

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/446

- Applicant** : Mr. Cheung Kam Yiu represented by R-riches Property Consultants Limited
- Site** : Lots 3564 S.A RP (Part) and 3564 S.A ss.5 RP (Part) in D.D. 116, Tong Tau Po Tsuen, Yuen Long, New Territories
- Site Area** : 223m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Village Type Development” (“V”)
[restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Eating Place (Outside Seating Accommodation of a 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 (outside seating accommodation of a restaurant) for a period of 3 years (**Plan A-1**). According to the Notes of OZP for the “V” zone, ‘Eating Place’, unless on the ground floor of a New Territories Exempted House (NTEH), is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently being used for parking of vehicles and storage use(**Plans A-2, A-4a and A-4b**). The Site is not related to any previous application.
- 1.2 The Site is accessible from Tai Shu Ha Road East (**Plan A-2 & Drawing A-1**). According to the submitted layout plan (**Drawing A-2**), the Outside Seating Accommodation (OSA) is the extension of a proposed restaurant at the ground floor of an existing New Territories Exempted House adjacent to the Site. There will be 1 shelter structure with total floor area of 223m² and height of 3.5m (1 storey) for OSA use. The Site will be fully covered by the proposed structure. No parking spaces will be provided. The Site is paved and no filling/excavation of land will be involved. The daily operation hours are from 11:00a.m. to 10:00p.m. There will be seven four-seater dining tables and chairs. The expected no. of visitors

would be less than 15 on weekdays and less than 25 on Saturdays, Sundays and public holidays. The expected no. of workers is 5. Plans showing the location and site layout as submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application Form received on 24.9.2018 (Appendix I)
- (b) Supplementary Planning Statement (Appendix Ia)
- (c) Further information received on 30.10.2018 responding to Transport Department (TD)'s comment (Appendix Ib)
[accepted and exempted from publication and recounting requirements]
- (d) Further information received on 6.11.2018 clarifying the number of tables and chairs (Appendix Ic)
[accepted and exempted from publication and recounting requirements]

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Appendix I of the Supplementary Planning Statement at **Appendix Ia**. They can be summarized as follows:

- (a) The Site is situated in the “V” zone. According to the Notes of OZP, ‘Eating Place’ within “V” zone is listed as “Column 2” use.
- (b) The Site is currently vacant and fenced off. The proposed use is in line with the planning intention of “V” zone. There will be no filling/excavation of land in order to reduce nuisance to the surroundings.
- (c) The Site is accessible from Tai Shu Ha Road East. The proposed use will not provide any parking space to avoid adverse traffic impacts to the surrounding areas. The visitors and workers will use public transport to reach Tai Shu Ha Road East and walk to the Site. There is a minibus stop located 100m away from the Site.

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

The applicant is not a “current land owner” 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 notice of the application near the entrance of the Site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Eating Place within “V” Zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) are relevant to this application. The relevant assessment criteria of the Guidelines are attached at **Appendix II**.

5. Background

The parking of vehicles use on the Site would be subject to planning enforcement action.

6. Previous Application

There is no previous application covering the Site.

7. Similar Application

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

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

8.1 The Site is:

- (a) located at the fringe of Tong Tau Po Tsuen and is accessible by Tai Shu Ha Road East (**Drawing A-1 and Plan A-2**); and
- (b) currently occupied for parking of vehicles without valid planning permission (**Plans A-2, A-4a and A-4b**).

8.2 The surrounding areas have the following characteristics:

- (a) parking of vehicles is found to the immediate north of the Site. To the further north are residential clusters of Tong Tau Po Tsuen;
- (b) scattered residential structures and a real estate agency are located to the immediate east of the Site;
- (c) Tai Shu Ha Road East is located to the immediate southwest of the site, while warehouses and open storage/storage yards are located to the further southeast, south, and southwest of the Site;
- (d) an orchard is located to the immediate west of the Site; and
- (e) except the orchard to its immediate northwest and open storage to its southeast within the same “V” zone, the parking of vehicles, the real estate agency, the warehouses and open storage/storage yards in the vicinity are suspected unauthorized development subject to enforcement action taken

by the Planning Authority.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the 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 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 Old Schedule Agricultural Lots held under 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 Tai Shu Ha Road East via Government land (GL). His office does not provide maintenance work for GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) There is no Small House application (SH) approved or currently under processing at the Site.
- (e) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to his office to permit any structure to be erected or regularize any irregularities on site. 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 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

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

He has no adverse comment on the application from traffic engineering point of view.

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

- (a) The access arrangement should be commented by Transport Department (TD).
- (b) His department does not and will not maintain any access connecting the Site and Tai Shu Ha Road East.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Food and Environmental Hygiene

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

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the commercial/trading activities, the applicant should arrange its disposal properly at his own expenses.
- (c) Proper licence / permit issued by FEHD is required if there is any catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Whenever the restaurant licensees who 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 relevant departments including Buildings Department, Transport Department, Fire Services Department, Planning Department, Home Affairs Department, Lands Department for clearance.

Environment

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

- (a) For any sewage arising from the proposed use, the applicant should connect sewage discharge to nearby public sewer. In case public sewer is not available in the vicinity, a septic tank and soak-away pit should be provided and the applicant should design and maintain the septic tank and soak-away pit according to the ProPECC Note No. 5/93 requirements. For any effluent discharge from the Site, the applicant is reminded of his obligation to comply with the Water Pollution Control Ordinance by applying for a discharge licence from the Regional Office (North) of EPD. To minimize noise impact, oily fume and cooking odour emissions, the applicant should make reference to EPD's Pamphlet "Control of Oily Fume and Cooking Odour from Restaurant and Food Business" available from EPD's website and properly design and maintain the cooking equipment and exhaust systems.
- (b) There was no environmental complaint concerning the Site received in the past 3 years.
- (c) Should the planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites".

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 Board consider that the application is acceptable from the planning point of view, conditions should be stipulated in the approval letter requiring the applicant for (i) the

submission of a drainage proposal and (ii) the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Fire Safety

10.1.7 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 his Department for approval. In addition, 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.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

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) 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.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing works or UBW on the Site under the BO.

- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of B(P)R at the building plan submission stage.

District Officer's Comments

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

His office has not received any comment from the village representatives in the vicinity regarding the application.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Project Manager (New Territories West), Civil Engineering and Development Department (PM(NTW), CEDD); and
- (e) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 5.10.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 26.10.2018, two public comments from a district councillor and a member of public were received. The district councillor raised no comment on the application (**Appendix III-1**). The member of public raised concern over the provision of parking, toilet and hand washing facilities, and the possible nuisance to the surrounding residential clusters (**Appendix III-2**).

12. Planning Considerations and Assessments

12.1 The subject application is for proposed temporary eating place (OSA of a restaurant) at a site zoned "V" on the OZP. The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion, and 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. According to the applicant, the OSA is the extension of the proposed restaurant at the ground floor of an existing New Territories Exempted House (**Drawing A-2**). No parking space will be provided to avoid adverse traffic impact. According to DLO/YL of LandsD, there is currently no

SH application approved or under processing at the Site and has no adverse comments on the application. As such, the approval of the application on a temporary basis would not jeopardize the long-term planning intention of the subject “V” zone.

- 12.2 The surrounding areas of the Site are predominantly rural in character intermixed with clusters of village houses, car parks, warehouses, open storage/storage yards, orchard and vacant structures/land and unused land. The applied use is considered not incompatible with the surrounding land uses.
- 12.3 The application is in line with TPB PG-No. 15A in that the eating place is located at the fringe of Tong Tau Po Tsuen and abuts Tai Shu Ha Road East and would unlikely cause inconvenience to the residents nearby. Besides, in view of the scale of the OSA (i.e. seven four-seater dining tables and chairs on an area of 223m²), it would unlikely cause significant adverse environmental hygiene, traffic, drainage, fire safety, sewerage and environmental impacts on the surrounding areas. Government departments consulted, including DFEH, C for T, CHE/NTW of HyD, CE/MN of DSD, D of FS and DEP, have no adverse comments on the application. There has been no environmental complaint received by DEP. While TPB PG-No.15A also states that the eating place use should not affect the land availability for village type development, DLO/YL of LandsD advises that there are currently no SH applications at the Site under processing by his office. As such, it is not expected that the approval of the application on temporary basis would affect the land availability for village type development in Tong Tau Po Tsuen.
- 12.4 Should the application be approved, the applicant will also be advised to note DFEH’s comments regarding licensing requirements as well as to follow the relevant mitigation measures and requirements in the “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact.
- 12.5 There are two public comments (**Appendices III-1 and III-2**) received on the application during the statutory publication period as summarized in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.4 above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department has no objection to the proposed temporary eating place (outside seating accommodation of a restaurant) 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 16.11.2021. 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) no car parking, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no filling/excavation of land, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) 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 16.5.2019;
- (e) 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 16.8.2019;
- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.5.2019;
- (h) in relation to (g) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.8.2019;
- (i) if any of the above planning conditions (a), (b), (c) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (j) if any of the above planning conditions (d), (e), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are at **Appendix I**.

- 13.3 Alternatively, should the Committee decide to reject the application, 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 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. No strong planning

justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 24.9.2018
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further information received on 30.10.2018 responding to TD's comment
Appendix Ic	Further information received on 6.11.2018 clarifying the number of tables and chairs
Appendix II	Relevant extract of the assessment criteria as set out in the Town Planning Board Guidelines (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
Appendices III-1 and III-2	Public Comments received during the Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Layout Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2018**