

RNTPC Paper Nos. A/YL-KTN/702 and 703A
For Consideration by the
Rural and New Town Planning Committee
on 21.8.2020

APPLICATIONS FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/YL-KTN/702 and 703

<u>Applicants</u>	: Mr. Tang Chi Wing Ms. Leung Mei Chu	(Application No. A/YL-KTN/702) (Application No. A/YL-KTN/703)
<u>Sites</u>	: Lot 216 S.U (Part) Lot 216 S.A ss. 1 RP (Part)	(Application No. A/YL-KTN/702) (Application No. A/YL-KTN/703)
	All in D.D.103, Ko Po Tsuen, Kam Tin, Yuen Long	
<u>Site Areas</u>	: 112m ² 42.05m ²	(Application No. A/YL-KTN/702) (Application No. A/YL-KTN/703)
<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>	: Temporary Eating Place (Outside Seating Accommodation) for a Period of 3 Years	

1. The Proposals

- 1.1 The applicants seek planning permission to use the application sites (the Sites) for temporary eating places (outside seating accommodation (OSA)) for a period of 3 years¹. Each OSA is attached to an existing eating place at the ground floor of a New Territories Exempted House (NTEH). According to the Notes of the OZP, while ‘Eating Place’ on the ground floor of a NTEH is always permitted within the “V” zone, other ‘Eating Place’ including the subject OSA is a Column 2 use in “V” zone which requires planning permission from the Town Planning Board (the Board). The Sites for both applications are used for the applied use without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Sites of Applications No. A/YL-KTN/702 and 703 are subject to 5 previous applications for temporary public car park covering a larger area. Except one application which was rejected by the Rural and New Town Planning Committee (the Committee) in 2008, the other four applications were approved with conditions by the Committee between 1997 and 2007.

¹ The two applications are considered together as they are in proximity to each other in the same “V” zone and proposed for the same use.

- 1.3 The OSAs, which are the extension of the adjoining existing eating places on the ground floor of NTEHs, involve shelters for shading sun and rain and no structure is proposed. The covered area and height of the shelters of Applications No. A/YL-KTN/702 and 703 are 109m²/3.4m high and 31.03m²/2.9m high respectively. The operation hour for both OSAs is from 11am to 10pm daily. The Sites are accessible to Ying Ho Road and Kam Tin Road via a local track. No parking space and loading/unloading space will be provided within the Sites. The layout plans and access plans submitted by the applicants are at **Drawings A-1 to A-4**.
- 1.4 In support of the applications, the applicants have submitted the following documents:
- (a) Application Form of Application No. A/YL-KTN/702 with **(Appendix I)** plans received on 17.3.2020
 - (b) Application Form of Application No. A/YL-KTN/703 with **(Appendix Ia)** plans received on 17.3.2020
 - (c) Further Information (FI) for Application No. A/YL-KTN/702 **(Appendix Ib)** received on 16.7.2020 in response to departmental comments
(exempted from publication requirement)
 - (d) FI for Application No. A/YL-KTN/703 received on 16.7.2020 **(Appendix Ic)** in response to departmental comments
(exempted from publication requirement)
- 1.5 On 15.5.2020, the Committee agreed to defer a decision on the application to allow time for the applicant to prepare FI to address departmental comments. After the deferral request, the applicant submitted FI in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in the application forms in **Appendices I to Ic**. The justifications are similar and can be summarized as follows:

The developments can provide rain shelter and dining spaces to serve the local residents.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Sites are currently not subject to any active enforcement action.

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Application for Eating Place within “Village Type Development” zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) are relevant to these applications. 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 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 Applications**

- 6.1 The Sites were involved in 5 previous applications covering a larger area and all were for temporary public vehicle park use. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1b**.
- 6.2 Applications No. A/YL-KTN/26, 145, 227 and 280 were approved with conditions by the Committee between 1997 and 2007 for a period of 1 or 3 years mainly for the reasons that the proposed public car park would serve the need of the local villagers; the developments were considered not incompatible with the surrounding land uses; and there were no adverse departmental comments. Planning permission for Application No. A/YL-KTN/280 was revoked in 2008 due to non-compliance with approval condition.

