

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

APPLICATION NO. A/YL-TYST/949

<u>Applicant</u>	: Tai Fat Restaurant Ltd. represented by Mr. CHEUNG Wai-leung
<u>Site</u>	: Government Land (GL) in front of Shops No. 4-5, G/F, Blocks 1-9, Treasure Court, 8 Ying Fuk Street, Hung Shui Kiu, Yuen Long, New Territories
<u>Site Area</u>	: 17.26 m ² (about)
<u>Land Status</u>	: GL covered by Land Licence YLOSA No. 37 (for the outdoor restaurant seating accommodation purpose)
<u>Plan</u>	: Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
<u>Zoning</u>	: “Residential (Group A)” (“R(A)”) [Restricted to a maximum plot ratio of 5, a maximum site coverage of 42% above the lowest 3 floors, and a maximum building height of 12 storeys (36m)]
<u>Application</u>	: Renewal of Planning Approval for Temporary “Eating Place (Outside Seating Accommodation (OSA) of a Licensed Restaurant)” for a Period of 1 Year

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary “eating place (OSA of a licensed restaurant)” use for a further period of 1 year on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for the “R(A)” zone, ‘Eating Place’, unless on the lowest three floors of a building, requires planning permission from the Town Planning Board (the Board). As the proposed OSA is located on open ground outside the footprint of a building, it requires planning permission from the Board. The Site is a strip of land on the footpath outside a licensed restaurant (**Plans A-2 and A-4**), currently occupied for the applied use and covered by a valid planning permission under application No. A/YL-TYST/886 with validity up to 11.5.2019.
- 1.2 The Site was involved in 7 previous applications (No. A/YL-TYST/553, 635, 669, 720, 780, 834 and 886) for the same applied use. The last renewal application

(No. A/YL-TYST/886) was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 1 year on 20.4.2018 with validity up to 11.5.2019. Details of the previous applications are at paragraph 6 below and **Appendix III**. Compared with the last application (No. A/YL-TYST/886), the current application is submitted by the same applicant for the same applied use with the same site area, layout and operation hours for the same applied period of permission (i.e. 1 year).

- 1.3 The OSA of 14.385m (L) x 1.2m (W) immediately outside the frontage of a ground floor restaurant forms an extension part of the restaurant. According to the applicant, the remaining clear width of the footpath after the OSA occupation will be not less than 3.5m. No fixed or permanent structure will be erected in the OSA. The OSA will accommodate a maximum of 4 tables and 12 stools, and the tables and stools will be removed after the operation hours. The operation hours of the OSA are restricted from 9:00a.m. to 10:30p.m. The plan showing the layout of the restaurant and the OSA submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with plans and appendix received on 29.1.2019 (**Appendix I**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary page (Appendix) attached to the Application Form at **Appendix I**. They can be summarised as follows:

- (a) The applicant has observed all the terms and conditions of the current licence and has maintained a very high standard of management in terms of environmental hygiene and environmental protection. There has not been a single case of prosecution or complaint being recorded.
- (b) The applicant will maintain the width of the OSA at 1.2m at all times. The remaining clear width of the footpath after occupation by the OSA will be not less than 3.5m.
- (c) The OSA would be confined to the operation hours of 9:00 a.m. to 10:30 p.m. daily, and the applicant has never operated beyond the allowed operation hours.
- (d) The operation of the OSA may benefit the community especially the bicycle riders who would like to monitor their bikes parked at the nearby cycle parking area (**Plan A-2**). It is demonstrated that the applicant could observe all the terms and conditions of the licence and provide a nice and environmentally friendly OSA without causing inconvenience to the neighbourhood or the community.

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

As the Site involves GL only, the “owner’s consent/notification” requirement 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) is not applicable to the application.

