

RNTPC Paper No. A/YL-KTN/876B
For Consideration by
the Rural and New Town
Planning Committee
on 28.7.2023

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/876

<u>Applicant</u>	: Mr. YAU Siu Fai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 913 RP (Part) and 920 RP in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	: About 267m ²
<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 at the time of submission Draft Kam Tin North OZP No. S/YL-KTN/10 currently in force [The zoning and development restrictions for the Site remain unchanged on the current draft OZP No. S/YL-KTN/10]
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Eating Place (Restaurant and Outside Seating Accommodation) for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary eating place (restaurant and outside seating accommodation) for a period of 3 years and filling of land. The Site falls within an area zoned “AGR” on the Kam Tin North OZP. According to the covering Notes of the OZP, temporary use of any land not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). Filling of land within “AGR” zone also requires planning permission from the Board. The Site is mainly hard-paved and occupied by a 2-storey vacant structure (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development involves one 2-storey structure with building height of about 7m and floor area of about 72m² for restaurant and washroom. The remaining portion of the Site will be outdoor seating area (about

85m²/32%) and landscape area (about 35m²/13%). The applicant also applies for regularisation of filling of land for paving part of the Site (220m²/82%) with concrete by not more than 0.2m in depth (from about +9.9mPD to +10.0mPD/+10.1mPD) for site formation of structure, outdoor dining and circulation space. The operation hours will be from 8:00 a.m. to 9:00 p.m. daily, including public holidays. Three staff members will be working at the Site to serve not more than 30 visitors. No car parking space will be provided. The Site is accessible from Fung Kat Heung Road and Mei Fung Road branching off San Tam Road. The layout plan and paving plan 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 with plans received on 12.12.2022 (Appendix I)
- (b) Further Information (FI) received on 23.2.2023 (Appendix Ia)
- (c) FI received on 14.7.2023 (Appendix Ib)

1.4 On 3.2.2023 and 21.4.2023, the Rural and New Town Planning Committee (the Committee) agreed to defer making a decision on the application for two months respectively as requested by the applicant.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the planning statement and FIs in **Appendices I to Ib**. They can be summarised as follows:

- (a) The Site is located in the proximity of Fung Kat Heung which is zoned “Industrial (Group D)” (“I(D)”) and dominated by various type of industrial uses. The proposed development is to meet the pressing demand of the locals and workers in Fung Kat Heung area.
- (b) The proposed development is temporary in nature and would not frustrate the long term planning intention of the “AGR” zone. Upon approval of the application, application for short term waiver (STW) will be submitted to Lands Department to regularise the existing structure at the Site.
- (c) The applicant will follow ‘Control of Oil Fume and Cooking Odour from Restaurant and Food Business’ issued by the Environmental Protection Department (EPD) to control oily fume and cooking odour emissions generated from the proposed development. Adequate air pollution control equipment will be provided at the kitchen for treating cooking fume emission before being discharged to the outdoor environment in order to fulfil the requirements of the Air Pollution Control Ordinance. The proposed development will not induce adverse traffic, environmental and drainage impacts to the surrounding area.

- (d) As heavy loading of structure would compact the existing soiled ground and weaken ground surface, concrete site formation is required to provide stronger ground reinforcement to stabilize existing soiled ground and prevent erosion from surface run-off. The land filling area has been kept minimal for meeting the operation need of the propose development.

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

The applicant is not the “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 and sending notice to Kam Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to any active planning enforcement case. Subject to collection of sufficient evidence, appropriate enforcement action under the Town Planning Ordinance would be undertaken.

5. Previous Applications

The Site, in part or in whole, is the subject of three previous applications (Nos. A/YL-KTN/651, 670 and 772) for temporary animal boarding establishment, temporary hobby farm, temporary hobby farm and caravan holiday camp with ancillary canteen, which are all unrelated to the current application. Details of the previous applications are summarised in **Appendix II** and the locations are shown on **Plan A-1**.

6. Similar Application

There is no similar application for the proposed use within the same “AGR” zone in the vicinity of the Site.

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

7.1 The Site is :

- (a) mainly hard-paved and occupied by a 2-storey vacant structure; and
- (b) accessible from San Tam Road via Fung Kat Heung Road and Mei Fung Road.

