

**Relevant extracts of the Town Planning Board Guidelines No. 15A 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)**

1. Scope and Application of the Guidelines

- 1.1 The general planning intention of the "Village Type Development" ("V") zone in the rural New Territories is to demarcate both existing recognised villages and areas of land considered suitable for village expansion. It is the planning intention to concentrate village and related development within the "V" zone for a more orderly development pattern, economic and efficient use of land and provision of infrastructure and services. A selective range of uses including commercial, community and recreational uses may be permitted within this zone on application to the Town Planning Board (the Board) on the basis that these uses would serve the needs of villagers and would not adversely affect the character of villages.
- 1.2 In view of the above planning intention, eating place use (such as restaurant and alfresco dining facility) in the "V" zone should be compatible with the surrounding land-uses and would not create any nuisance or cause inconvenience to the local residents. The development should not have adverse impacts on traffic, drainage, sewage disposal and fire safety aspects. In addition, it should not reduce the land area available for village type development. For sites located adjacent to recreational uses or tourist attraction spots, favourable consideration may be given if the above considerations are not compromised.
- 1.3 Even if a proposal is considered acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the site and to cater for changing circumstances in future.
- 1.4 These Guidelines set out the planning criteria for assessing planning applications for eating place use in the "V" zone in the rural areas.

2. Definition of New Territories Exempted House (NTEH)

"NTEH" is defined in the Covering Notes in rural outline zoning plans.

3. Requirement for Planning Permission

Eating place use on the ground floor of a NTEH within the "V" zone does not require planning permission. However, such use on other floors of a NTEH, on open ground as an extension to a ground floor eating place in a NTEH, or as a free-standing development within the "V" zone requires planning permission from the Board.

4. Main Planning Criteria

- 4.1 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.
- 4.2 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.
- 4.3 Sympathetic consideration may also be given to any application which would not have adverse impacts on drainage, sewage disposal facilities or fire safety aspects.
- 4.4 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.
- 4.5 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.
- 4.6 All other statutory or non-statutory requirements of relevant Government departments should be met.

Previous Applications Covering the Application Site (the Site)

Approved Applications

	<u>Application No.</u>	<u>Proposed Use(s)/ Development(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Approval Conditions</u>
1	A/YL-TT/272	Temporary Eating Place for a Period of 3 Years	10.12.2010 [revoked on 10.2.2013*]	(1), (2), (3), (4), (5)
2	A/YL-TT/321	Temporary Eating Place for a Period of 3 Years	23.5.2014 [revoked on 23.5.2015#]	(1), (2), (3), (4), (5), (6)
3	A/YL-TT/403	Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 3 Years	11.8.2017	(1), (2), (3), (4), (5), (6), (7), (8)

* The permission was revoked due to non-compliance with approval conditions requiring the implementation of drainage facilities and submission and implementation of fire service installations (FSIs) proposal.

The permission was revoked due to non-compliance with approval conditions requiring the submission and implementation of drainage and FSIs proposals.

Approval Condition(s):

- (1) No (night-time) operation during specific hours.
- (2) Submission and implementation of tree preservation and/or landscape proposals.
- (3) Submission of proposal and provision of drainage facilities.
- (4) Submission and implementation of fire services installations (FSIs) proposal.
- (5) Revocation of planning approval if conditions not comply with by a given date/at any time during the approval period.
- (6) Reinstatement of the site to an amenity area upon expiry of planning permission.
- (7) No vehicle is allowed to queue back to or reverse onto/from public road at any time.
- (8) Provision of car parking spaces and loading/unloading facilities on the Site at all times.

Rejected Applications

	<u>Application No.</u>	<u>Proposed Use(s)/ Development(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Rejection Reason(s)</u>
1	A/YL-TT/366	Temporary Eating Place for a Period of 3 Years	4.12.2015	(1), (2), (3)
2	A/YL-TT/373	Temporary Eating Place for a Period of 1 Year	4.3.2016	(1), (2), (3)
3	A/YL-TT/379	Proposed Temporary Eating Place (Outside Seating Accommodation of a Restaurant) for a Period of 3 Years	10.6.2016	(2), (3)

Rejection Reason(s):

- (1) No strong planning justification has been given in the submission for a departure from the planning intention of the "V" zone, even on a temporary basis.
- (2) The applicant fails to demonstrate that the development would not cause adverse traffic, drainage and fire safety impacts on the surrounding area.
- (3) Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