- 6.3 Application No. A/YL-KTN/309 was rejected by the Committee in 2008 mainly on the grounds that the development was not in line with the planning intention and the applicant did not provide sufficient information to demonstrate the development would not cause adverse environmental impact on the surrounding areas.

7. Similar Applications

There are six similar applications for eating place (OSA) (with or without shop and services/ ancillary car parking spaces) (No. A/YL-KTN/368, 416, 497, 606, 700 and 701) to the south of the Sites within the same “V” zone. All of them were approved with conditions by the Committee between 2011 and 2020 for a period of 3 years mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “V” zone; the applied use was not incompatible with the surrounding land uses; the applied use was in line with TPB PG-No.15A in that it was located at the fringe of residential clusters of Ko Po Tsuen and was readily accessible from Kam Tin Road and would unlikely cause inconvenience to the residents nearby; and there were no adverse comments from concerned departments. Planning permission of Application No. A/YL-KTN/497 was revoked in 2017 due to non-compliance of approval conditions. Details of the applications are at **Appendix IV** and their locations are shown on **Plan A-1a**.

8. The Sites and Their Surrounding Area (Plans A-1 to A-4)

8.1 The Sites are:

- (a) currently used for the applied use without valid planning permission and adjoining existing restaurants on the ground floor of existing NTEHs;
- (b) hard-paved and located at the fringe of Ko Po Tsuen; and
- (c) accessible from Ying Ho Road and Kam Tin Road via a local track.

8.2 The surrounding area is predominantly rural in character intermixed with residential development, village houses, restaurants/eating places mainly at the ground floor of village houses, shop and services and a sitting out area:

- (a) to the east and north are village houses and some with restaurants on ground floors;
- (b) to the west is a local track leading to Ying Ho Road, across which is a residential development (i.e. the Riva) and vacant/unused land; and
- (c) to the south are villages houses and two eating places (OSA) under approved Application Nos. A/YL-KTN/700 and 701. To the further south are shop and services, OSA adjoining a restaurant and ancillary parking spaces under an approved Application No. A/YL-KTN/606, a sitting out area and Kam Tin Road.

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 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 Sites comprise Old Scheduled 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) Building Licences Nos. 7849 and 7859 were issued to permit erection of one 3-storeys building with roof-over area of 65.03m² for non-industrial purposes to Lot Nos. 216 S.A ss.1 RP, 216 S.U in D.D. 103 respectively and they are the NTEHs governed by Cap. 121.
- (c) The proposed use and structures to be erected on the remainder of the lots are in breach of the conditions of the Building Licences.
- (d) Apart from the NTEHs approved as mentioned in (b) above, there is no Small House application approved or under processing at the Sites.

Traffic

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

Considering that there is neither parking provision nor vehicular access to the lots and the induced traffic impact is minimal, he has no comment on the applications.

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

- (a) Ying Ho Road is not maintained by HyD.

- (b) HyD is not/ shall not be responsible for the maintenance of any access connecting the Sites and Kam Tin Road.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Sites 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 concerning the Site received in the past three years.
- (b) Provided that the applicants will provide necessary pollution control measures and ensure that the applied 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 applications from environmental planning perspective.
- (c) The applicants are 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 applicants should make reference to the Environmental Protection Department (EPD)'s Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" available from EPD's website. The applicants are 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 applicants are also reminded that effluent discharges from the applied 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 Sites are hard-paved, he has no adverse comments on the applications 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 developments.
- (b) Should the applications be approved, conditions requiring the applicant to submit, implement and maintain the drainage proposal for the developments 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 applicants are 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 applicants are reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123) or application of licence for OSA 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 Sites, prior approval and consent of the Buildings Authority should be obtained, otherwise they are unauthorized building works (UBW) under the 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 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 building works or UBW on the Site under the BO.

