

RNTPC Paper No. A/YL-NTM/407
For Consideration by
the Rural and New Town
Planning Committee
on 21.8.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/407

- Applicant** : Zhuang Fortunate Agricultural Co., Limited represented by Everbright Surveyors Limited
- Site** : Lots 1402, 1403 and 1405 in D.D. 105, Ngau Tam Mei, Yuen Long
- Site Area** : About 1,120 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12
- Zoning** : “Residential (Group C)” (“R(C)”)
[maximum plot ratio: 0.4, maximum building height: 3 storeys (9m)]
- Application** : Proposed Temporary Eating Place (Restaurant) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place (restaurant) for a period of 3 years (**Plan A-1a**). The Site falls within an area zoned “R(C)” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12. According to the Notes for the “R(C)” zone, ‘Eating Place’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is partly vacant and partly used for open storage of building materials without valid planning permission.
- 1.2 The Site is accessible to San Tam Road through an existing local access road and Ko Hang Road, with a vehicular access and pedestrian access respectively located at the southern and northern boundary of the Site. The layout plan and vehicular access plan are at **Drawings A-1 to A-2**. The proposed development parameters are summarised as follows:

Major Development Parameters	
Site Area	About 1,120 m ²
Total Floor Area	About 472 m ²

No. of Structures	5 (1 storey, not exceeding 5m) for restaurant , office, staff changing/rest room, toile and storage use
No. of Parking Spaces	1 for private car / light goods vehicle (LGV)
No. of Loading/ Unloading (L/UL) Bays	1 for private car / LGV
Operation Hours	7:00 a.m. to 11:00 p.m., Mondays to Sundays (public holidays included)

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

- (a) Application form received on 29.6.2020 **(Appendix I)**
- (b) Further Information (FI) dated 17.8.2020 providing background clarification and responses to comments of the Transport Department (TD) (exempted from the publication requirement) **(Appendix Ia)**
- (c) FI dated 18.8.2020 providing response to comments of EPD **(Appendix Ib)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** and FI at **Appendix Ia**. They can be summarized as follows:

- (a) The proposed restaurant is in line with the planning intention of the “R(C)” zone in which commercial uses may be permitted on application to the Board.
- (b) The proposed restaurant is temporary in nature. It can provide catering services to local villagers, residents and workers in the vicinity and help to tackle current unemployment in the restaurant industry by creating more jobs.
- (c) The restaurant mainly serves the residents and workers in the vicinity. Only 1 parking space and 1 L/UL bay will be provided. The frequency of delivery of supplies of vegetable/raw food to the restaurant is only once daily. The proposed temporary restaurant will not cause adverse traffic and environmental impacts.
- (d) The applicant will observe and comply with all requirements/practices requested by EPD to ensure all other effluents from the Site are subject to control and properly handled before discharging into any communal sewers, storm water drains, river courses or water bodies in the vicinity, if any. These include the Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage; effluent discharge to observe Water Pollution Control Ordinance (WPCO)

and getting a Discharge Licence issued under the WPCO before a new discharge is commenced; and if septic tank and soakaway system is proposed, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” including percolation test and certification by Authorized Person.

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

The applicant is not the “current land owner” of the Site 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 posting site notice and sending notice to San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to planning enforcement action. Should a material change of use be identified on site, which constitutes an unauthorized development (UD) under the Town Planning Ordinance, enforcement action would be instigated subject to sufficient evidence.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Application

There is no similar application within the “R(C)” zone on the OZP.

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

7.1 The Site is:

- (a) accessible at its southern boundary through an existing local access road connecting to Ko Hang Road and Castle Peak Road-Mai Po, and at its northern boundary from San Tam Road; and
- (b) partly vacant and partly used for open storage of building materials without valid planning permission.