7.2 The surrounding areas have the following characteristics:

- (a) to its north and east are scattered residential dwellings/structures, active farmland, open storage/storage yards, caravan holiday camp with ancillary eating place (with valid planning permission under application No. A/YL-KTN/859) and vacant land;
- (b) to its west and northwest across Mei Fung Road are parking of vehicles, hobby farm, active farmland, residential structures/dwellings and storage yard. To its further north about 80m is “I(D)” zone; and
- (c) to its south are parking of vehicle, vacant land (with valid planning permissions for proposed animal boarding establishment, holiday camp and warehouse under applications No. A/YL-KTN/807, 850 and 852 respectively) and a warehouse (with planning permission under application No. A/YL-KTN/824).

8. Planning Intention

- 8.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government department as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III and IV** respectively.
- 9.2 The following government departments do not support / have adverse comments on the application.

Land Administration

9.2.1 Comments of the District Lands Officer/ Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) he has adverse comments on the application;

- (b) the Site comprises 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; and
- (c) he has grave concerns given that there are unauthorized building works (UBWs) and/or uses on the private lot(s) which are already subject to lease enforcement actions according to case priority. The lot owner(s) should remedy the lease breaches as demanded by LandsD.

Agriculture and Nature Conservation

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

- (a) from nature conservation perspective, DAFC has no adverse comment on the application; and
- (b) the agricultural activities are active in the vicinity and agricultural infrastructures such as road accesses and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the proposed development falling within the “AGR” zone is not supported from agricultural perspective.

10. Public Comment Received During Statutory Publication Period (Appendix V)

The application was published for public inspection. During the statutory public inspection period, two public comments were received from the Conservancy Association and an individual. The commenters object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; the proposed development would induce adverse drainage, sewerage and waste impacts; and there is no justification for restaurant at the Site which is distant from residential development.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary eating place (restaurant and outside seating accommodation) for a period of 3 years and filling of land in “AGR” zone. The proposed use is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes and DAFC does not support the application from agricultural perspective. Nevertheless, it is considered that approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “AGR” zone. Filling of land within “AGR” zone requires planning permission from the Board as it may cause

adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and the Director of Environmental Protection (DEP) have no adverse comment from drainage and environmental perspectives. An approval condition on reinstatement of the Site upon expiry of the planning permission as proposed by the applicant is recommended should the Committee decide to approve the application.

- 11.2 According to the submission, the proposed eating place is intended to serve the nearby locals and workers. The proposed development, which is small in scale (site area of about 267m²), is considered not incompatible with the surrounding area which is rural in character intermixed with residential dwellings/ structures, farmland, hobby farm, open storage/storage yards and vacant land. Chief Town Planner/Urban Design and Landscape of Planning Department has no objection to the application from landscape planning perspective as the proposed use is not incompatible with the surrounding landscape character.
- 11.3 Other relevant departments consulted including Commissioner for Transport, DEP, CE/MN of DSD and D of FS have no adverse comment on the application. To minimise any possible environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP. DLO/YL of LandsD has adverse comment on the application in view of the existing UBW and/or use on the Site. In this regard, the applicant states that he will apply for STW for regularisation of the existing structure at the Site. Relevant advisory clause on the need for application to LandsD for regularisation for UBWs is recommended.
- 11.4 For the two public comments objecting to the application, the departmental comments and planning assessments stated above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that proposed use could be tolerated for a period of 3 years.
- 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 28.7.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 9:00p.m. and 8:00a.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 28.1.2024;
- (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 28.4.2024;
- (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 implementation 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 28.1.2024;
- (f) 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;
- (g) if any of the above planning condition (b), (c) or (e) 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; and
- (h) upon expiry of the planning permission, the reinstatement of the site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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

the proposed development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish pond for agricultural purposes. The zone is also intended to retain fallow arable land with good potential for rehabilitation. 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 with plans received 12.12.2022
Appendix Ia	FI received on 23.2.2023
Appendix Ib	FI received on 14.7.2023
Appendix II	Previous applications
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Layout plan
Drawing A-2	Paving plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2023**