

**APPLICATION FOR EXTENSION OF TIME
FOR COMMENCEMENT OF APPROVED DEVELOPMENT
UNDER SECTION 16A(2) OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/H5/395-2

- Applicant** : Super Gear Investment Limited represented by MasterPlan Limited
- Application Site** : 8-18 Wing Fung Street and Government land behind 12-18 Wing Fung Street, Wan Chai
- Site Area** : About 678.87m² (including Government land of 49.53m²)
- Lease** : I.L. 47s.F, s.G, s.H, & s.I and I.L. 8464 (92.7%)
- I.L. 47s.F, s.G, s.H, & s.I (Wing Fung Building at 8-10 Wing Fung Street)
- (a) User : Virtually unrestricted except non-offensive trade clause
- (b) Term : 999 years from 24.6.1853
- I.L. 8464 (Regal Court at 12-18 Wing Fung Street)
- (a) User : Restricted to non-industrial (excluding godown) purposes and not less than 50 residential flats must be constructed on the Lot
- (b) Term : 75 years (non-renewable) from 15.6.1981
- (c) Design, Disposition and Height clause
- (d) No right of vehicular access
- Government land (7.3%)
- Plans** : Draft Wan Chai OZP No. S/H5/28 currently in force
- Draft Wan Chai Outline Zoning Plan (OZP) No. S/H5/27 at the time of approval of the Section 16 application
- Zoning** : “Commercial (6)” (“C(6)”)
- maximum building height (BH) of 180mPD and 135mPD for sub-areas (a) and (b) respectively
 - minimum setback of 1m from the lot boundary fronting Wing Fung Street
 - a public open space of not less than 1,650m² at street level
 - planning permission for any in-situ conversion/redevelopment of existing residential building to commercial/office building shall be accompanied by a Traffic Impact Assessment (TIA) for sub-area (b)
- Application** : Further extension of time (EOT) for commencement of the approved commercial/office development for a period of 3 years until 6.1.2023

1. The Proposal

- 1.1 The applicant seeks the granting of further EOT for commencement of the approved commercial/office development at the application site (the Site) (**Plan AA-1a**). The proposed development was approved with conditions under Application No. A/H5/395 by the Metro Planning Committee (the Committee) of the Town Planning Board (the Board) on 6.1.2012. Application for EOT (No. A/H5/395-1) was also approved with conditions by the Director of Planning (D of Plan) under the delegated authority of the Board on 1.12.2015 to extend the validity of the planning permission for 4 more years up to 6.1.2020.
- 1.2 In the current application, the applicant applies for a further EOT for commencement of the approved development for 3 years up to 6.1.2023. In support of the application, an application form received on 2.12.2019 (**Appendix Ia**) and letter dated 29.11.2019 providing justifications (**Appendix Ib**) were submitted by the applicant.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the applicant's letter at **Appendix Ib**, which can be summarised as follows:

- (a) there has been no material change in planning circumstance since the original approval was granted;
- (b) there are no adverse planning implications arising from the EOT for commencement;
- (c) the applicant has been working diligently to commence the project. Effort has been put in discharging approval conditions, making building plan submission and undertaking the land exchange process;
- (d) the design parts of the relevant approval conditions have been complied with by the applicant. The approval conditions involving implementation could only be discharged upon the completion of the development;
- (e) the applicant had applied to the Lands Department (LandsD) for a land exchange in June 2012 after the Board granted approval to the application in January 2012, however the land exchange application has encountered a protracted process due to the fact that part of the Site involves government land (i.e. the lane behind Regal Court in **Plan AA-2**) and the special land grant for Regal Court as a project of the Hong Kong Housing Society to provide subsidized housing. The processing time for the land exchange application is beyond the control of the applicant. The applicant was advised verbally that Executive Council (ExCo) has discussed the land exchange application and raised no objection on the basis of the Section 16 approved scheme. The basic terms of the new lease for the subject development have been discussed at the District Lands Conference (DLC) since early 2014. The applicant has been carrying out detailed discussions with LandsD since the last EOT approval in December 2015. Since August 2019, the land exchange application has been transferred to a new Section namely Land

