

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/712

- Applicant** : Mr. LAI Chow Lun represented by Metro Planning and Development Company Limited
- Site** : Lots 1532 S.A ss.1 to 1532 S.A ss.15 and 1532 S.A RP in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Area** : About 400 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Public Vehicle Park (Private Car) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a proposed temporary public vehicle park (private car) for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘public vehicle park’ is neither a Column 1 nor Column 2 use under “AGR” zone. Temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the OZP. The Site is currently vacant.
- 1.2 According to the applicant’s submission, 14 parking spaces (2.5m x 5m each) are provided for private vehicles on the Site (**Drawing A-2**). The car park will operate from 7 a.m. to 11 p.m. on a daily basis including Sundays and public holidays serving the villagers of Kan Tau Tsuen. The Site is accessible via a local track to Sha Tau Kok Road – Lung Yeuk Tau (**Plan A-2**). The site plan, layout plan and drainage plan submitted by the applicant are at **Drawings A-1 to A-3**.
- 1.3 The Site is the subject of a previous application (No. A/NE-LYT/698) submitted by the same applicant for the same use. The application was rejected by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 19.7.2019 mainly on the ground that the applicant failed to demonstrate that the temporary

public vehicle park would not cause adverse traffic impact on the surrounding areas. For the current application, the applicant has submitted a traffic review report to address the concerns of the Transport Department (TD).

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

- (a) Application Form with attachments received on 27.8.2019 (**Appendix I**)
- (b) Further Information (FI) received on 26.9.2019 (**Appendix Ia**)
- (c) FI received on 23.10.2019 (**Appendix Ib**)
- (d) FI received on 31.10.2019 (**Appendix Ic**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application form at **Appendix I**. They can be summarised as follows:

- (a) the proposed development is temporary in nature, and therefore would not violate the long term planning intention of the “AGR” zone. The Site could be converted to agricultural use whenever there is a demand;
- (b) the scale, nature, form and layout of the proposed development is compatible with the surrounding environment;
- (c) the proposed development has been paved for a long time so that no site formation works will be carried out;
- (d) the proposed development is intended to serve the villagers of Kan Tau Tsuen so that parking spaces for private cars can be provided for their convenience;
- (e) the operation hours of the proposed development is 7 a.m. to 11 p.m. on a daily basis including Sundays and public holidays. No operation will be held outside the operation hours;
- (f) similar public vehicle parks have been approved by the Board on a temporary basis. Those approved public vehicle parks are found to the west of the Site within the same “AGR” zone (**Plan A-1**). As such, sympathetic consideration should be given to the current application;
- (g) the applicant submitted a traffic review report (**Appendices Ia and Ib**) to demonstrate that the proposed development would generate minimal amount of traffic and would not induce significant impact on the nearby road network. To ensure pedestrian safety, a traffic sign will be erected near the entrance of the car park;
- (h) the land within Kan Tau Tsuen is mainly zoned for “Village Type Development” (‘V’) for Small House developments. The land adjoining the ‘V’ zone is therefore suitable for the use of public vehicle park to meet the parking demand of the villagers; and
- (i) some temporary uses such as public vehicle park and training centre within the same “AGR” zone (**Plan A-1**) where the Sites fall within are approved by the Board.

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

The applicant is one of the “current land owners”. In respect of the other “current land owners, the applicant 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 site notice and sending a notice to the Ta Kwu Ling Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner / Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advised that the Site is the subject of an enforcement case against an unauthorized development involving use of place for parking of vehicles. An Enforcement Notice was issued on 24.6.2019 to the notice recipients requiring the discontinuance of the unauthorized development by 24.9.2019. According to the latest site inspection, the Site is vacant. The case will be kept monitoring according to established procedures. According to the record, the Site has been formed prior to the incorporation of land filling restriction clause in “AGR” zone in 2005.

