

**Relevant Extract of Town Planning Board Guideline No. 15A on
Application for Eating Place within “Village Type Development”
in Rural Areas under section 16 of the Town Planning Ordinance**

The planning criteria are summarized as follows:

- (a) the eating place use should not create any 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 also be given to any application which 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 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 20m of public roads constructed/maintained by the Highways Department or 15m of other local public roads), sympathetic consideration may be given by the Board on individual merits;
- (e) for a village located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given to eating place use which will provide catering facilities to serve the visitors and tourists. In such circumstances, adequate car-parking spaces should be provided to serve the eating place use as required by the Transport Department. If it is impossible to provide car-parking spaces at the application site, the applicant should demonstrate that there are adequate car-parking facilities conveniently located in the vicinity to serve the eating place use; and
- (f) all other statutory or non-statutory requirements of relevant Government departments should be met.

Previous s.16 Applications

Approved Application

Application No.	Proposed Development	Date of Consideration	Approval Conditions
A/NE-TK/534	Temporary Eating Place (OSA of a Restaurant) for a period of 3 Years	27/2/2015	A1 – A4
A/NE-TK/630	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a period of 3 Years	9/2/2018	A1, A4-A6

Approval Conditions

- A1. no operation between the specified time, as proposed by the applicants, is allowed on the site during the planning approval period
- A2. submission and implementation of the fire service installations (FSIs) proposal within specified periods from the date of the planning approval
- A3. submission and implementation of drainage proposal within specified periods from the date of the planning approval
- A4. upon the expiry of the planning permission, reinstatement of the application site to an amenity area
- A5. maintenance of the existing drainage facilities at all times during the planning approval period
- A6. provision of (FSIs) and water supplies for fire-fighting within the specified periods from the date of the planning approval

**Similar Applications for Restaurant/Temporary Eating Place
(Outside Seating Accommodation (OSA) of a Restaurant) within the “V” Zone on the
Approved Ting Kok Outline Zoning Plan No. S/NE-TK/19**

Approved Applications

Application No.	Proposed Development	Date of Consideration	Approval Conditions
A/NE-TK/93	Restaurant (Open-air Cafe)	4/12/1998 (Review)	A1
A/NE-TK/118	Restaurant (Open-air Cafe)	28/1/2000	A1, A2
A/NE-TK/151	Restaurant (Open-air Cafe)	17/1/2003	A3
A/NE-TK/157	Restaurant (Open-air Cafe)	25/4/2003	A1, A4, A5
A/NE-TK/158	Restaurant (Open-air Cafe)	25/4/2003	A1, A5, A6
A/NE-TK/159	Restaurant (Open-air Cafe)	25/4/2003	A1, A5
A/NE-TK/164	Restaurant (Open-air Cafe)	11/7/2003	A3
A/NE-TK/170	Restaurant (Open-air Cafe)	19/9/2003	A1, A5
A/NE-TK/218	Temporary Eating Place (OSA of a Restaurant)	20/10/2006 (Revoked on 20/01/2007)	A1, A7-A10
A/NE-TK/236	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	24/8/2007	A1, A7-A10
A/NE-TK/237	Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	14/9/2007 (Revoked on 14/03/2008)	A1, A7, A9-A11
A/NE-TK/315	Renewal of Planning Approval for Temporary “Eating Place (OSA of a Restaurant)” for a Period of 3 Years	13/8/2010	A1, A5, A12
A/NE-TK/412	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	9/11/2012	A8, A10

A/NE-TK/413	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	9/11/2012	A8, A10
A/NE-TK/437	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	3/5/2013	A10, A13
A/NE-TK/438	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	3/5/2013	A10, A13
A/NE-TK/447	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	21/6/2013	A1, A10, A12, A14
A/NE-TK/505	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	25/4/2014	A1, A10, A13, A15, A16
A/NE-TK/532	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	16/1/2015 (Revoked on 16/7/2015)	A10, A13-A16
A/NE-TK/566	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	4/12/2015 (Revoked on 4/3/2016)	A8, A10, A13-A16
A/NE-TK/568	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	18/12/2015	A10, A12-A14
A/NE-TK/569	Proposed Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	18/12/2015 (Revoked on 18/12/2016)	A10, A12, A13, A17
A/NE-TK/574	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	22/4/2016	A10, A13
A/NE-TK/575	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	22/4/2016	A10, A13
A/NE-TK/584	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	29/7/2016	A1, A10, A12, A14

A/NE-TK/656	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	7/12/2018	A7, A12, A13
A/NE-TK/672	Renewal of Planning Approval for Temporary Eating Place (OSA of a Restaurant) for a Period of 3 Years	2/8/2019	A1, A12, A13, A18

Approval Conditions

- A1. setback of the development
- A2. protection of the existing mature tree at the south-western part of the application site
- A3. provision/submission of drainage/sewerage facilities
- A4. submission and implementation of landscaping and tree preservation proposals within the specified periods from the date of the planning approval
- A5. provision of drainage facilities for connection to the nearby stormwater drainage system
- A6. no materials should be stored/stacked on the footpath and carriageway adjoining the application site
- A7. provision of FSIs within the specified periods from the date of the planning approval
- A8. provision/ submission / implementation of drainage /sewage proposal within the specified periods from the date of the planning approval
- A9. provision/submission of drainage connection within the specified periods from the date of the planning approval
- A10. upon the expiry of the planning permission, reinstatement of the application site to an amenity area
- A11. diversion of water main affected by the development
- A12. maintenance of the existing drainage facilities at all times during the planning approval period
- A13. no operation between the specified time, as proposed by the applicant, was allowed on the site during the planning approval period
- A14. provision/submission/implementation of FSIs proposal within the specified periods from the date of the planning approval
- A15. provision of a clearance of 1.5m from the edge of the drainage channel at all times during the planning approval period
- A16. no structure or support for any structure shall be erected within the area of drainage reserve at any time during the planning approval period

A17. submission and implementation of FSIs and water supplies for fire-fighting proposal within the specified periods from the date of the planning approval

A18. maintenance of existing FSIs in efficient working order at all time during the approval period

Recommended Advisory Clauses

- (a) to note the comments of the District Lands Officer/Tai Po, Lands Department that:
- (i) site inspection revealed that semi-enclosed were found erected on the Site, and the adjoining private lots and Government Land without LandsD's prior approval. The applicants are required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate enforcement action may be considered to be taken by DLO/TP;
 - (ii) should the Board approve the application on the lots, the lot owner is required to submit an application for Short Term Waiver ("STW") to LandsD if they wish to erect structures on the lots. There is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of wavier fee and administrative fee as considered appropriate; and
 - (iii) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicle access (EVA) thereto.
- (b) to note the comments of the Director of Environmental Protection (DEP) that:
- (i) the applicant is reminded to strictly observe and comply with relevant environmental pollution control ordinances (including Noise Control Ordinance and Air Pollution Control Ordinance); and
 - (ii) the applicant is also reminded to carry out pollution abatement measures in relevant Guidelines, including General Environmental Guidelines for Outside Seating Accommodation and Control of Oily Fume and Cooking Odour from Restaurants and Food Business), and avoid creating any nuisance.
- (c) to note the comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) that:
- (i) there is no existing DSD maintained public drain available for connection in the area. The applicants should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site;
 - (ii) any existing flow path affected should be re-provided;
 - (iii) the applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas;
 - (iv) the applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation; and

- (v) the applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the system.
- (d) to note the comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) that:
- (i) some existing water mains are inside the Site may be affected. The applicants are required to either divert or protect the water mains found on Site;
 - (ii) if diversion is required, existing water mains inside the proposed Site areas are needed to be diverted outside the site boundary of the proposed Site to lie in Government land. A strip of land of minimum 1.5m in width should be provided for the diversion of existing water mains. The cost of diversion of existing water mains upon request will have to be borne by the applicant; and the applicant shall submit all the relevant proposal to WSD for consideration and agreement before the works commence;
 - (iii) if diversion is not required, the following conditions shall apply:
 - existing water mains are affected and no development which requires resiting of water mains will be allowed;
 - details of site formation works shall be submitted to the Director of Water Supplies (DWS) for approval prior to commencement of works;
 - no structures shall be built or materials stored within 1.5 metres from the centre line(s) of water main(s). Free access shall be made available at all times for staff of the DWS or their contractor to carry out construction, inspection, operation, maintenance and repair works;
 - no trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water mains. No change of existing site condition may be undertaken within the aforesaid area without the prior agreement of the DWS. Rigid root barriers may be required if the clear distance between the proposed tree and the pipe is 2.5m or less, and the barrier must extend below the invert level of the pipe;
 - no planting or obstruction of any kind except turfing shall be permitted within the space of 1.5 metres around the cover of any valve or within a distance of 1 metre from any hydrant outlet; and
 - tree planting may be prohibited in the event that the DWS considers that there is any likelihood of damage being caused to water mains.
- (e) to note the comments of the Director of Fire Services (D of FS) that:
- (i) the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. In addition, the applicant should also be advised on the following points: (1) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and (2) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and

- (ii) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans; and
- (f) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that:
- (i) if the existing structures are erected on leased land without approval of the Building Department (BD)(not being a New Territories Exempted House), they are unauthorised under the Building Ordinance (BO) and should not be designated for any approved use under the captioned application;
 - (ii) for Unauthorised Building Works (UBW) erected on leased land, enforcement action may be taken by the Building Authority (BA) to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
 - (iii) before any new building works are to be carried out on the Site, prior approval and consent of the BA should be obtained unless they are exempted building works or commenced under the simplified requirement under the Minor Works Control System. 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;
 - (iv) if the proposed use under application is subject to the issue of licence, please be reminded that any existing structures on the application 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;
 - (v) any temporary shelters for storage or other uses are considered as temporary buildings subject to the control of Part VII of the Building (Planning) Regulations;
 - (vi) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D;
 - (vii) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the Building Authority under Building (Planning) Regulation 19(3) at building plan submission stage; and
 - (viii) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.
- (g) to note the comments of the Director of Food and Environmental Hygiene:that:
- (i) proper licence / permit issued by his Department is required for any food business / catering service / activities regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. The operation of any eating place should be under a food licence issued by the FEHD. If the operator intends to operate a restaurant business in the territory, a restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). For the

operation of other types of food business, relevant food licences should also be obtained from FEHD in accordance with Cap. 132. Under the Food Business Regulation, Cap. 132X, a Food Factory Licence should be obtained from this department for food business which involves the preparation of food for sale for human consumption off the premises before commencement of such business. The application for food business licences under Cap.132, if acceptable by FEHD, will be referred to relevant government departments for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicants for compliance and the licence will be issued upon compliance of all the requirements;

- (ii) whenever restaurant licensees wish to include an OSA into their licensed premises, they are required to submit application to FEHD by filling in the application form together with 8 copies of proposed layout cum OSA plan and 5 copies of 1:1000 location map for approval. If the application of OSA is acceptable for further processing, FEHD will refer it to the relevant departments including such as Buildings Department, Transport Department, Fire Services Department, Planning Department, Home Affairs Department, Lands Department for clearance. A Letter of Requirements on the captioned would be issued if no objection was raised by the Departments concerned and the OSA licence will be issued upon full compliance of all the requirements;
- (iii) 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; and
- (iv) if any FEHD's facility is affected by the development, FEHD's prior consent must be obtained. Re-provisioning of the affected facilities by the applicants up to the satisfaction of FEHD may be required. Besides, the applicants should provide sufficient amount of additional recurrent cost for management and maintenance of the re-provisioned facilities to FEHD.