Supply Section of LandsD. It is expected that the land exchange application process would be expedited;

- (f) the applicant had submitted a total of four rounds of building plan submission for the commencement of the approved development. However, the building plan submissions were disapproved by the Buildings Department (BD) due to insufficient documentary proof of ownership or realistic prospect of control of the Government land forming the Site since the inclusion of government land within the site boundary of the building plan submission as detailed in (e) above¹. The applicant has recently made a fifth building plan submission to BD and seeking favourable consideration in the proof of ownership. The applicant may need more time to resolve the technical issues with BD; and
- (g) the further extension of 3 years is considered reasonable given the above-mentioned technical issues which are still to be resolved.

3. Town Planning Board Guidelines

TPB PG-No. 36B

- 3.1 The Board's Guidelines on "Class A and Class B Amendments to Approved Development Proposals" (TPB PG-No. 36B) are relevant to this application (**Appendix IIa**). The latest Schedule of Class A and Class B Amendments contained in the TPB PG-No. 36B was published in the Gazette and took effect on 2.3.2018. Under Category 18 of the Schedule, which is relevant to the subject EOT, it is stipulated that "the period of extension, or the aggregate of all the periods of extensions, not exceeding the original duration for commencement of development of the approved development" is a Class B amendment. According to the TPB PG-No. 36B, the Board has delegated its authority to D of Plan to consider applications for Class B amendments. However, an application for Class B amendments which are considered unacceptable by the concerned Government departments will have to be submitted to the Board for consideration. The TPB PG-No. 36B also stipulates that if the amendment does not fall within Class A nor Class B amendments, a fresh planning application under Section 16 of the Town Planning Ordinance (the Ordinance) will be required.

TPB PG-No. 35C

- 3.2 The Board's Guidelines on "Extension of Time for Commencement of Development" (TPB PG-No. 35C) are also relevant to this application (**Appendix IIb**). The TPB PG-No. 35C states that any EOT for commencement of development shall not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal. The assessment criteria contained in the TPB PG-No. 35C are extracted as follows:
 - (a) whether there has been any material change in planning circumstances since the original permission was granted (such as a change in the planning policy/land-use zoning for the area);

¹ According to BD, the site of a proposed building in the building plan submission can only include the land which the applicant has owned or which the applicant has a realistic prospect of controlling.

- (b) whether there are any adverse planning implications arising from the EOT;
- (c) whether the commencement of development is delayed due to some technical/practical problems which are beyond the control of the applicant, e.g. delays in land administration procedures, technical issues in respect of vehicular access and drainage works or difficulties in land assembly;
- (d) whether the applicant has demonstrated that reasonable action(s), e.g. submission of building plans for approval, have been taken for the implementation of the approved development;
- (e) whether the applicant has demonstrated that reasonable action(s), e.g. submission and implementation of proposals, have been taken to the satisfaction of relevant Government departments in complying with any approval condition;
- (f) whether the applicant has demonstrated that there is a good prospect to commence the proposed development within the extended time limit;
- (g) whether the extension period applied for is reasonable; and
- (h) any other relevant considerations.

4. **Background**

Zoning History

- 4.1 The area covering the Three Pacific Place (3PP) (i.e. 1 Queen's Road East) and the Site (being occupied by Wing Fung Building (i.e. 8-10 Wing Fung Street) and Regal Court (i.e. 12-18 Wing Fung Street)) was originally zoned "Residential (Group A)" ("R(A)") on the Wan Chai OZP. The area was rezoned from "R(A)" to "C(6)" zone with stipulation of BH restriction of 180mPD for sub-area (a) and 120mPD for sub-area (b); requirement for planning permission for any in-situ conversion/redevelopment of existing residential building to commercial/office building shall be accompanied by a TIA for sub-area (b); requirement for provision of public open space of not less than 1,650m² at street level and a minimum setback requirement of 1m from the lot boundary fronting Wing Fung Street under the amendment to the draft Wan Chai OZP No. S/H5/26 made under Section 6F(8) to the Ordinance on 29.7.2011 (**Plan AA-1b**) after hearing of representations and further representations on the OZP.
- 4.2 The development restrictions of the "C(6)" zone on the OZP largely remain unchanged for both the draft Wan Chai OZPs No. S/H5/27 and No. S/H5/28, except the BH restriction of the sub-area (b) (where the Site is located) has been amended from 120mPD to 135mPD on the draft Wan Chai OZP No. S/H5/28 gazetted on 4.5.2018.

Planning Intention

- 4.3 The "C" zoning is intended primarily for commercial developments, which may include uses such as office, shop, services, place of entertainment, eating place

and hotel, functioning as territorial business/financial centre(s) and regional or district commercial/shopping centre(s). These areas are usually major employment nodes. While the sub-area (a) of the “C(6)” zone is mainly to reflect the as-built condition of the 3PP completed in February 2007, the sub-area (b) of the “C(6)” zone is intended primarily to encourage the redevelopment of this area into commercial/office uses subject to planning permission from the Board to ensure the traffic impact of the proposed development will be duly addressed.

The Planning Permission

- 4.4 The Site is the subject of the planning application No. A/H5/395 which was approved with conditions by the Committee on 6.1.2012 when the Site was zoned sub-area (b) of the “C(6)” zone on the draft Wan Chai OZP No. S/H5/27. Since then, the zoning (“C(6)”) and the development restrictions remain unchanged except that the BH restriction of the sub-area (b) of the “C(6)” zone has been amended from 120mPD to 135mPD on the draft Wan Chai OZP No. S/H5/28 following the review of BH restrictions of the OZP.
- 4.5 Under the approved scheme (A/H5/395), the proposed 27-storey commercial/office building at the Site is the extension project of the 3PP. The extension building has a non-domestic gross floor area of 11,014.764m², site coverage not exceeding 65%, proposed BH of about 118mPD and 2 basement floors for accommodating 37 car parking spaces, 4 motorcycle parking spaces and 5 loading/unloading (L/UL) facilities (**Drawings AA-1 to AA-10**). The extension building will be served by the lifts of the existing 3PP development.
- 4.6 The approval letter of Application No. A/H5/395 dated 20.1.2012 and the letter dated 1.12.2015 to the subsequent EOT (No. A/H5/395-1) for 4 years up to 6.1.2020 for commencement of the approved development are attached in **Appendices IIIa** and **IIIb** respectively.

Fulfilment of Approval Conditions

- 4.7 The approved planning application No. A/H5/395 is subject to three approval conditions including (a) the design and provision of car parking and L/UL facilities for the proposed development; (b) the provision of water supplies for fire fighting and fire service installations; and (c) the submission and implementation of a landscaping proposal. The submission of design of car parking and L/UL facilities and the landscaping proposal have been considered and accepted by the Commissioner for Transport (C for T) and D of Plan on 10.10.2013 and 20.8.2013 respectively. In this connection, the approval conditions (a) and (c) have been partially complied with. The approval conditions (a), (b) and (c) could only be fully discharged when the above facilities and landscape works are implemented.

5. The Site and Its Surrounding Areas (Plans AA-1 to AA- 4)

5.1 The Site is

- (a) occupied by two residential buildings known as Wing Fung Building and Regal Court. The Government service lane concerned, which is located at

the rear of Regal Court, provides a link between Wing Fung Street West and Star Street (**Plan AA-2**); and

- (b) adjacent to 3PP, which is a 40-storey office building, and is within walking distance to the MTR Admiralty Station through subway connection.

5.2 The surrounding areas have the following characteristics:

- (a) mixed with commercial and residential developments in character; and
- (b) while residential developments are generally located to the south and east, office buildings are mainly along Queen's Road East to the north.

6. Comments from Relevant Government Departments

6.1 Relevant government departments have been consulted and their views on the application are summarised as follows:

6.1.1 Comments of the Chief Estate Surveyor/Land Supply, Lands Department (CES/LS, LandsD):

- (a) He has no comment on the application.
- (b) As regards the land exchange application in respect of the application site, it was approved in principle by the District Lands Conference on 13.2.2014 and is still under processing by LandsD pending Government's access issue to be resolved.

6.1.2 Comments of the Chief Building Surveyor/Hong Kong East & Heritage, Buildings Department (CBS/HKE&H, BD):

- (a) He has no comment on the application under the Buildings Ordinance.
- (b) No approval to general building plan has been given for the subject development.
- (c) The latest general building plan submitted by the applicant is currently under processing. He would give favourable consideration to the site parameters of the proposed development against DLC's no in-principle objection as an adequate proof of realistic prospect of control of the land forming the Site when processing the building plans.

6.1.3 Comments of C for T:

- (a) While it is noted that the proposed development remains unchanged, there is no information on the latest anticipated completion year of the subject development. The applicant should demonstrate that the previous TIA submitted for the approved development is still

applicable taking into account the latest anticipated completion year and the traffic generated from all nearby new developments before completion of the approved development.

- (b) In view of the strong demand for carparking spaces and L/UL facilities in the vicinity, the applicant should critically review and provide internal transport facilities towards the high side of the requirements stipulated in the Hong Kong Planning Standards and Guidelines (HKPSG).

6.2 The following government departments have no comment on the application:

- (a) District Officer (Wan Chai), Home Affairs Department;
- (b) Director of Leisure and Cultural Services;
- (c) Chief Engineer/Hong Kong & Islands, Drainage Services Department;
- (d) Director of Fire Services;
- (e) Chief Highway Engineer/Hong Kong, Highways Department;
- (f) Chief Engineer/Development(2), Water Supplies Department; and
- (g) Commissioner of Police.

7. Planning Consideration and Assessment

7.1 The applicant seeks planning permission under Section 16A for further EOT for commencement of the approved commercial/office development at the Site for a period of 3 years. As EOT has been granted once for a period of 4 years, any further granting of EOT would exceed the original duration for commencement of development of the approved development proposal in accordance with the TPB PG-Nos. 35C and 36B. According to TPB PG-No. 36B, as the concerned government departments have reservation on the EOT application, it is submitted to the Committee for consideration.

7.2 As mentioned in paragraphs 4.4 to 4.6 above, the planning permission under the application No. A/H5/395 was first granted with a 4-year validity period until 6.1.2016. Subsequently, the validity of the planning permission has been extended on 1.12.2015 for a period of 4 years, which is valid until 6.1.2020. Further granting of EOT for a period of 3 years would result in a total extension period (i.e. 7 years) exceeding the original duration for commencement of development of the approved development proposal. It does not comply with the TPB PG-No. 35C in that any EOT for commencement of development shall not result in an aggregate extension period longer than the original duration for commencement of the approved development proposal, which is to ensure that the approved development would be implemented within a reasonable period.

7.3 According to TPB PG No. 36B, for EOT, the period of extension, or the aggregate of all the periods of extensions, not exceeding the original duration for commencement of development of the approved development proposal is a Class B amendment. In addition, if the amendment sought does not fall within Class B amendments, a fresh planning application under Section 16 of the Ordinance will be required.

- 7.4 The extant EOT application is inconsistent with TPB PG-Nos. 35C and 36B. While the Committee needs not reject the current Section 16A application solely on the basis that it does not comply with the above requirements under the two guidelines, those TPB PGs remain strong reference materials which serve to explain the intention of the Board in processing and considering the application. It is necessary for the applicant to establish a strong case to warrant special consideration by the Board in granting further EOT for commencement of development, which is beyond the scope of Class B amendments.

Actions Taken by the Applicant

- 7.5 Since the application was approved with conditions in 2012, the applicant has partially discharged all the approval conditions though their full compliance will be made upon the completion of the proposed development. The applicant has also submitted application for land exchange for the proposed development and obtained no in-principle objection by DLC in 2014, but the land exchange has yet to be executed. The applicant has also submitted building plans for the proposed development several times but they cannot be approved due to the land exchange issues. Notwithstanding that actions have been taken by the applicant for implementation of the approved development, there are changes in planning circumstances in the past eight years which may result in adverse planning implications arising from the current EOT, as detailed in paragraph 7.6 below.

Changing Circumstances

- 7.6 In order to address the potential traffic impact, it is specified in the Notes of the "C(6)" zone that planning permission is required for any in-situ conversion/redevelopment of an existing building from a residential building to a commercial/office building. Such application shall be accompanied by a TIA. In this regard, a TIA was submitted in the original application to substantiate the approved scheme. Given the delay in the commencement of the proposed development, C for T has doubt on whether the approved TIA is still applicable and considers that a critical review on the provision of the internal transport facilities towards the high side of the HKPSG requirement is required due to the strong demand for carparking spaces and L/UL facilities in the district. These are the changes in planning circumstances since the approval of the original application in 2012.

Setting Precedent

- 7.7 As mentioned in paragraph 7.3 above, it is clearly specified in the TPB PG-No. 36B that amendment to an approved scheme that does not fall within Class B amendments will necessitate a fresh planning application. Approving a further EOT beyond the level of Class B amendment without strong justification may set a precedent not only for EOT applications but also amendments under other categories in the TPB PG-No.36B, thereby obviating the need for submission of a fresh application as reasonably expected by members of the public.
- 7.8 In view of the above, it is considered that the application does not warrant special consideration by the Committee, as there are changes in the planning circumstances, even though the applicant has taken actions to implement the proposed development after the planning permission was granted.

8. Planning Department's Views

8.1 Based on the assessment made in paragraph 7, PlanD does not support the application for EOT for commencement of the approved development for the following reasons:

- (a) the application is not in line with the Town Planning Board Guidelines No. 35C and 36B in that further extension of the validity of the planning permission would result in an aggregate extension period longer than the original duration for commencement of the approved development proposal. There is no strong justification to warrant a departure from the said Guidelines;
- (b) there are changes in planning circumstances which call for consideration of the proposed development afresh; and
- (c) approval of the application will set an undesirable precedent for similar applications. The cumulative effect of approving such similar applications will defeat the purpose of time-limited condition.

8.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **6.1.2023**, as proposed by the applicant, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced. The amended permission is subject to the following conditions which are attached to the original planning permission for the approved development by the Committee.

Approval Conditions

- (a) the submission of a revised traffic impact assessment to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (b) the design and provision of car parking and loading/unloading facilities for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board; and
- (c) the submission and implementation of a landscaping proposal (including the design for the public open space) 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**.

9. Decision Sought

9.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 9.2 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 date when the validity of the permission should expire.
- 9.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for the rejection should be given to the applicant.

10. Attachments

Appendix Ia	Application Form received on 2.12.2019
Appendix Ib	Applicant's Letter dated 29.11.2019
Appendix IIa	"Class A and Class B Amendments to Approved Development Proposals" (TPB PG-No. 36B)
Appendix IIb	"Extension of Time for Commencement of Development" (TPB PG-No. 35C)
Appendix IIIa	Approval Letter to A/H5/395 dated 20.1.2012
Appendix IIIb	Approval Letter to A/H5/395-1 dated 1.12.2015
Appendix IV	Advisory Clauses
Drawings A-1 to A-10	Approved Scheme
Plans AA-1a and AA-1b	Location Plans
Plan AA-2	Site Plan
Plans AA-3 and AA-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**