

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/671

<u>Applicant</u>	: Mr. TANG Wai-Ip
<u>Site</u>	: Lot 540 (Part) in D.D. 109, Kam Tin North, Yuen Long
<u>Site Area</u>	: 1,787m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Proposed Temporary Eating Place for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for temporary eating place for a period of 3 years. According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use in “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is subject to a previous application for temporary open storage of construction machineries for a period of 3 years which was rejected by the Town Planning Board on review in 2004. The Site is currently vacant and partly fenced (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the proposed development involves three one-storey structures with building height of 3.5m and a total floor area of about 225.5m² for eating place, storage and electric meter room use. The operation hours are from 8 a.m. to 10 p.m. from Mondays to Sundays, including public holidays. The Site is accessible from Kam Tin Bypass and Kong Tai Road via a local track. 6 private car parking spaces and 1 loading/unloading space for light goods vehicle will be provided within the Site. According to the applicant, no outdoor amplification system will be installed within the Site. The layout plan and access plan submitted by the applicant are at **Drawings A-1 and A-2**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with justifications and plans received on 17.7.2019 **(Appendix I)**
 - (b) Further Information (FI) received on 19.8.2019 providing responses to departmental comments **(Appendix Ia)**
 - (c) Further Information (FI) received on 29.8.2019 providing responses to departmental comments **(Appendix Ib)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the justification statement in **Appendix I** and FIs in **Appendices Ia and Ib**. They can be summarized as follows:

- (a) The proposed use is only temporary in nature and no permanent structure will be erected on Site. The Site can be easily reinstated and will not jeopardize the long-term planning intention. Upon approval of the application, proper landscaping and drainage works will be provided to enhance the surroundings and reduce the possibility of flooding.
- (b) The proposed eating place is intended to serve nearby villagers and residents near Kam Tin Road. It will provide an alternative dining choice, which could help to redistribute and relieve the traffic load in Kam Tin Town Center.
- (c) To minimize environmental nuisances to the nearby residents, the applicant will provide appropriate facilities to control noise, oily fumes, cooking odour, aerial emissions, grease waste and wastewater with reference to the relevant guidelines issued by the Environmental Protection Department (EPD) and undertaking regular maintenance, repair and cleaning of the facilities.
- (d) Similar application for eating place in the vicinity has been approved by the Rural and New Town Planning Committee (the Committee) of the Board.

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

The applicant is not a “current land owner” but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting a site notice and notifying the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

A major portion of the Site was subject to enforcement action (No. E/YL-KTN/480) against an unauthorized development (UD) involving storage use. A minor portion on the north-western part of the Site was subject to enforcement action (No. E/YL-KTN/488) against UD involving storage use and use for place for parking of vehicles. Enforcement Notices (EN) were issued on 18.1.2018 and 19.2.2019 respectively to the concerned parties requiring discontinuation of the UD. Subsequent site inspections revealed that the UD were discontinued upon expiry of the ENs. The compliance notices were issued on 2.8.2019 and 26.8.2019 respectively.

5. Town Planning Board Guidelines

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

- (a) the eating place use should not create environmental nuisance or cause inconvenience to the residents nearby. Such use should preferably be located at the fringe of a village area, e.g. area abutting the main road. For any eating place use that is situated amidst the existing village houses, sympathetic consideration may only be given if there are no objections from local residents;
- (b) the eating place use should not have any adverse traffic impact on its surrounding areas nor should it affect any pedestrian circulation in the area;
- (c) sympathetic consideration may be given if the eating place use would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects;
- (d) for any application on open ground as an extension to ground floor eating place in a New Territories Exempted House (NTEH) or as a free-standing development, the eating place use should not adversely affect the land availability for village type development. Application sites with configurations/dimensions which are not suitable to be delineated separately for village type development or which are considered not suitable for village type development (e.g. within 20 m of public roads constructed/maintained by the Highways Department or 15 m of other local public roads), sympathetic consideration may be given by the Board on individual merits; and
- (e) all other statutory or non-statutory requirements of relevant Government departments should be met.

