

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/643

- Applicant** : Warm Sunshine Rehabilitation Home Limited (朝陽復康中心有限公司)
represented by Kea Kwun (International) Consultants Ltd
- Site** : Lot 1267 in D.D. 84 and adjoining Government Land, Tai Po Tin, Ta Kwu Ling,
New Territories
- Site Area** : 744.5 m² (about) (including about 680 m² of Government land)
- Leases** : (i) Lot 1267 is held under New Grant No. 11118 (for erection of a New
Territories Exempted House for non-industrial purpose)
(ii) Government Land
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-
TKL/14
- Zonings** : (i) "Agriculture" ("AGR") (about 725.9 m² or 97.5% of the Site)
(ii) "Government, Institution or Community" ("G/IC") (about 18.6 m² or
2.5% of the Site)
- Application** : Renewal of Planning Approval for Temporary Social Welfare Facility
(Residential Care Home for Persons with Disabilities) for a period of 3 years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary social welfare facility (residential care home for persons with disabilities) (RCHD) for a further period of three years until 22.9.2023 (**Plan A-1**). The Site falls mostly within an area mostly zoned "AGR" with a very minor portion encroaching onto adjoining "G/IC" zone on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, 'Social Welfare Facility' is a use always permitted within the "G/IC" zone while temporary use or development of any land or building not exceeding a period of three years within "AGR" zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the OZP.
- 1.2 There is an existing 3-storey NTEH (with a total floor area of about 167.8m²) erected at the western portion of the Site providing 26 places with residential care for persons with disabilities. A covered area connected with the NTEH with floor area of about 109.7m² is located at the southern part of the Site, which is for kitchen, dining and activity areas.

A temporary structure with the floor area of about 50m² and height of 5.5m located at the eastern part of the Site is used for office. The Site is accessible via a local track to Ping Che Road and three parking spaces for staff, visitor and ambulance are provided. The site layout plan and floor plan submitted by the applicant are at **Drawings A-1 to A-2**. The Site is currently used for the applied use with valid planning permission until 22.9.2020.

- 1.3 The Site is the subject of a previous application (No. A/NE-TKL/565) for the same use submitted by the same applicant approved by the Rural and New Town Planning Committee (the Committee) on 22.9.2017 for a period of 3 years up to 22.9.2020. The development scheme submitted under the current renewal application is the same as the previous application No. A/NE-TKL/565 in terms of the applied use, site layout and development parameters. All the approval conditions of the previous application have been complied with.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with Attachment received on 6.8.2020 (Appendix I)
 - (b) Supplementary Information received on 12.8.2020 (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 7 of the application form and supplementary information at **Appendices I to Ia**. They can be summarized as follows:

- (a) the RCHD aims at providing residential care home services to the persons with psychologically or physically disabilities in Hong Kong;
- (b) the RCHD has undertaken refurbishment works in 2019 to improve the facility's safety and comfortability as well as to fulfil the requirements of RCHD licence issued by Social Welfare Department;
- (c) all approval conditions, including provision of FSIs, sewage and drainage facilities, specified by the Board under the previous application have been complied with; and
- (d) there is no change in the development parameters as compared with the previously approved application.

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

The applicant is not the "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consent from the concerned land owner. Detailed information would be deposited at the meeting for Members' inspection. For the Government land within the Site, TPB PG-No.31A is not applicable.

4. Town Planning Board Guidelines

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’ are relevant to this application. The relevant planning criteria are summarized as follows:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

5. Previous Application

5.1 The Site is the subject of a previous application (No. A/NE-TKL/565) submitted by the same applicant under the current renewal application for the same use. The application was approved with conditions on 22.9.2017 for a period of three years mainly on the considerations that the small scale and residential nature of the RCHD is not incompatible with the surrounding developments; the development was unlikely to cause adverse traffic, environmental, drainage and fire safety impacts; and concerned government departments had no adverse comment or no objection to the application.

5.2 Details of the previous application are summarized at **Appendix II** and the location is shown on **Plan A-1**.

6. Similar Application

There is no similar application in the “AGR” and “G/IC” zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area.

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

7.1 The Site is:

- (a) paved, fenced off and occupied by a RCHD; and
- (b) accessible by Ping Che Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) situated in an area of mixed land uses including a Government farm, a religious institution, domestic structures, and a few car repairing workshops intermixed with active / fallow farmland and tree clusters (**Plans A-2 and A-3**);
- (b) to the north is vacant land and across Ping Che Road, is a Chinese temple of Wun Chuen Sin Kwoon (雲泉仙館) zoned “G/IC” on the OZP and some vacant land;
- (c) to the immediate east is the Ta Kwu Ling Farm under AFCD management zoned “G/IC” on the OZP;
- (d) to the south are domestic structures and temporary structures for domestic purpose; and
- (e) to the west and northwest are temporary domestic structures, car repairing workshops and active/fallow agricultural land.

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 8.2 The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organizations providing social services to meet community needs, and other institutional establishments.

