nor any application for food licences received by the FEHD Licensing Office. The existing staff canteen is being subject of his routine inspection since 2016.

District Officer's Comments

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

he has consulted the locals regarding the application. The incumbent North District Council member of the subject constituency and 1st Vice-chairman of Ta Kwu Ling District Rural Committee (TKLDRC) have no comment on the application. The indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Tsung Yuen Ha support the application.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Commissioner of Police (C of P); and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 23.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments on the application were received (**Appendix III**). The Chairman of Sheung Shui District Rural Committee has no comment on the application. An individual objects to the application on the grounds that the LT/HYW BCP is scheduled to be opened in September 2019 and there is no further need for canteen facilities to support the construction workers.

11. Planning Considerations and Assessments

- 11.1 The application is for renewal of planning permission for temporary canteen and ancillary office for a period of three years at the Site zoned “GB” on the OZP. The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas as well as to provide passive recreational outlets and there is a general presumption against development within this zone. Although the development is not in line with the planning intention of “GB” zone, the Site is at present hard paved and surrounded by the construction sites / works areas of a number of Government projects including the proposed LT/HYW BCP and widening of Lin Ma Hang Road projects. Also, the canteen can provide catering services to meet the needs of the construction workers nearby during the construction/ defects liability periods of these Government projects. DAFC has no comment on the renewal of the planning approval as the Site has been formed. Approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.
- 11.2 The applied use is considered not incompatible with the surrounding environment which is rural in character with mainly vacant land and temporary structures (**Plan A-2**). It is also not expected to have significant adverse impacts on the surrounding area. The temporary canteen is mainly to serve the staff and workers from the nearby Government projects. According to CPM, ArchD, after the completion of LT/HYW BCP project scheduled for end of 2019, there may be about 300-400 workers to proceed on outstanding works/defect rectification works in the beginning, and the labour force will be reduced gradually along the one year defects liability period. Concerned Government departments consulted, including C for T, CE/MN of DSD, DEP, D of FS, DFEH and CTP/UD&L of PlanD, have no objection to or no adverse comment on the renewal application.
- 11.3 The application generally complies with the TPB PG-No. 34C on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ as there has not been any material change in planning circumstances since the approval of the last application; there are no major adverse departmental comments against the renewal application; all the approval conditions for the last application have been complied with; and the approval period sought which is for the same as the last approval granted by the Board is not unreasonable.
- 11.4 The current development proposal scheme is largely the same as the previously approved scheme (No. A/NE-TKLN/4) except for a minor change in the layout resulting in a reduction of total GFA from about 200 m² to 134.6 m² (i.e. - 65.4 m²) so that an access could be provided within the middle of the Site in compliance with the relevant approval conditions for fire safety requirement under the previous application. All the approval conditions for the previous application have been complied with and there has not been major change in planning circumstances since the approval of the previous application.
- 11.5 There is one similar application (No. A/NE-TKLN/6) for temporary retail shop, canteen and ancillary office for a period of three years within the REC and GB zones in the vicinity of the Site (**Plan A-2**). The application was approved by the Board on review on 13.4.2018 mainly on the considerations that the applicant has demonstrated in the submission that the development would have no adverse traffic impact on the

surrounding area; the development was not incompatible with the surrounding environment; the proposed use is temporary in nature and small in scale and approval of the application on a temporary basis would not frustrate the long-term planning intentions of the REC and GB zones; and there was no adverse departmental comments. There has not been major change in planning circumstances since the approval of the previous and similar applications.

11.6 Regarding the adverse public comments as detailed in paragraph 10 above, the Government department's comments and the planning assessment above are relevant.

12. Planning Department's Views

12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary use under application could be tolerated for a further period of 3 years.

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 further period of 3 years, and be renewed from 15.9.2019 until 14.9.2022. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 3:00 p.m. and 7:00 a.m. on weekdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period
- (c) the boundary fence on the Site should be maintained at all times during the planning approval period;
- (d) all existing trees shall be maintained at all times during the approval period;
- (e) the existing drainage facilities should be maintained properly at all times during the planning approval period and rectified if they are found inadequate/ineffective during operation;
- (f) the existing fire service installations implemented on the Site should be maintained in efficient working order at all times;
- (g) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (h) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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

the development is not in line with the planning intention of the "Green Belt" zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets, and there is a general presumption against development within this zone. There is no strong planning justification provided 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 for renewal of the planning 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

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| Appendix I | Application form with attachments received on 15.7.2019 |
| Appendix Ia | Supplementary Information received on 19.7.2019 |
| Appendix Ib | FI received on 8.8.2019 |
| Appendix Ic | FI received on 26.8.2019 |
| Appendix Id | FI received on 28.8.2019 |
| Appendix II | Relevant Extract of TPB Guidelines No. 10 for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance |
| Appendix III | Relevant Extract of TPB Guidelines No. 34C on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development |
| Appendix IV | Previous s.16 Application |
| Appendix V | Similar s.16 application for canteen within/partly within the "GB" zone in the vicinity of the Site in the Ta Kwu Ling North Area |
| Appendix VI | Public Comments |
| Appendix VII | Recommended Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Drawing A-2 | FSIs proposal |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4a and A-4b | Site Photos |

**PLANNING DEPARTMENT
SEPTEMBER 2019**