**Similar s.16 Applications within or straddling the Same “V” Zone
on the Tai Tong Outline Zoning Plan**

Approved Applications

	<u>Application No.</u>	<u>Proposed Use(s)/ Development(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Approval Condition(s)</u>
1	A/YL-TT/114	Proposed Restaurant	17.8.2001 [on a temporary basis for 2 years]	(1), (2), (3), (4)
2	A/YL-TT/149	Temporary Restaurant for a Period of 3 Years	10.10.2003 [revoked on 10.11.2004]	(4), (5), (6), (7)
3	A/YL-TT/192	Temporary Restaurant for a Period of 3 Years	3.2.2006 [revoked on 3.2.2008]	(1), (4), (5), (6), (9)
4	A/YL-TT/249	Temporary Eating Place for a Period of 3 Years	6.11.2009 [revoked on 6.8.2010]	(4), (5), (6), (7), (8), (10), (11)
5	A/YL-TT/282	Temporary Canteen for a Period of 3 Years	15.4.2011	(2), (3), (4), (7), (8), (10)
6	A/YL-TT/324 #	Temporary Eating Place for a Period of 3 Years	25.4.2014	(2), (3), (4), (7), (10), (12), (13)
7	A/YL-TT/335	Temporary Canteen for a Period of 3 Years	8.8.2014	(2), (3), (4), (7), (8), (10), (12), (13)
8	A/YL-TT/407	Renewal of Planning Approval for Temporary Canteen for a Period of 3 Years	28.7.2017	(2), (4), (6), (7), (10), (12), (13)
9	A/YL-TT/497	Renewal of Planning Approval for Temporary Canteen for a Period of 3 Years	1.9.2020	(4), (5), (6), (7), (10), (11), (12)

Straddles the subject “V” and adjoining “Open Storage” zones

Approval Condition(s):

- (1) Provision of vehicular access.
- (2) Submission and implementation of tree preservation and/or landscape proposal.
- (3) Submission of proposal and/or provision of drainage facilities.
- (4) Revocation of planning approval if conditions not complied with by a given date/at any time during the approval period.
- (5) Maintenance of the existing trees and/or landscape planting on the site.
- (6) Maintenance of the drainage facilities on the site and/or submission of record of existing drainage facilities.
- (7) Submission and implementation of fire services installations (FSIs) proposals.
- (8) Submission of proposal and/or provision of run-in/out.
- (9) Provision of emergency vehicular access, water supplies for fire fighting and fire service installations.
- (10) No (night-time) operation during specific hours.
- (11) No medium or heavy vehicles or container vehicles are allowed for the operation of the site.

- (12) No queuing and reverse movement of vehicle are allowed on public road.
- (13) Reinstatement of the site to an amenity area upon expiry of the planning permission.

Rejected Application

	<u>Application No.</u>	<u>Proposed Use(s)/ Development(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Rejection Reason(s)</u>
1	A/YL-TT/280	Temporary Eating Place for a Period of 3 Years	14.9.2012 on review	(1), (2)

Rejection Reason(s):

- (1) The previous 3 planning permissions granted under Applications No. A/YL-TT/149, 192 and 249 were revoked due to non-compliance with approval conditions on fire safety aspect, and the applicant failed to demonstrate to the Board that she would comply with approval conditions imposed by the Board.
- (2) Due to the failure in complying with approval conditions on fire service installations, the potential fire risks from the eating place could not be adequately addressed. The application therefore did not meet 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).