5. Previous Application

- 5.1 The application is the subject of a previous application (No. A/NE-LYT/698) for the same use submitted by the same applicant as the current application. For the previous application, the application was rejected by the Committee on 19.7.2019 on the considerations that the development was not in line with the planning intention of the “AGR” zone; and the applicant failed to demonstrate in the submission that the development would not cause adverse traffic impact on the surrounding areas. Compared with the previous application, the proposal including the site area and number of parking spaces for private vehicles remains unchanged, and the applicant has submitted further information including a traffic review report to address the TD’s concerns.
- 5.2 Details of the previous application are summarized at **Appendix II** and its location shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are seven similar applications involving three sites within the same “AGR” zone on the Lung Yeuk Tau and Kwan Tei South area in the vicinity of the Site for temporary public vehicle park and related use(s) (**Plan A-1**).
- 6.2 Of them, four similar applications (No. A/NE-LYT/414, 495, 556 and 645) involving the same site for temporary public vehicle park for private cars and light goods vehicles or renewal of the same applied use were approved with conditions by the Committee between March 2010 and July 2018 mainly on the considerations that the developments were not incompatible with the surrounding land uses; the developments would unlikely cause any significant adverse impacts on the traffic, environment, drainage and landscape of the area; there were previous planning approvals granted on the site for the same use and the applicants had complied with all approval conditions; and there was no adverse comment from concerned departments.

- 6.3 The two other similar applications (No. A/NE-LYT/586 and 691) involving the same site for temporary public vehicle park (private cars, light goods vehicles and medium goods vehicles) were approved with conditions by the Committee between May 2016 and May 2019 mainly on the similar grounds as the four other approved similar applications mentioned in paragraph 6.2 above.
- 6.4 The remaining similar application (No. A/NE-LYT/699) located to the immediate west of the Site was rejected by the Committee on 19.7.2019 mainly on the grounds that the development was not in line with the planning intention of the “AGR”; and the applicant failed to demonstrate in the submission that the development would not cause adverse traffic impact on the surrounding areas.
- 6.5 Details of these similar applications are at **Appendix III** and their locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) mainly flat, paved and vacant; and
- (b) accessible from Sha Tau Kok Road – Lung Yeuk Tau via a local track (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) situated at the fringe of a village development with mostly village houses to the east, and fallow agricultural land to its north and south intermixed with some vacant land (**Plan A-3**);
- (b) to the east and southeast are mostly village houses which is the village proper of Kan Tau Tsuen (**Plan A-2**); and
- (c) to the immediate west is the site of a previously rejected planning application (No. A/NE-LYT/699) for the use of private vehicle car park, where is currently vacant (**Plan A-2**).

8. **Planning Intention**

The planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area is to primarily 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.

9. **Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the lots under application are Old Schedule Lots held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the vehicle park use;
- (b) the existing structures on the Site (**Plan A-4**) were erected without approval from his office. The aforesaid structures are not acceptable under the lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures; and
- (c) if the application is approved, the owner(s) of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by government in its landlord's capacity and there is no guarantee that it will be approved. If the STW application is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

Traffic

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

- (a) having reviewed the further information including a traffic review report and pedestrian safety measure submitted by the applicant (**Appendices Ia and Ib**) in demonstrating the satisfactory manoeuvring of vehicles within the Site and the provision of a traffic sign near the entrance of the car park to ensure pedestrian safety. It can be concluded that the proposed use will not induce additional adverse traffic impact on the surrounding road network and affect pedestrian safety. In this regards, he has no in-principle objection to the application from the traffic engineering point of view; and
- (b) the vehicular access between the Site and Sha Tau Kok Road – Ma Mei Ha is not managed by Transport Department. The applicant should seek comment from the responsible party.

9.1.3 Comments of the Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

he has no comment on the application from highways viewpoint. The road leading to the access is not maintained by Highways Department.

Agriculture

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

Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The hard paved Site can still be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Environment

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

- (a) it is noted that the Site will not involve parking of heavy goods vehicle nor container truck. The applicant is advised to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP; and
- (b) there was no environmental complaint against the Site during the past three years.

Drainage

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

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Water Supply

9.1.7 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD’s standards.