4. Town Planning Board Guidelines

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

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site was involved in 7 previous applications (No. A/YL-TYST/553, 635, 669, 720, 780, 834 and 886) for the same applied use on the same site submitted by the same applicant which were approved with conditions by the Committee or the Board on review. Details of the applications are summarised in **Appendix III** and the location is shown on **Plan A-1**.
- 6.2 Application No. A/YL-TYST/553 was approved with conditions by the Board on review on 11.5.2012 for a period of 1 year mainly on the consideration that the clear width of the footpath would not be less than 3.5m; the approval period sought was shortened from 5 years to 1 year; the proposed operation hours were changed from between 9:00a.m. and 11:00p.m. to between 9:00a.m. and 10:30p.m.; and no permanent structures would be erected in the OSA.
- 6.3 The subsequent renewal applications (No. A/YL-TYST/635, 669, 720, 780 and 834) were approved with conditions by the Committee each for a period of 1 year on 19.4.2013, 21.3.2014, 27.3.2015, 4.3.2016 and 28.4.2017 respectively. The last renewal application (No. A/YL-TYST/886) was approved with conditions by the Committee for a period of 1 year on 20.4.2018 and the validity of the planning approval is up to 11.5.2019.
- 6.4 Compared with the last application (No. A/YL-TYST/886), the current renewal application is submitted by the same applicant for the same applied use with the same site area, layout and operation hours. The approval period sought under the current application (i.e. 1 year) is also of the same timeframe as the previous approval.

7. Similar Application

There is no similar application within the same “R(A)” zone on the OZP.

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

8.1 The Site is a strip of paved land (14.385m (L) x 1.2m (W)) on a footpath of about 4.7m wide to the immediate northwest of Blocks 4 and 5 of Treasure Court outside a licensed restaurant named ‘Tai Fat Restaurant’.

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) predominantly an established residential area with a number of residential developments, including Treasure Court, Lai Hung Garden, Symphony Garden, Coronet Court and Beauty Court, intermixed with Tan Kwai Tsuen Road Garden, sitting-out areas, shops, eating places and school in the vicinity;
- (b) to its immediate northwest on the other side of the footpath is a long planter, beyond which are cycle track and the Castle Peak Road – Hung Shui Kiu;
- (c) to its west is the cul-de-sac of Ying Fuk Street;
- (d) shops and eating places can be found along Ying Fuk Street and Tan Kwai Tsuen Road and on the ground floor of Blocks 1 to 9 of Treasure Court; and
- (e) Tan Kwai Tsuen Road Garden and two sitting-out areas are located to the further south and further east of the Site respectively.

9. Planning Intention

The planning intention of the “R(A)” zone is primarily for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application and/or the public comments are summarised as follows:

Land Administration

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

- (a) He has no comment from land administration point of view.

- (b) The Site is covered by a Land Licence YLOSA No. 37 issued by his office on 8.7.2013 for the purpose of outdoor restaurant seating accommodation for a period of one year certain commencing on 12.5.2013 and thereafter from year to year subject to the Licence shall be spent of effect if no valid planning permission and other terms and conditions provided in the Licence.

Traffic

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

He has no adverse comment to 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 applicant shall at his own cost and to the satisfaction of his department make good of any damage to the public carriageway, footpaths and other street furniture arising from his works. The applicant is requested to submit initial photos of the concerned footpath for his record.
- (b) If his department need to carry out any maintenance works on or adjacent to the Site, the applicant shall remove all installations and objects at the Site as necessary at his/her own costs.

Food and Environmental Hygiene

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

- (a) She has no comment to the renewal application.
- (b) The Site has been granted with approved OSA under the respective general restaurant licenses in 2013. The area of the existing approved OSA is 14.385 x 1.2m.
- (c) A complaint against the suspected pest infestation in the Site was received by her office in the past 12 months. Investigation has been carried out by her department but no enforcement action was taken.
- (d) Regarding the public comment (**Appendix IV-1**), the Royal Capital Restaurant is covered by a valid general restaurant license with OSA and the premises address is "D.D. 124 Lots 4212 & 4213, Shop 1, Ground Floor (& Outside Seating Area at Shop Front), Treasure Court, Castle Peak Road, Hung Shui Kiu, Yuen Long, New Territories" (**Plan A-2**). No further OSA application has been received by her department.

Environment

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

- (a) No complaint against the Site was received in the past three years.
- (b) The applicant should be reminded to comply with various pollution control ordinances, such as the Air Pollution Control Ordinance, Noise Control Ordinance and Water Pollution Control Ordinance, to address various potential environmental concerns.
- (c) Should the planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (Code of Practice).

Drainage

10.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) The Site is relatively small and he has no objection to the application from drainage viewpoint.
- (b) The applicant should be reminded to provide his own drainage facilities to collect the runoff generated from the Site or passing through the Site, and discharge the runoff collected to a proper discharge point. The development should not obstruct overland flow or cause any adverse drainage impact to the adjacent areas and existing drainage facilities.

District Officer's Comments

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

His office has not received any comment from the locals on the application.

10.2 The following government departments have no comment/no objection on the application:

- (a) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Director of Fire Services (D of FS);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);

- (e) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (f) Director of Electrical and Mechanical Services (DEMS); and
- (g) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 12.2.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 5.3.2019, 6 public comments (**Appendices IV-1 to IV-6**) were received from the general public. The public comments raised objection to the application on the grounds of conflict between the applied use and the alleged large flow of pedestrians as the existing footpath is narrow; the indoor area of the subject restaurant can already meet the demand; the OSA may attract stray dogs; create hygiene problem; create noise and environmental nuisance; and may attract smokers to the area.

12. Planning Considerations and Assessments

- 12.1 The current renewal application is for temporary eating place (OSA of a licensed restaurant) at a site zoned “R(A)” on the OZP. The planning intention of the “R(A)” zone is for high-density residential developments, and commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. The subject OSA, which is ancillary to a licensed restaurant at the ground floor of a residential development, is considered not in conflict with the planning intention of the “R(A)” zone.
- 12.2 The OSA with an area of about 17.26 m² is located at the fringe of the “R(A)” zone to the south of Castle Peak Road – Hung Shui Kiu which is predominated by residential developments. Eating place (one with existing OSA), shop and services and sitting-out areas are found in the vicinity (**Plan A-2**). As such, the OSA at the Site which directly abuts the frontage of a ground floor restaurant is considered not incompatible with the surrounding land uses.
- 12.3 Relevant government departments, including C for T, DFEH, CHE/NTW, HyD, D of FS and DEP, have no/ no adverse comment on the application. The OSA is unlikely to cause significant adverse pedestrian traffic and environmental impacts on the surrounding areas. Besides, there is no complaint pertaining to the Site received by DEP in the past three years. Although a complaint against the suspected pest infestation in the Site was received by DFEH in the past 12 months, investigation has been carried out by the Food and Environmental Hygiene Department but no enforcement action was taken.
- 12.4 The current renewal application for 1 year is generally in line with TPB PG-No. 34B in that there has been no material change in planning circumstances since the granting of the previous approval under application No. A/YL-TYST/886; all the approval conditions have been complied with as of today; and the 1-year approval period sought is reasonable and is of the same time frame as the previous approval. To minimise possible environmental nuisances, approval condition restricting the operation hours, as proposed by the applicant, is recommended in paragraph 13.2 below. Any non-compliance with the approval condition will result in revocation

of the planning permission. Should the planning application be approved, the applicant will also be advised to follow the relevant mitigation measures and requirements in the Code of Practice in order to minimise any potential environmental impact, and to note DEP's comments regarding compliance with relevant ordinances.

- 12.5 Given that 7 previous approvals for the same applied use has been granted to the Site, approval of the current application is in line with the Committee's previous decisions.
- 12.6 There are 6 objecting public comments (**Appendices IV-1 to IV-6**) received on the application during the statutory publication period as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 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 above, the Planning Department considers that the temporary eating place (outside seating accommodation of a licensed restaurant) could be tolerated for a further period of 1 year.
- 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 further period of 1 year from 12.5.2019 to 11.5.2020. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 10:30 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site 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.

[Approval conditions (a) and (b) are the same as those under the permission for Application No. A/YL-TYST/886.]

Advisory clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
 - (a) the proposed development would reduce the width of the existing footpath and the applicant has not demonstrated that the pedestrian environment enjoyed by the public in that location would not be adversely affected; and

- (b) the continued occupation of the Site for the development would generate adverse environmental nuisance on the residential uses in the vicinity of the Site.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for renewal of the planning 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 plans and appendix received on 29.1.2019
Appendix II	Relevant extracts of Town Planning Board Guidelines No. 34B on “Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development” (TPB PG-No. 34B)
Appendix III	Previous Applications Covering the Application Site
Appendices IV-1 to IV-6	Public Comments received during the Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**