

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

**APPLICATION NO. A/YL-KTN/641**

<b><u>Applicant</u></b>	: Mr. Tang Pak Chung Kevin represented by Chief Force Limited
<b><u>Site</u></b>	: Lot 474 (Part) in D.D. 109, Pat Heung, Yuen Long
<b><u>Site Area</u></b>	: About 1,227m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Proposed Temporary Eating Place (Staff Canteen) 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 (staff canteen) 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 not the subject of any previous application and is currently paved and vacant (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the proposed development involves 1 one-storey structure with building height of about 3.5m and a total floor area of about 176m<sup>2</sup> for staff canteen use. The operation hours are from 10 a.m. to 10 p.m. from Tuesdays to Sundays, including public holidays. There is no operation on Mondays. The Site is accessible from Kam Tin Road via a local track. 5 private car parking spaces and 1 loading/unloading space for light goods vehicle will be provided within the Site. Boundary fencing will be provided. According to the applicant, the proposed staff canteen is intended to serve the workers in the nearby petrol filling station, clinic and other businesses. The layout plan with fire service installations, landscape proposal and access plan submitted by the applicant are at **Drawings A-1 to A-3**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with planning statement and plans received on 28.12.2018 and supplementary information received on 7.1.2019 **(Appendix I)**
  - (b) Further Information (FI) received on 25.1.2019 in response to departmental comments **(Appendix Ia)**
  - (c) FI received on 31.1.2019 in response to departmental comments **(Appendix Ib)**
  - (d) FI received on 14.2.2019 and 15.2.2019 in response to departmental comments **(Appendix Ic)**

## 2. **Justifications from the Applicant**

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

- (a) The proposed use is only temporary in nature. The open area within the Site will be for manoeuvring space and landscape use for amenity purpose.
- (b) The applicant will provide and maintain appropriate fire service installations and landscaping within the Site in accordance with relevant guidelines. No traffic impact will be generated on Kam Tin Road or the surrounding area.
- (c) The applicant will provide appropriate facilities to control oil fume and noise and undertake maintenance of the facilities in accordance with the Environmental Protection Department (EPD)'s guidelines to minimize environmental impacts on the surrounding area. Also, there will be no road widening or felling of trees for the access road to the Site. The proposed use will not cause pollution to the nearby pond and meander.
- (d) There are similar applications in Yuen Long and Kwu Tung which were approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board. Should the application be approved, the applicant will comply with all approval conditions to the satisfaction of relevant government departments.

## 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**

The Site is not subject to any enforcement action.

#### **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 not the subject of any previous application.

#### **7. Similar Application**

There is no similar application within the same “V” zone on the OZP.

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

8.1 The Site is:

- (a) paved and vacant; and
- (b) accessible from Kam Tin 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, amenities and vacant/unused land. The open storage yards and parking of vehicles are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its immediate north is a residential development within the “Residential (Group C) 2” (“R(C)2”) zone namely Seasons Monarch (the nearest about 15m away);
- (b) to its immediate east is a residential dwelling/structure. To the south are open storage yards, parking of vehicles, a warehouse, a residential structure/dwelling, amenity areas and unused land. To its further south across Kam Tin Road is Shek Kong Barracks; and
- (c) to its west are open storage yards and vacant/unused land. To its further northwest are a residential dwelling/structure, open storage yards, parking of vehicles and vacant land.

**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 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 Kam Tin Road – Yuen Long via Government Land (GL). 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 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 or 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 point of view.
- (b) Should the application be approved, 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 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 does not and will not maintain any access connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and 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):

- (a) It is noted that the Site has been paved and is located within “V” zone. However, the proposed vehicular access (which is an existing paved road according to the recent site visit) is located within an area zoned as “Conservation Area (1)” (“CA(1)”). Provided that no widening of the existing paved access is required for the proposed development, and no felling of trees on GL is necessary, he has no strong view against the proposed development from nature conservation perspective.
- (b) There is a pond in the nearby “CA(1)” zone, and an abandoned meander to the northwest of the Site. Should the application be approved, the applicant shall be advised to avoid causing pollution to the pond and the meander. The applicant shall also be advised to avoid causing damages to trees on GL, e.g. in the “CA(1)” zone.

### **Drainage**

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions on submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be included.

### **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. The relevant information about the kitchen, if any, including the layout, fuel uses, etc.

- (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) There is no record of approval by the Building Authority for the existing structures at the Site. He is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (c) 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.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) 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.
- (f) 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.
- (g) 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.