9. Comments from Relevant Government Departments

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

Land Administration

- 9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):
 - (a) the application lot is held under New Grant No. 11118 for erection of a New Territories Exempted House (NTEH) for non-industrial purpose. The building erected on the lot shall not contain more than three storeys nor exceed a height of 25 feet with a Built-Over-Area (BOA) not exceeding 700 square feet;
 - (b) according to the development schedule, the access to the Site would route through Lot 1390 RP in D.D. 82 (**Plan A-2**), the applicant should make his own arrangements to acquire access. The Government shall accept no responsibility in such arrangements;

- (c) the regularization application for occupation of the Government Land (GL) adjoining the lot by way of Short Term Tenancy (STT) to support the operation of residential care home for persons with disabilities is being processed by his office. The area of concerned GL is about 679.27m² and the BOA of the existing structures erected on the GL concerned should not exceed 138.21m²;
- (d) the existing structures erected on the GL concerned cannot be used for domestic purpose; and
- (e) if the renewal of the planning approval is granted, his office will review the STT regularization application aforementioned. If the actual area of the concerned GL and BOA of the existing structures erected on the GL concerned exceed the ones mentioned in para. (c) above, the excessive area and BOA will be subject to such terms and conditions to be imposed including payment of rent and administrative fees as considered appropriate by his office.

Social Welfare Aspect

9.1.2 Comments of the Director of Social Welfare (DSW):

- (a) he has no adverse comment on the application; and
- (b) the subject RCHD is covered with licence valid from 1.5.2020 to 31.10.2021.

Traffic

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

- (a) he has no in-principle objection to the application from the traffic engineering point of view; and
- (b) the vehicular access between the Site and Ping Che Road is not managed by TD. The applicant should also seek comment from the responsible party.

Environment

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

- (a) he has no objection to the application from the environmental protection point of view;
- (b) the applicant is reminded to comply with all environmental protection/pollution control ordinances, in particular the Water Pollution Control Ordinance, and to follow the requirements in ProPECC 5-93 regarding the operation and maintenance of the grease trap, septic tank and soakaway system; and
- (c) there was no environmental complaint against the Site during the past three years.

Drainage

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

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit a conditional record of the existing drainage facilities on site as previously implemented on the same site in the planning application No. A/NE-TKL/565 to the satisfaction of this Division within three months of the TPB's letter of approval; and
- (c) maintain those existing drainage facilities properly and rectify those facilities if they are found inadequate / ineffective during operation.

Building Matters

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

he has no in-principle objection to the renewal application. Detailed comments are enclosed in **Appendix IV**.

Fire Safety

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

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

Agriculture

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

she has no strong view against the application for renewal of planning approval from agricultural development point of view.

Public Hygiene

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

- (a) he has no comment on the application provided that no Food and Environmental Hygiene Department's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surroundings;
- (b) proper licence/permit issued by his Department is required if there is any catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public; and

- (c) for any waste generated from the activity/operation, the applicant should arrange disposal properly at his own expenses.

District Officer's Comments

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

he has consulted the locals regarding the application. The incumbent North District Council (NDC) member of the subject constituency has no comment on the application as the social welfare institution has been running smoothly over the years.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 14.8.2020, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix III**). The Chairman of Sheung Shui Rural Committee indicates no comment on the application. The remaining comment from an individual, while indicating support to the provision of RCHD facilities, raises concern on the conditions in care homes and whether it is operating in accordance with the relevant guidelines and licences.

11. Planning Considerations and Assessments

11.1 The application is for renewal of planning permission for temporary social welfare facility (residential care home for persons with disabilities) for a further period of three years. While social welfare facility is always permitted within the "G/IC" zone, the temporary development is not in line with the planning intention of "AGR" zones which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. Nevertheless, DAFC has no strong view against the renewal application. Approval of the application on a temporary basis for another three years would not frustrate the long-term planning intention of the "AGR" zone.

11.2 The current development scheme is the same as the last approved scheme in terms of the applied use and site area. The applied use is considered not incompatible with the surrounding developments which are of mixed land uses comprising domestic structures, GIC facilities and some rural workshops (**Plan A-2**). In view of the nature and the small-scale of the applied use, the development is not expected to have significant adverse traffic, environmental, drainage and landscape impacts on the surrounding areas. As advised by DSW, the RCHD at the Site is covered with licence valid until 31.10.2021. Concerned

government departments consulted, including C for T, DEP, D of FS and CE/MN of DSD have no adverse comment on or no objection to the application.

- 11.3 The Site is the subject of a previous application (No. A/NE-TKL/565) for the same temporary use submitted by the same applicant approved by the Committee on 22.9.2017. All the approval conditions of the previous application have been complied with. There has been no material change in planning circumstances since the approval of the previous application.
- 11.4 The renewal application generally complies with the Town Planning Board Guidelines on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' (TPB PG-No. 34C) in that 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.
- 11.5 Regarding the public comments as detailed in paragraph 10, the Government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department considers that the temporary use under application could be tolerated for a 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 23.9.2020 until 22.9.2023. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the existing drainage facilities implemented under Application No. A/NE-TKL/565 on the Site shall be maintained properly at all times during the planning approval period;
- (b) the existing FSIs implemented on the site should be maintained in efficient working order at all times during the planning approval period;
- (c) the submission of a condition record of the existing drainage facilities within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 23.12.2020;
- (d) 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
- (e) if the above planning condition (c) 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 IV**.

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 "AGR" zone in the Ping Che and Ta Kwu Ling area which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for 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 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

Appendix I	Application Form with Attachment received on 6.8.2020
Appendix Ia	Supplementary Information received on 12.8.2020
Appendix II	Previous s.16 Application
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Floor Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos