

APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-YTT/3

<u>Applicant</u>	: Mr. KO Wing Leung
<u>Site</u>	: Lot 70 (Part) in D.D. 27 and Adjoining Government Land (GL), Yim Tin Tsai, Tai Po, New Territories
<u>Site Area</u>	: About 1,672m ² (including GL of about 1,172m ² or about 70% of the Site)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Yim Tin Tsai and Ma Shi Chau Outline Zoning Plan (OZP) No. S/NE-YTT/2
<u>Zonings</u>	: “Residential (Group D)” (“R(D)”) (about 89%) “Government, Institution or Community” (“G/IC”) (about 11%)
<u>Application</u>	: Renewal of Planning Approval for Temporary Eating Place (Outside Seating Accommodation (OSA) of a Restaurant) and Ancillary Vehicle Park for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary eating place (OSA of an existing licensed restaurant adjoining to its west) and ancillary vehicle park for a period of three years (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Eating Place’ is a Column 2 use under both “R(D)” and “G/IC” zones which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission until 18.3.2025.
- 1.2 The Site is accessible from Sam Mun Tsai Road via a village access road. The OSA comprises an open-air area (about 325m²) and an area covered by four open-sided shelters (about 55m²) to accommodate 20 tables. According to the applicant, the operating hours of the OSA are from 11:00 a.m. to 11:00 p.m. on weekdays, and from 10:00 a.m. to 11:00 p.m. on weekends and public holidays. A total of 28 parking spaces for private cars are provided within the Site for use

by its customers and staff only. The layout plan submitted by the applicant is shown in **Drawing A-1**.

- 1.3 The Site is the subject of a previous application (No. A/NE-YTT/2) submitted by a different applicant for the same use, which was approved by the Rural and New Town Planning Committee (the Committee) on 18.3.2022 for a period of three years. All the approval conditions of the previous application have been complied with. As compared with the previous application, there is no change in the site area, general layout, development parameters, operation hours (a hour less on weekdays) and access arrangement under the current application.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on (Appendix I) 23.1.2025
 - (b) Further Information (FI) received on 28.2.2025 (Appendix Ia) *(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 as stated in the Application Form at **Appendix I** as summarised below:

- (a) the applied OSA and ancillary vehicle park are to support the operation of an existing restaurant, namely Royal China Pearl, which has been operated for many years. The applied use is compatible with the surrounding land uses;
- (b) no adverse visual, traffic and environmental impacts are arisen from the applied use; and
- (c) the application is to renew an approved planning permission (No. A/NE-YTT/2) for the same use. All approval conditions under the planning permission have been complied with.

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 (the Ordinance) (TPB PG-No. 31B) by posting site notice and sending notice to Tai Po Rural Committee by local registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, the requirements as set out in TPB PG-No. 31B are not applicable.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34D) is relevant to the application. The relevant assessment criteria are summarised at **Appendix II**.

5. Background

The Site is currently not subject to any active planning enforcement action. The existing restaurant adjoining to the Site is governed under a Short Term Tenancy (STT) No. 307A granted by Lands Department (LandsD) (**Plan A-2**). Since the restaurant use was in existence before the first publication of the draft Yim Tin Tsai and Ma Shi Chau Development Permission Area Plan No. DPA/NE-YTT/1 on 2.9.2011, the restaurant use can be considered as ‘existing use’ tolerated under the Ordinance.

6. Previous Application

The Site is the subject of a previous application (No. A/NE-YTT/2) which was submitted by a different applicant for the same use as the current application. The application was approved with conditions for a period of three years by the Committee on 18.3.2022 mainly on the considerations that the proposed use would not frustrate the long-term planning intentions of the “R(D)” and “G/IC” zones; not incompatible with the surrounding areas; and not result in adverse traffic, environmental, drainage and fire safety impacts on the surrounding areas. All the approval conditions imposed for the previous application have been complied with. The planning permission of the previous application No. A/NE-YTT/2 will be valid until 18.3.2025. Details of the application are summarised at **Appendix III** and its location is shown on **Plan A-2**.

7. Similar Application

There is no similar application for OSA and ancillary vehicle park use within the same “R(D)” and “G/IC” zones.

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

8.1 The Site is:

- (a) currently used for the applied use as OSA on a raised platform (about 470m² in area at the same level of the adjoining restaurant) with ancillary car park with valid planning permission;
- (b) situated at the northern fringe of Sam Mun Tsai San Tsuen and Luen Yick Fishermen Village; and
- (c) accessible via a village access road leading to Sam Mun Tsai Road.

- 8.2 The surrounding areas are mainly occupied by domestic structures of Sam Mun Tsai San Tsuen and Luen Yick Fisherman Village to its west and south respectively. A residential development, namely Springdale Garden, and a church are located to its north and further north respectively. There are several grocery stores located in the vicinity of the Site.

9. Planning Intentions

- 9.1 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.
- 9.2 The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community (GIC) facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organizations providing social services to meet community needs, and other institutional establishments.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government department as set out in paragraph 10.2 below, other departments consulted have no objection to or no comment on the application. Their general comments on the application and recommended advisory clauses are provided at **Appendices IV** and **V** respectively.
- 10.2 The following government department has reservation on the application.