Advisory Clauses

- (a) to resolve any land issues relating to the development with the concerned owner(s) of the application site (the Site);
- (b) to note the comments of the District Lands Officer/Yuen Long, Lands Department (LandsD) that the Site comprises Government Land (GL), a New Grant (NG) Lot and Old Schedule Agricultural Lots (OSALs). Lot No. 2146 in D.D. 117 was held under NG No. 4405 for agricultural purpose and with permission for the construction of a Small House with roof-over area not exceeding 65.03m² for non-industrial purposes. The OSALs were 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. No permission is given for occupation of GL (about 116m² subject to verification) included in the Site. Any occupation of GL without Government's prior approval is not allowed. The lot owner(s) will need to apply to her office to permit the structures to be erected or to regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Furthermore, the GL should be excluded from the Site or a formal approval should be applied for prior to the actual occupation of the GL. Applications for any of the above will be considered by her department 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 rent or fee, as may be imposed by her department;
- (c) to note the comments of the Commissioner for Transport that sufficient space within the Site should be provided for manoeuvring of vehicles. The land status of the access road/path/track leading to the Site from Tai Tong Shan Road should be checked with the lands authority. The management and maintenance responsibilities of the access road/path/track should be clarified with the relevant management and maintenance authorities accordingly. No parking of vehicles on public road is allowed;
- (d) to note the comments of the Chief Engineer/New Territories West, Highways Department that the run-in/out at the access point should be constructed in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement. Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains. His department shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Shan Road;
- (e) to note the comments of the Director of Food and Environmental Hygiene that from the restaurant licensing point of view, no shelters other than moveable sunshades and the like should be allowed in the outside seating accommodation (OSA). Prior approval and consent must be obtained from the Building Authority (BA) under the Buildings Ordinance (BO) (Cap. 123) for the construction of awnings or other supporting structures. The main licensing criteria for OSA in respect of Hygiene Requirements are in the following: (i) an OSA should normally be annexed to restaurant premises, i.e. food and beverages need not be conveyed through an intervening public thoroughfare; (ii) additional food preparation space and scullery area equivalent to 1/10 of the OSA area should be provided inside the roofed-over restaurant premises; (iii) adequate sanitary and ablution facilities should be provided within

the roofed-over area of the premises for use by the customers; and (iv) area in a backyard/open yard where there are no waste/soil pipes or manholes prejudicing the hygienic operation of the OSA will also be considered. Whenever the restaurant licensees who wish to include an OSA into their licensed premises, they are required to submit application to her department 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, her department will refer it to the relevant departments including Buildings Department (BD), Transport Department, Fire Services Department, Planning Department (PlanD), Home Affairs Department, LandsD for clearance. A Letter of Requirements on the captioned would be issued if no objection was raised by the departments concerned. Furthermore, if any facility of her department is affected by the development, prior consent from her department must be obtained. Re provisioning of the affected facilities by the project proponent to the satisfaction of her department may be required. Besides, sufficient amount of additional recurrent cost for management and maintenance of the re provisioned facilities to her department should be provided by the project proponent. 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, you should handle at your own expenses. Proper licence / permit issued by her department is required if food business and/or related place of public entertainment activity is involved: (i) for the operation of any types of food business, relevant food licences / permits should also be obtained from her department in accordance with the Public Health and Municipal Services Ordinance (Cap. 132); (ii) any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building, erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public Entertainment Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement. A Place of Public Entertainment Licence (or Temporary Place of Public Entertainment Licence) should be obtained from her department whatever the general public is admitted with or without payment; and (iii) 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 her 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.

- (f) to note the comments of the Director of Environmental Protection that the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storages Sites" issued by the Environmental Protection Department should be followed to minimise any potential environmental nuisances;
- (g) to note the comments of the Director of Fire Services that in consideration of the design/nature of the proposal, another fire services installations (FSIs) proposal is anticipated to be required. Relevant layout plans incorporated with the proposed FSIs should be submitted to his department for approval and implement the approved FSIs proposal accordingly. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans. If the proposed structure(s) is required to comply with

the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans;

- (h) to note the comments of the Chief Building Surveyor/New Territories West, BD that if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorised building works (UBW) under the BO and should not be designated for any proposed use under the application. For UBW erected on leased land, enforcement action may be taken by 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. Before any new building works (including containers/open sheds as temporary buildings; demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. The development intensity of the separate sites should be considered separately. An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO. The two sites shall be considered as two separate sites and 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. 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. If the proposed use under application is subject to the issue of a licence, it 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; and
- (i) to note the comments of the Director of Electrical and Mechanical Services that the electricity supplier (i.e. CLP Power) should be approached for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within or in the vicinity of the Site. Based on the cable plans and the relevant drawings obtained, if there is underground cable and/or overhead line within or in the vicinity of the Site, the following measures should be carried out: (i) if the Site is within the preferred working corridor of high voltage overhead lines at transmission voltage level 132kV or above as stipulated in the Hong Kong Planning Standards and Guidelines published by PlanD, prior consultation and arrangement with CLP Power is necessary; (ii) prior to establishing any structure within the Site, you and/or your contractors shall liaise with the electricity supplier and, if necessary, ask CLP Power to divert the underground cable and/or overhead line away from the vicinity of the proposed structure; and (iii) the Electricity Supply Lines (Protection) Regulation and the "Code of Practice on Working near Electricity Supply Lines" established under the Regulation shall be observed when carrying out works in the vicinity of the electricity supply lines.