6. Previous Application

The Site is the subject of a previous planning application (No. A/YL-KTN/200) for temporary open storage of construction machineries for a period of 3 years submitted by the

same applicant which was rejected by the Board on review in 26.11.2004 on the grounds that the development did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in that residential dwellings which were located to its close proximity would be susceptible to adverse environmental nuisances generated by the development; and insufficient information to demonstrate the development would not cause adverse drainage, traffic and environmental impacts on the surrounding areas. Details of the application are summarised in **Appendix III** and its location is shown on **Plan A-1**.

7. **Similar Application**

There is a similar application (No. A/YL-KTN/641) for proposed temporary eating place (staff canteen) for a period of 3 years within the same “V” zone on the OZP. The application was approved with conditions by the Committee on 22.2.2019 for the reasons that the proposed temporary use would not jeopardize the long term planning intention; the applicant stated that the proposed staff canteen intended to serve the workers in the nearby businesses; not incompatible with the surrounding land uses; the site was located at the fringe of the “V” zone and easily accessible from Kam Tin Road; and no adverse comments from relevant government department. Details of the application are summarised in **Appendix IV** and its location is shown on **Plan A-1**.

8. **The Site and Its Surrounding Area (Plans A-1 to A-4b)**

8.1 The Site is:

- (a) vacant and partly fenced; and
- (b) accessible from Kam Tin Bypass and Kong Tai Road via a local track.

8.2 The surrounding area is predominantly rural in character mixed with residential dwellings/structures, open storage yards, a warehouse, parking of vehicles and vacant/unused land. The open storage yards and parking of vehicles are suspected UDs subject to enforcement action by the Planning Authority:

- (a) to its north is vacant/ unused land. Kam Tin River is at its further north;
- (b) to its east is a residential development within the “Residential (Group C) 2” (“R(C)2”) zone namely Seasons Monarch (the nearest about 10m away);
- (c) to its immediate south is a streamcourse. To its further south are residential structures/dwellings, open storage yard, parking of vehicles, a warehouse and unused land. A piece of vacant land at its southeast is the subject of an approved application No. A/YL-KTN/641 for proposed temporary eating place (staff canteen) for a period of 3 years approved by the Committee in 2019. To its further south across Kam Tin Road is Shek Kong Barracks; and
- (d) to its west are vacant land and a village office.

9. **Planning Intention**

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

10. **Comments from Relevant Government Departments**

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

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an Old Scheduled Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible from Kong Tai Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should planning approval be given to the planning application, the lot(s) owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

- (e) There is no Small House application approved and under processing at the Site.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be incorporated.
- (c) The applicant is advised that the Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

10.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) HyD is not/ shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Bypass.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road drains.

Environment

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

- (a) There is no environmental complaint received at the Site in the past three years.
- (b) Provided that the applicant will provide necessary pollution control measures and ensure that the proposed use would not cause any environmental nuisances such as noise, oily fume and cooking odour to the public and people living nearby, he has no objection to the application from environmental planning perspective.
- (c) The applicant is advised to properly design and maintain adequate mechanical ventilation and necessary pollution control measures to avoid accumulation of aerial emissions and minimise potential noise and odour nuisances to the public and people living nearby. To

minimize noise impact, oily fume and cooking odour emissions from the restaurant, the applicant should make reference to the EPD's Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" available from EPD's website. The applicant is also advised to follow the relevant mitigation measures and requirements in the revised "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" to minimize any potential environmental nuisances.

- (d) All wastewater collected from kitchen, including that from basins, sinks and floor drains, should be discharged via a grease trap in accordance with the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". The applicant is also reminded that effluent discharges from the proposed use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge licence under the WPCO shall be obtained before a new discharge is commenced.

Nature Conservation

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

Noting that the Site is paved and no felling of trees would be involved in the proposed development, he has no strong view on the application from nature conservation perspective.

Drainage

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

- (a) He has no in-principle objection to the proposed development.
- (b) The Site is in the vicinity of an existing streamcourse. The applicant shall be required to place all the proposed works 3m away from the top of the bank of the streamcourse. All the proposed works in the vicinity of the streamcourse should not create any adverse drainage impacts, both during and after construction. Proposed flooding mitigation measures if necessary shall be provided at the resources of the applicant to his satisfaction.
- (c) Should the application be approved, approval conditions requiring the applicant to submit a drainage proposal (including measure not to disturb the adjacent existing streamcourse), and implement and maintain the drainage proposal for the development should be included in the planning permission.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123) or application for licence for the subject eating place is required, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans or referral from relevant licensing authority respectively.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) 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.
- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

- (e) If the proposed use under application is subject to issue of a license, the applicant is 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.