7.2 The surrounding areas are intermixed with open storage yards, scattered residential dwellings, agricultural land, unused/vacant/ruin land and scattered residential

dwellings. Some of the open storage yards are suspected UDs subject to enforcement action by the Planning Authority:

- (a) to its immediate east and northeast are the shop and services use for sale of building materials under approved applications, and open storage of building materials;
- (b) to its immediate south is unused land. Further south and southeast are the open storage yards for construction materials/bamboo, agricultural land, unused land and scattered residential dwellings;
- (c) to its immediate west is unused land. Further west and southwest are the storages and open storage yard and scattered residential dwellings; and
- (d) to its north are a watercourse and San Tam Road. Further north across San Tam Road is the Mai Po Substation falling within the “Other Specified Use (Electric Sub-station)” zone.

8. Planning Intention

The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application.

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/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots 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) Should planning approval be given to the application, the lot owner(s) will need to apply to LandsD to permit the structures to be erected or regularize any irregularities on site, if any. Given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be

approved. If such application 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.

Traffic

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

- (a) He has no adverse comment from traffic engineering point of view.
- (b) The Site is connected to Ko Hang Road via a section of local access which is not managed by Transport Department. The land status of the local access should be clarified with the Lands Department by the applicant. Moreover, the management and maintenance responsibility of the local access should be clarified with the relevant lands and maintenance authority.
- (c) Should the application be approved, the following conditions should be incorporated:

No vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The proposed access arrangement of the Site from Ko Hang Road should be commented and approved by TD.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and Ko Hang Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

9.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

As the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary, or existing railway protection boundary of any railway systems, he has no comment on the application from railway development point of view.

Environment

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

- (a) According to the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP), he has no comment on the application. This

temporary use will not cause traffic of heavy vehicles and dust nuisance is not expected.

- (b) The applicant is advised to observe/note the following:
 - (i) the requirement stipulated in “COP”; and
 - (ii) effluent discharges from the Site are subject to control under the WPCO. A discharge licence under the WPCO shall be obtained before a new discharge is commenced. If septic tank and soakaway system is proposed, its design and construction should follow the requirements of the ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” including percolation test and certification by Authorized Person.

Landscape

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

- (a) He has no objection to the application from landscape planning perspective.
- (b) The applicant seeks planning permission for proposed eating place (restaurant) for a period of 3 years at the Site which falls within the “R(C)” zone on the Ngau Tam Mei OZP. The Site is not the subject of any previous planning application.
- (c) Based on the aerial photo of 2018, the Site is situated in an area of rural landscape character comprising scattered tree groups, low-rise residential development, village houses and temporary structures. The proposed use is considered not incompatible with the surrounding development.
- (d) With reference to his site visit in July 2020, the Site is vacant and occupied with building materials. The Site is partly paved and partly covered with self-seeded grass and groundcovers. No existing tree is recorded within the Site. Significant adverse impact on landscape resources within the Site arising from the development is not anticipated.
- (e) It is noted that the proposed vehicular access is in conflict with the existing mature fruit trees. The approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant should seek comments and approval from DLO on the proposed tree works and compensatory planting proposal, if appropriate.

Drainage

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

- (a) He has no objection in principle to the application from drainage operation and maintenance point of view.
- (b) Should the application be approved, the applicant should be advised on the followings:
 - (i) he notes that the Site was not the subject of any previous planning application. The applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to his Site.
 - (ii) Other detailed advisory clauses are at **Appendix III**.

Building Matters

9.1.8 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 (BA) for the structures existing at the Site and his department is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The following issues should be observed by the applicant:
 - (i) if the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BA, they are unauthorized building works (UBW) under the Building Ordinance (BO) and should not be designated for any approved use under the application;
 - (ii) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing works or UBW on the Site under the BO;
 - (iii) before any new building works (including containers and open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are UBW. An AP should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
 - (iv) 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) Regulation (B(P)R) respectively;

- (v) the Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage; and
- (vi) if the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

Nature Conservation

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

His site inspection reveals that the Site is largely paved with a garden located at the east of the Site. A channelized watercourse is located to the north of the Site. While he has no comments on the application from nature conservation point of view, the applicant shall be advised to avoid adverse impacts to the trees and the watercourse nearby.