Land Administration

10.2.1 Comments of the District Lands Officer/Tai Po (DLO/TP), LandsD:

- (a) he has reservation on the planning application since there are unauthorized structures within the proposed STT;
- (b) the Site comprises an unleased and unallocated GL with a proposed STT No. TP0089 under processing to regularise existing occupation according to the approved planning application No. A/NE-YTT/2; and an Old Schedule Agricultural Lot in D.D. 27 held under the Block Government Lease which contains restriction that no structure is allowed to be erected without prior approval of the Government. It is noted that no structure is proposed on the private lot;
- (c) a recent inspection revealed that the following unauthorized structures were found within the proposed STT No. TP0089 under processing:

- (i) as varied from the approved application, the erected four open-sided shelters were found enclosed; and
- (ii) the four electric vehicle chargers erected on the proposed STT No. TP0089 and a porch straddling the proposed STT and the adjoining existing restaurant on STT No. 307A are not covered by any planning approval or application;
- (d) the applicant should remove/ rectify immediately the unauthorized structures mentioned in (c) above. LandsD reserves the rights to take necessary land control action against the illegal occupation of GL without further notice. LandsD would not process STT application which was not covered by the Board's approval/ decision. Under the prevailing land policy, regularisation of newly erected structures would not be considered;
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto; and
- (f) his advisory comments are at **Appendix V**.

11. Public Comment Received During Statutory Publication Period

On 4.2.2025, the application was published for public inspection. During the statutory public inspection period, one opposing public comment from an individual was received mainly on the grounds that the approval of the application would encourage illegal occupation of GL for OSA and vehicle park uses, and aggravate the illegal parking and traffic congestion problems arising from the operation of the existing restaurant; the applied development is not compatible with surrounding uses predominated by residential use; the operation of the existing restaurant and OSA has caused noise nuisance, air and light pollution, odour and hygiene problems affecting nearby residents; the restaurant is found discharging wastewater at the Site which flows along the slope area and causes potential pollution to the natural environment; and the applied development would pose fire risk to surrounding areas (**Appendix VI**).

12. Planning Considerations and Assessments

12.1 The application is for renewal of a planning permission (No. A/NE-YTT/2) for temporary OSA of an existing restaurant and ancillary vehicle park with 28 parking spaces for private cars for a period of three years at the Site mainly zoned "R(D)" (about 89%) and partly zoned "G/IC" (about 11%) on the OZP. Although the applied development is not in line with the planning intentions of the "R(D)" and "G/IC" zones which are primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for the provision of GIC facilities respectively, there is no known development proposal within the Site. Approval of the application on a temporary basis for a further period of three years would not frustrate the long-term planning

intentions of the “R(D)” and “G/IC” zones.

- 12.2 The Site is located at the northern fringe of Sam Mun Tsai San Tsuen and Luen Yick Fishermen Village and is accessible from Sam Mun Tsai Road via a village access road. The applied use serving as an extension to the adjoining existing licenced restaurant is considered not incompatible with the surrounding areas which are predominantly rural in character intermixed with some domestic dwellings/structures, grocery stores, a church and unused land.
- 12.3 Relevant departments consulted, including the Commissioner for Transport, Director of Environmental Protection (DEP), Chief Engineer/Mainland North of Drainage Services Department (DSD), Director of Food and Environmental Hygiene and Director of Fire Services have no objection to or no adverse comment on the application. Significant adverse traffic, environmental, drainage, environmental hygiene and fire safety impacts on the surrounding areas are not anticipated. No environmental complaint concerning the Site has been received by DEP in the past three years. An approval condition to maintain existing drainage facilities on the Site at all times during the planning approval period is recommended in paragraph 13.2 below to address the technical requirement of DSD. Regarding DLO/TP, LandsD’s concern on the unauthorized structure(s) erected within and straddling the Site, the applicant will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.
- 12.4 The application generally complies with TPB PG-No. 34D in that there has been no material change in planning circumstances since the approval of the previous application (No. A/NE-YTT/2); no major adverse departmental comments against the renewal application; all approval conditions on submission and implementation of drainage proposal and fire service installations under the previous application have been complied with; and the three-year approval period sought is reasonable and of the same timeframe as the previous approval. Given the previous approval for the same use with the same layout and development parameters at the Site in 2022 as detailed in paragraph 6 above, approving the current application is in line with the Committee’s previous decision.
- 12.5 Regarding the opposing public comment as detailed in paragraph 11, the government departments’ comments and planning assessments above are relevant. With regard to the allegation of illegal occupation of GL, DLO/TP advises that the STT is under processing to regularise the applied OSA according to the approved planning application No. A/NE-YTT/2.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11 above, the Planning Department has no objection to the application.
- 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 three years and be

renewed from 19.3.2025 to 18.3.2028. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period; and
- (b) if the above planning condition (a) 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.

Advisory Clauses

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

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

- the applied use is not in line with the planning intentions of the "R(D)" and "G/IC" zones which are for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for the provision of government, institution or community facilities serving the needs of local residents and/or wider district, region or the territory respectively. There is no strong planning justification in the current submission for a departure from the planning intentions, 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 with attachments received on 23.1.2025
Appendix Ia	FI received on 28.2.2025
Appendix II	Extracts of TPB PG-No. 34D
Appendix III	Previous application

Appendix IV	Government department's general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comment
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a and A-4b	Site photos

**PLANNING DEPARTMENT
MARCH 2025**