Environmental Hygiene

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

- (a) If any of Food and Environmental Hygiene Department's (FEHD) facility is affected by the development, FEHD's prior consent must be obtained. Re provisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the re provisioned facilities to FEHD.
- (b) Proper licence and/or permit issued by FEHD is required if food business and / or related place of entertainment activity is involved:
 - (i) For the operation of any types of food business, relevant food licenses / permits should also be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132); and
 - (ii) Any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building, erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public entertainment (PPE) Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement. A Place of Public Entertainment Licence (or Temporary Place of Public Entertainment Licence) should be obtained from FEHD whatever the general public is admitted with or without payment.
- (c) If the proposal involves any commercial/trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. Its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial / trading activities, the applicant should handle on their own / at their expenses.

District Officer's Comments

10.1.10 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from locals upon close of consultation and has no particular comments on the application.

10.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department;
- (c) Director of Electrical and Mechanical Services; and
- (d) Commissioner of Police.

11. Public Comment Received During Statutory Publication Period

On 26.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comments were received.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary eating place for a period of 3 years at the Site zoned "V". The planning intention of the "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed temporary eating place is not entirely in line with the planning intention of the "V" zone. Nevertheless, DLO/YL, LandsD advised that there is no Small House application approved or under processing at the Site. In this regard, it is considered that approval of the application on a temporary basis for 3 years would not jeopardize the planning intention of the "V" zone.
- 12.2 The development is considered not incompatible with the surrounding land uses which are rural in character mixed with residential dwellings/structures, open storage yards, a warehouse, parking of vehicles and vacant/unused land. According to the applicant, the proposed eating place is intended to serve nearby villagers and residents.
- 12.3 In relation to the relevant assessment criteria set out under TPB PG-No. 15A, the proposed use is located at the fringe of the "V" zone. The Site is readily accessible from Kong Tai Road and Kam Tin Bypass and the local access leading to the Site does not pass through the nearby residential developments. Also, relevant government departments consulted, including C for T, CE/MN of DSD and D of FS have no adverse comment on the application from traffic, drainage and fire safety aspects. DEP has no objection to the application provided that the applicant will

provide necessary pollution control measures and ensure not causing environmental nuisance to the public and people living nearby. The applicant has stated that he will provide appropriate facilities with reference to the relevant guidelines by the EPD to minimize environmental nuisances to the surrounding area.

- 12.4 To minimize any possible environmental nuisance generated by the proposed development, approval conditions restricting operation hours and provision of boundary fencing are recommended in paragraphs 13.2 (a) and (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites". The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2 (d) to (h) below.
- 12.5 No public comments were received during the statutory publication period.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department has no objection to the proposed temporary eating place for a period of 3 years.
- 13.2 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 6.9.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the provision of boundary fencing within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 6.3.2020;
- (d) 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 6.3.2020;
- (e) in relation to (d) 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 6.6.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (g) the submission of fire service installations 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 6.3.2020;
- (h) in relation to (g) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.6.2020;
- (i) if any of the above planning conditions (a), (b) or (f) 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
- (j) if any of the above planning conditions (c), (d), (e), (g) or (h) 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**.

- 13.3 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 "V" zone which is intended to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the "V" zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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 date when the validity of the permission should be valid on a temporary basis.
- 14.3 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.

15. Attachments

Appendix I	Application form with justifications and plans received on 17.7.2019
Appendix Ia	FI received on 19.8.2019
Appendix Ib	FI received on 29.8.2019
Appendix II	Relevant Extract of Town Planning Board Guidelines for Application for Eating Place within “Village Type Development” Zone in Rural Areas (TPB PG-No. 15A)
Appendix III	Previous application covering the Site
Appendix IV	Similar application within the same “V” zone on the Kam Tin North OZP
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Access Plan
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**