## **Environmental Hygiene**

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

- (a) Proper licence and/or permit issued by Food and Environmental Hygiene Department (FEHD) is required if food business or related place of entertainment is involved:
  - (i) The operation of any eating place should be under a food licence issued by FEHD. If the operator/tenant intends to operate any food business at the premises, relevant food licence/restricted food permit should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). The application for restaurant licence, if acceptable by FEHD, will be referred to relevant government departments, such as BD, Fire Services Department and Planning Department for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.
  - (ii) In accordance with Section 4 of the Food Business Regulation, Cap. 132, a food licence is not required for the operation of any canteen in any work place (other than a factory canteen) for the use exclusively of the persons employed in the work place. However, a restricted food permit(s) granted by FEHD is/are still required for the sale of any restricted foods as specified in Schedule 2 of the said regulation.
  - (iii) 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.
- (b) If the proposal involves any commercial/trading activities, its state should not be a nuisance or injurious or dangerous to health and surrounding environment.
- (c) The operation of the eating place must not cause any environmental nuisance to the surrounding. The refuse generated by the proposed eating place are regarded as trade refuse. The management or owner of

the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.

- (d) If any FEHD's facility is affected by the development, FEHD's prior consent must be obtained. Reprovisioning 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 reprovisioned facilities to FEHD.

### **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 (CE/C, WSD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

## **11. Public Comments Received During Statutory Publication Period**

On 8.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 29.1.2019, three public comments from individuals were received (**Appendices III-1 to III-3**). The commenters object the application mainly on the grounds that the proposed development will cause environmental nuisances to residents nearby; unclear who the canteen will serve; the scale of the brownfields nearby could not justify the business for the proposed use; and the application may legitimize unapproved activities.

## **12. Planning Considerations and Assessments**

12.1 The application is for temporary eating place (staff canteen) 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 ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on

application to the Board. The proposed temporary eating place (staff canteen) 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, amenity area and vacant/unused land. According to the applicant, the proposed staff canteen intends to serve the workers in the nearby petrol filling station, clinic and other businesses.
- 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 Kam Tin Road and does not share the same access with the nearby residential developments. Also, relevant government departments consulted, including C for T, DEP, CE/MN of DSD and D of FS have no adverse comment on the application from traffic, drainage, environmental and fire safety aspects.
- 12.4 To minimize any possible environmental nuisance generated by the proposed development, approval conditions restricting operation hours and vehicles types are recommended in paragraphs 13.2 (a) to (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. 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. 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” in order to alleviate any potential environmental impact. Moreover, 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 (i) below.
- 12.5 During the statutory public inspection period, three public comments were received objecting to the application mainly on the grounds of environmental nuisance and no details of targeted customers was provided. In this regard, concerned departments including DEP have no adverse comment on the application. Also, the applicant stated that the proposed use is to serve nearby workers. The planning considerations and assessments above are also relevant.

### **13. Planning Department’s Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments as mentioned in paragraph 11 above, the Planning Department has no objection to the proposed temporary eating place (staff canteen) 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 22.2.2022. 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 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Mondays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) 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 22.8.2019;
- (f) 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 22.8.2019;
- (g) in relation to (f) 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 22.11.2019;
- (h) 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 22.8.2019;
- (i) in relation to (h) 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 22.11.2019;
- (j) if any of the above planning conditions (a), (b), (c) or (d) 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
- (k) if any of the above planning conditions (e), (f), (g), (h) or (i) 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 IV**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) 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; and
  - (b) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications to proliferate into the "V" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

## **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**

<b>Appendix I</b>	Application form with planning statement and plans received on 28.12.2018 and supplementary information received on 7.1.2019
<b>Appendix Ia</b>	FI received on 25.1.2019 in response to departmental comments
<b>Appendix Ib</b>	FI received on 31.1.2019 in response to departmental comments
<b>Appendix Ic</b>	FI received on 14.2.2019 and 15.2.2019 in response to

departmental comments

<b>Appendix II</b>	Relevant Extract of Town Planning Board Guidelines for Application for Eating Place within “Village Type Development” Zone in Rural Areas (TPB PG-No. 15A)
<b>Appendix III-1 to III-3</b>	Public comments received during the statutory publication period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan with FSIs Proposal
<b>Drawing A-2</b>	Landscape Plan
<b>Drawing A-3</b>	Access Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
FEBRUARY 2019**