- (c) The Sites 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) The Sites do 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.
- (e) If the proposed use under applications is subject to issue of a license, the applicants should be reminded that any existing structures on the Sites 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) Proper licence/permit issued by Food and Environmental Hygiene Department (FEHD) is required if food business is involved. For the operation of any types of food business, relevant food licences / permits should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132).
- (b) When a restaurant licensee/licence applicant wishes to use any OSA outside the restaurant premises for alfresco dining, he/she should take notice of the main licensing criteria for OSA, covering matters such as legal right to use the land concerned, planning, building safety, fire safety, and traffic requirements, etc. as well as to obtain approval from the DFEH before commencement. Restaurateurs operating OSA business without approval may be subject to prosecution pursuant to the Food Business Regulation (Cap. 132X). Repeated convictions may lead to suspension or cancellation of their licences.
- (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 and has no comment on the applications.

10.2 The following Government departments have no comment on/no objection to 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 27.3.2020, the applications were published for public comments. During the three-week statutory publication period, no public comment was received.

12. **Planning Considerations and Assessments**

- 12.1 The applications are for temporary eating places (OSA) for a period of 3 years at “V” zone, which are extension to existing eating places at the ground floor of NTEHs. 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 applied use 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 Sites. It is considered that approval of the applications on a temporary basis for 3 years would not jeopardize the long-term planning intention of the “V” zone.
- 12.2 The developments are considered not incompatible with the surrounding land uses which are rural in character predominated by residential development, village houses, restaurants/eating places mainly at the ground floor of village houses, shop and services, vacant/unused land and a sitting-out area. According to the applicants, the applied use is intended to serve the local residents.
- 12.3 The applications are generally in line with TPB PG-No. 15A in that the developments are located at the fringe of the “V” zone and residential cluster of Ko Po Tsuen. The Sites are also readily accessible from Ying Ho Road via a very short local track and would unlikely cause inconvenience to the residents nearby. 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. No local objections have been received during the statutory publication period of both applications.
- 12.4 The Sites are subject to 5 previous applications for temporary public vehicle park, which is different from the current applications. There are 6 similar applications for eating place (OSA) (with or without shop and services/ ancillary parking spaces) in the same “V” zone which were approved with conditions by the Committee between 2011

and 2020 as detailed in paragraph 7 above. Approval of the current applications is in line with the Committee's previous decisions.

- 12.5 To minimize any possible environmental nuisance generated by the developments, approval condition restricting the operation hours is recommended in paragraphs 13.2 (a) below. Besides, the applicants will be advised to adopt the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites". Moreover, the technical requirements of CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2 (b) to (f) below.
- 12.6 No public comment was 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 temporary eating place (OSA) for a period of 3 years.
- 13.2 Should the Committee decide to approve the applications, it is suggested that the permissions 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 operation between 10:00 p.m. and 11:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 21.2.2021;
- (c) in relation to (b) 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 21.5.2021;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained 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 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 21.5.2021;
- (g) if any of the above planning condition (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 condition (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 V**.

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

the development is not in line with the planning intention of the "V" zone which 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 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 applications and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the applications, 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 applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

15. Attachments

Appendix I	Application Form of Application No. A/YL-KTN/702 with plans received on 17.3.2020
Appendix Ia	Application Form of Application No. A/YL-KTN/703 with plans received on 17.3.2020
Appendix Ib	FI received on 16.7.2020 for Application No. A/YL-KTN/702
Appendix Ic	FI received on 16.7.2020 for Application No. A/YL-KTN/703
Appendix II	Relevant Extract of TPB PG-No. 15A
Appendix III	Previous applications covering the Sites

Appendix IV	Similar applications within the same “V” zone on the Kam Tin North OZP
Appendix V	Advisory Clauses
Drawings A-1 to A-2	Layout Plans
Drawings A-3 to A-4	Access Plans
Plan A-1a	Location Plan with similar applications
Plan A-1b	Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2020**