Fire Safety

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

- (a) He has no objection in principle to the application 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 D of FS for approval. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs 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 (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Gas Safety Aspect

9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) There is a high pressure underground town gas transmission pipeline (running along San Tam Road) in the vicinity of the Site.
- (b) The project proponent/consultant/works contractor shall therefore liaise with the Hong Kong and China Gas Company Limited in respect of the exact locations of existing or planned gas pipes/gas installations in the vicinity of the Site and any required minimum set back distance away from them during design and construction stages of development.
- (c) The project proponent/consultant/works contractor is required to observe the Electrical and Mechanical Services Department's requirements on the "Avoidance of Damage to Gas Pipes 2nd Edition" for reference. The webpage address is:
[https://www.emsd.gov.hk/filemanager/en/content_286/CoP_gas_pipes_2nd_\(Eng\).pdf](https://www.emsd.gov.hk/filemanager/en/content_286/CoP_gas_pipes_2nd_(Eng).pdf)

Others

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

- (a) 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 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 / permit issued by his Department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap.132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.
- (c) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer's Comments

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

He has no comment on the application and the local comments should be submitted to the Board directly, if any.

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

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P); and
- (e) Director of Leisure and Cultural Services (DLCS).

10. Public Comments Received During Statutory Publication Period

On 7.7.2020, the application was published for public inspection. During the first three weeks of the statutory publication period which ended on 28.7.2020, 10 public comments were received from individuals objecting to the application and raising concerns that adverse traffic, hygiene, sewerage, drainage and building safety issues will be caused by the proposed restaurant (**Appendix II**).

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary eating place (restaurant) for a period of 3 years at the Site. The Site falls within “R(C)” zone which is intended primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Although the proposed temporary restaurant is not entirely in line with the planning intention of the “R(C)” zone, approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “R(C)” zone as there is no immediate permanent development proposal for the Site.
- 11.2 The proposed development is not incompatible with the surrounding land uses comprising mainly retail uses, open storage/storage yards, agricultural land, residential dwellings and vacant/unused land (**Plan A-2**). The Site is located at the fringe of “R(C)” zone with access connected to San Tam Road and Ko Hang Road. According to the applicant, the proposed temporary restaurant could provide catering services to the local villagers, residents and workers in the vicinity.
- 11.3 In view of the nature and small scale of the proposed temporary restaurant, it is unlikely to cause adverse traffic, nature conservation, environmental, drainage and landscape impacts on the area. In this regard, there are no adverse comments from the concerned departments including DLO/YL, C for T, DAFC, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD. The technical concerns from C for T, CE/MN of DSD and D of FS on traffic, drainage and fire safety requirements can be addressed by the stipulation of planning conditions

recommended in paragraphs 12.2 (a) to (e) below. Besides, the applicant should be advised to follow the latest “COP” issued by DEP to minimize the possible environmental impacts, to observe WPCO for effluent discharge, and ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” for septic tank and soakaway system.

11.4 During the statutory publication period, 10 public comments were received objecting to the applications/raising concerns on the traffic, hygiene, sewerage, drainage and building safety issues. The planning assessment above is of relevance.

12. Planning Department’s Views

12.1 Based on the assessments in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department has no objection to the application.

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 period of 3 years until 21.8.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions:

- (a) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period;
- (b) the submission of a 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 21.2.2021;
- (c) in relation to (b) above, the implementation of the 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 21.5.2021;
- (d) the drainage facilities implemented for the development on the site should be maintained properly at all times during the planning approval period;
- (e) 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 21.2.2021;
- (f) in relation to (e) above, the provision of fire service installations 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 21.5.2021;
- (g) if any of the above planning conditions (a) 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

- (h) if any of the above planning conditions (b), (c), (e), or (f) 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 III**.

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

the planning intention of the "R(C)" zone is primarily low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board. The development is not in line with the planning intention of the "R(C)" zone. No strong planning justification has been given 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 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 received on 29.6.2020
Appendix Ia	FI received on 17.8.2020
Appendix Ib	FI received on 18.8.2020
Appendix II	Public Comment
Appendix III	Recommended Advisory Clauses
Drawing A-1	Layout Plan

Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2020**