

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

**APPLICATION NO. A/YL-NSW/279**

- Applicant** : Gala Growth Co. Ltd represented by Hui Wah Kui
- Site** : Lots 3719 S.G ss. 9 RP (Part) and 3719 S.G ss.10 (Part) in D.D. 104, Nam Sang Wai, Yuen Long
- Site Area** : 840 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Nam Sang Wai Outline Zoning Plan (OZP) No. S/YL-NSW/8
- Zoning** : “Other Specified Uses” annotated “Comprehensive Development to include Wetland Restoration Area” (“OU(CDWRA)”)
- [Restricted to a maximum plot ratio of 0.4 and a maximum building height of 6 storeys including car park. ]
- Application** : Renewal of Planning Approval for Temporary Eating Place (Restaurant) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks renewal of planning approval for a temporary restaurant at the application site (the Site) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for “OU(CDWRA)” zone, ‘Restaurant’ as a kind of ‘Eating Place’ is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission under Application No. A/YL-NSW/256.
- 1.2 The Site is the subject of 10 previous applications. The last application No. A/YL-NSW/256, for the same applied use in the same structures submitted by the same applicant, was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 23.6.2017 for a period of 3 years until 22.7.2020. All approval conditions including those in relation to the submission of

condition record of existing drainage facilities and submission/provision of fire services installations (FSIs) have been complied with.

- 1.3 According to the site plan (**Drawing A-1**) submitted by the applicant, the proposed restaurant together with staff quarters are accommodated within an existing New Territories Exempted House (NTEH) and 3 temporary structures. Vehicular access to the Site is via a local track connecting to Fairview Park Boulevard. The major parameters of the current application are the same as the last approved Application No. A/YL-NSW/256. They are summarized below:

Total Floor Area	869m <sup>2</sup>
Building/Structure	An existing NTEH and 3 temporary structures
Building Height	NTEH: 3 storeys (8.23m) 3 structures : 1-2 storeys (2.43m to 5.48m)
No. of Loading/unloading Bay	1
Operation Hours	7:30am to 10pm
Uses by Floor:	
G/F	Restaurant, kitchen, lavatories, storage, loading/unloading bay;
1/F	Staff quarters/rest area
2/F	Staff quarters

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

- (a) Application Form received on 11.5.2020 **(Appendix I)**
- (b) Further Information (FI) dated 5.7.2020 providing clarification on **(Appendix Ia)** background information and FI dated 7.7.2020 with replacement page of site layout *(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 the Application Form at **Appendix I**, and can be summarised as follows:

- (a) There is no change to the existing structures and the use remains unchanged as 'Eating Place (Restaurant)' as the last planning approval.
- (b) The restaurant is not incompatible with the surrounding areas which are predominated by residential and commercial developments. There is no significant change to the surrounding developments since the previous approval. The temporary restaurant is small in scale and the renewal of planning approval for a period of 3 years will not cause adverse impact to the surrounding environment.

- (c) The restaurant will continue to provide catering services to the local residents, workers and visitors.
- (d) Since the commencement of operation of the restaurant, no complaints on nuisances were received by the Government departments/authorities.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

### 4. **Town Planning Board Guidelines**

***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. 34C)***

- 4.1 TPB PG-No. 34C is relevant to this application and the relevant assessment criteria are summarized as below:
  - (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
  - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
  - (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
  - (d) whether the approval period sought is reasonable;
  - (e) any other relevant considerations; and
  - (f) the approval period for renewal should not be longer than the original validity period of the temporary approval.

***Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)***

- 4.2 According to TPB PG-No. 12C, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarised as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

## 5. Background

The Site is not a subject of any active planning enforcement action.

## 6. Previous Applications

- 6.1 The Site is the subject of 10 previous applications (No. A/DPA/YL-NSW/4, A/YL-NSW/20, 40, 66, 111, 174, 193, 208, 228 and 256) (**Plan A-1**). The first application (No. A/DPA/YL-NSW/4) was approved for an NTEH (Small House) while the subsequent nine applications (A/YL-NSW/20, 40, 66, 111, 174, 193, 208, 228 and 256) were all approved for restaurant use. Details of these applications are summarized at **Appendix II**.
- 6.2 Application No. A/DPA/YL-NSW/4 for an NTEH (Small House) covering only Lot 3719s.G ss.10 under the then “Unspecified Use” (“U”) zone was approved with conditions by the Committee on 15.11.1991. Subsequent to the approval, a Building Licence (BL) was granted on 22.12.1992 and a Small House was subsequently erected.
- 6.3 The Site was rezoned to “Recreation” (“REC”) on the draft Nam Sang Wai OZP No. S/YL-NSW/1 in 1994. Applications No. A/YL-NSW/20, 40 and 66 for temporary restaurant use for 3 years were approved with conditions by the Committee on a temporary basis with shorter approval periods (i.e. 1 year for applications No. A/YL-NSW/20 and 40 while 2 years for application No. A/YL-NSW/66) as Drainage Services Department (DSD) advised that the resumption limit of the Ngau Tam Mei Drainage Channel project would encroach onto a significant portion of the Site at that time. All the approval conditions of these planning permissions were complied with.
- 6.4 In 2000, the Site was rezoned to “OU(CDWRA)” on the draft Nam Sang Wai OZP No. S/YL-NSW/2. 6 applications for the same restaurant use under the “OU(CDWRA)” zone were approved for a period of 3 years each between 2002 to 2017. However, one application was revoked in 2011 due to failure of compliance with the approval conditions on the submission and implementation of FSIs proposal. The last application No. A/YL-NSW/256 was approved with conditions by the Committee on 23.6.2017 for 3 years until 22.7.2020. All the approval conditions including those in relation to the

submission of condition record of existing drainage facilities and submission/ provision of FSIs had been complied with.

**7. Similar Application**

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

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

8.1 The Site is:

- (a) currently occupied by 4 structures and used as a restaurant with valid planning permission;
- (b) located near Man Yuen Chuen to the south of Fairview Park Boulevard;
- (c) accessible by a local track branching off from Fairview Park Boulevard (both are private roads); and
- (d) within the WBA under the TPB PG-No. 12C.

8.2 The surrounding areas are a mixture of residential dwellings, school, retail, car parks and open storage yards. Some open storage yards and car parks are suspected unauthorized developments (UDs) subject to enforcement action by Planning Authority:

- (a) to the east across Yau Pok Road is a drainage channel and further east across the drainage channel are the residential dwellings in Man Yuen Chuen (about 70m away);
- (b) to the south are some residential dwellings and open storage yards;
- (c) to the north and northwest across a local track are a plant nursery, vehicle parks and the Wong Chan Sook Ying Memorial School and further west are houses in Fairview Park (about 60m away) within the “R(C)” zone; and
- (d) to the northeast are a car park, a retail shop approved under application No. A/YL-MP/270 and an insurance agency within the “R(C)” zone.

**9. Planning Intention**

The “OU(CDWRA)” zone is intended to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area. It is also intended to phase out existing sporadic open storage and port back-up uses on degraded wetlands. Any new building should

be located farthest away from Deep Bay. For application for uses developed individually and not forming part of a comprehensive development scheme, the requirement of the provision of wetland restoration proposal could be exempted.

## **10. Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application received are summarised 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 the Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval of the Government.
- (b) The private land of Lots No. 3719 S.G ss.9 RP and 3719 S.G ss.10 in D.D. 104 are covered by Short Term Waiver (STW) No. 2568 to permit structures for the purpose of “Restaurant”.
- (c) Should planning approval be given, the STW holders will need to apply to his office for modification of the STW conditions if there is any irregularity on site. Besides, given the proposed use is temporary in nature, only application for regularization or election of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as landlord 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 LandsD.

### **Traffic**

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

- (a) The Site is connected to the public road network via a section of local access which is not managed by Transport Department. The land status of the local access road should be clarified with the LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) As there is no information about the vehicular access at the private lot(s) to the concerned site, the applicant should arrange by themselves if necessary,

and should seek the relevant land owner(s) on the right of using the vehicular access.

- (c) Should the application be approved, the following condition should be incorporated:

No vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

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

- (a) HyD is not/shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Yau Pok Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

**Environment**

10.1.4 Comment of the Director of Environmental Protection (DEP):

- (a) The applicant should be reminded that all wastewater discharge from the Site shall comply with the requirements in the Water Pollution Control Ordinance.
- (b) No environmental complaint pertaining to the Site has been received over the past 3 years.

**Drainage**

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

- (a) He has no objection in principle to the application. He presumes the applicant would maintain the same drainage facilities as those implemented under the previous application No. A/YL-NSW/256. As such, he has no objection in-principle to the application.
- (b) Should the application be approved, he suggests imposing approval conditions requiring the applicant to maintain the drainage facilities implemented under application No. A/YL-NSW/256 and to submit records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board.

### **Landscape**

10.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L of PlanD):

- (a) He has no objection to the application from the landscape planning point of view.
- (b) The Site is the subject of 10 previous planning applications, of which the last application (No. A/YL-NSW/256) was approved in 2017 for the same use to which he has no objection from the landscape planning perspective. This application is a renewal application of the temporary eating place.
- (c) According to the site photos of 2018, the Site is situated in an area of rural fringe landscape character comprising of scattered tree groups and low-rise residential developments. Considering the nature and scale of the application, the proposed use is considered not entirely compatible to the surrounding environment. The Site is in operation as eating place. Comparing the aerial photos taken in 2017 and 2018, there is no significant change to the surrounding landscape setting since the application was last approved. Further significant adverse impact on landscape resources due to the proposed development is not anticipated.
- (d) Should the application be approved, he suggests imposing approval condition requiring the landscape planting within the Site be maintained at all times during the planning approval period.

### **Nature Conservation**

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

He has no strong view on the application for continuation of a 'restaurant' use at the Site which was approved previously, on temporary basis.

### **Fire Safety**

10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in-principle to the application subject to FSIs being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposed structures, 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. The applicant should also be advised on the following:



- (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
  - (ii) the location of the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) Furthermore, should the applicant wish to apply for exemption from the provision of FSI as prescribed by his department, the applicant is required to provide justifications to his department for consideration.
- (d) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

#### 10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) He could not offer any comment on the application under the BO, noting that the application may involve NTEH and possible unauthorized structures and his department has no record of the buildings/structures on site.
- (b) The suitability of the premises for restaurant would depend on a number of factors including structural stability, means of escape provision, fire resisting construction and existing of unauthorized building works. If the buildings concerned are NTEH, he is unable to offer comment as it is outside the ambit of his department.

### **Other Comments**

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

- (a) He has no comment on the application provided that no Food and Environmental Hygiene Department (FEHD)'s facilities will be affected and such works shall not cause any environment nuisance to the surrounding. Also, the activity inside the premises shall not cause any nuisance to the public. The applicant is reminded to handle the wastes generated from the proposed activity on his own / at his expenses.
- (b) (b)The restaurant is currently operated with valid licence issued by FEHD. The applicant is advised that proper license /permit issued by FEHD is required if there is any catering service /activities regulated by the DEFH under the Public Health and Municipal Services Ordinance (Cap. 132) and

other relevant legislation for the public and the operation of any business should not cause any obstruction.

### **District Officer's Comments**

#### 10.1.11 Comments of the District Officer (Yuen Long) (DO(YL)):

His office has no comment and has not received any comments from the local on the application.

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

- (a) Commissioner of Police;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Director of Leisure and Cultural Services;
- (d) Director of Electrical and Mechanical Services;
- (e) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD);
- (f) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (g) Project Manager (West), Civil Engineering and Development Department.

## **11. Public Comments Received During Statutory Publication Period**

On 19.5.2020, the application was published for public inspection. During the first three weeks of the statutory publication period which ended on 9.6.2020, one comment from an individual was received (**Appendix III**). The commenter raised concerns on wetland restoration at the Site and the continuous approval of the renewal applications.

## **12. Planning Considerations and Assessments**

12.1 The application is for renewal of a planning approval under application no. A/YL-NSW/256 for a temporary restaurant accommodated in an existing NTEH and three temporary structures for 3 more years. The Site is at the fringe of the "OU(CDWRA)" zone, which is intended to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area. It is also intended to phase out existing sporadic open storage and port back-up uses on degraded wetlands. While the temporary restaurant development at the Site is not entirely in line with the planning intention of the "OU(CDWRA)" zone, it could provide catering services to local residents, workers as well as visitors in the area, and is considered not incompatible with the surrounding land uses including residential developments at Man Yuen Chuen and Fairview Park as well as the commercial/residential developments along Fairview Park Boulevard (**Plan A-2**). There is also no known long-term development for the Site.

- 12.2 The renewal application is in line with the TPB PG-No. 34C in that the 3-year approval period sought is not unreasonable; there is no adverse planning implication arising from the renewal of the planning approval; and the applicant has complied with all approval conditions, including submission of condition record of existing drainage facilities and submission/provision of FSIs. There has not been material change in planning circumstances since the previous approval was granted.
- 12.3 According to the TPB PG-No. 12C, the Site falls within the WBA which is intended to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have off-site disturbance impact on the ecological value of fish ponds. As the Site is located at a significant distance from the fish ponds and wetlands in the Deep Bay area and separated by the major residential developments at Fairview Park, the envisaged off-site impacts on the wetlands and fish ponds would be insignificant. Since the applied use is only temporary in nature, the requirement of EcoIA submission can be exempted. DAFC has no strong view on the application for continuation of the restaurant use at the Site.
- 12.4 In view of the nature and small-scale of the restaurant, it is unlikely to cause adverse traffic, environmental, drainage and landscape impacts on the area. In this regard, there are no adverse comments from the concerned departments including DLO/YL, C for T, DEP, CE/MN of DSD, DAFC and D of FS. There is also no adverse comment from CTP/UD&L of PlanD from the landscaping planning point of view. The technical concerns from C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS on traffic, landscaping, drainage and fire safety requirements can be addressed by the stipulation of planning conditions recommended in paragraphs 13.2 (a) to (e) below.
- 12.5 The Committee has approved 9 previous applications for temporary restaurant use at the Site since 1997. The last application (No. A/YL-NSW/256) for temporary restaurant use at the Site submitted by the same applicant was approved by the Committee on 23.6.2017. Approval of the current renewal application is in line with the Committee's previous decisions.
- 12.6 During the statutory publication period, one public comment was received raising concerns on the wetland restoration at the Site. The planning assessment above is of relevance

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12 above and having taken into account the public comment mentioned in paragraph 11, 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 3 years, and be renewed from 23.7.2020 until 22.7.2023. The following conditions of approval and advisory

clauses are suggested for Members' reference:

Approval conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period;
- (b) the maintenance of the existing landscape planting on the Site at all times during the planning approval period;
- (c) the maintenance of the existing drainage facilities on the Site at all times during the planning approval period;
- (d) the submission of a condition record of the existing drainage facilities on site within **3 months** from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Board by **23.10.2020**;
- (e) the submission of a fire service installations proposal within **6 months** from the date of commencement of the renewed planning approval to the satisfaction of Director of Fire Services or of the Board by **23.1.2021**;
- (f) in relation to (e) above, the provision of fire service installations proposed within **9 months** from the date of commencement of the renewed planning approval to the satisfaction of Director of Fire Services or of the Board by **23.4.2021**
- (g) if any of the above planning condition (a), (b) or (c) 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;
- (h) if any of the above planning condition (d), (e) or (f) 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
- (i) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Board.

*[Except for the inclusion of condition (a) to accord with the latest comments of TD, all the other conditions are the same as those imposed under the previously approved application No. A/YL-NSW/256.]*

Advisory clauses

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

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

The continued occupation of the Site for restaurant use is not in line with the planning intention of the “Other Specified Uses” annotated “Comprehensive Development to include Wetland Restoration Area” zone which is intended to provide incentive for the restoration of degraded wetlands adjoining existing fish ponds through comprehensive residential and/or recreational development to include wetland restoration area, and to phase out existing sporadic open storage and port back-up uses on degraded wetlands. There are no strong planning grounds to justify 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 conditions and advisory clauses, 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 reasons for rejection should be given to the applicant.

**15. Attachments**

<b>Appendix I</b>	Application form received on 11.5.2020
<b>Appendix Ia</b>	FI dated 5.7.2020 and 7.7.2020
<b>Appendix II</b>	Previous applications covering the application site
<b>Appendix III</b>	Public comment received
<b>Appendix IV</b>	Recommended advisory clauses
<b>Drawings A-1 and A-2</b>	Layout Plan
<b>Plan A-1</b>	Location Plan with Previous Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to 4b</b>	Site Photos

**PLANNING DEPARTMENT  
JULY 2020**