Landscape Aspect

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is located in areas of rural landscape character surrounded by village houses and open storage. The use under the application is considered not incompatible with the surrounding environment. It is observed that the Site have been hard paved and already in operation with no significant existing vegetation. Significant adverse impact on existing landscape resources arising from the development is not anticipated; and
- (c) since there is no major public frontage along the site boundary, should the Board approve the application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations being provided to the satisfaction of his department; and
- (b) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (b) any temporary shelters or converted containers for storage/washroom/first-aid room/ site office, if any, are considered as temporary buildings which are subject to control under Building (Planning) Regulations (B(P)R) Pt. VII;
- (c) the Site shall be provided with means of obtaining access thereto from a street under the B(P)R 5 and emergency vehicular access shall be provided under the B(P)R 41D;
- (d) if the Site is not abutting on a specified street having a width not less than

4.5m wide, the development intensity shall be determined under B(P)R19(3) at the building plan submission stage; and

- (e) formal submission under the BO is required for any proposed new works, including any temporary structures, if any. Detailed comments under BO will be provided at building plan submission stage.

District Officer's Comments

9.1.11 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The Resident Representative (RR) of Kan Tau Tsuen supports the application as the proposed development can provide more parking spaces. The Chairman of Fanling District Rural Committee, the Indigenous Inhabitant Representative (IIR) and the North District Council member of the subject constituency have no comment on the application.

9.2 The following Government departments have no comment on / no objection to the application:

- (a) Director of Fire Services (D of FS); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 3.9.2019 and 4.10.2019, the application and the further information were published for public inspection respectively. During the statutory public inspection periods, nine public comments were received (**Appendix IV**). One public comment from the North District Council Member supports the application as it can cater for the need of residents. Two comments were from the Chairman of Sheung Shui District Rural Committee indicating no comment on the application. The remaining six public comments were from Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited, The Hong Kong Bird Watching Society and an individual objecting to the application mainly on the grounds that the current application is the subject of a previously rejected application; the development is not in line with the planning intention of "AGR" zone; the approval of application would encourage "destroy first, build later"; approval of application would set an undesirable precedent to future similar applications within the "AGR" zone; and the application is to legitimize unauthorized development.

11. Planning Considerations and Assessments

11.1 The application is for a proposed temporary public vehicle park (private car) for a period of 3 years at the Site zoned "AGR" on the OZP. 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 ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, given its temporary nature and small in scale, it is considered that the 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.

- 11.2 The Site is located to the west of Kan Tau Tsuen near the existing village proper and surrounded mostly by village houses, fallow farmland and vacant land (**Plan A-2**). The temporary public vehicle park is considered not entirely incompatible with the surrounding areas where village houses, temporary structures, active/fallow agricultural land can be found (**Plan A-3**). Since significant adverse impact on existing landscape resources arising from the proposed development is not anticipated, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective.
- 11.3 The Site is the subject of a previous application (No. A/NE-LYT/698) for the same temporary use submitted by the same applicant, which was rejected by the Committee on 19.7.2019 mainly on the ground that the applicant failed to demonstrate that the temporary public vehicle would not cause adverse traffic impact on the surrounding areas. For the current application, the applicant has submitted information to demonstrate satisfactory manoeuvring of vehicles within the Site and proposed the erection of a traffic sign near the entrance of vehicle park to ensure pedestrian safety. C for T considered that the proposed use will not induce additional adverse traffic impact on the surrounding road network and affect pedestrian safety. In this regard, he has no in-principle objection to the application from the traffic engineering point of view.
- 11.4 DEP has no objection to the application as the Site will not involve parking of heavy goods vehicle nor container truck, but advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental impacts to the nearby residents should the application be approved by the Board. Other relevant Government departments consulted, including CE/MN, DSD, CE/C of WSD and D of FS, have no adverse comment on or no objection to the application.
- 11.5 There are seven similar applications involving three sites within the same “AGR” zone to the southwest of the Site. Except for application No. A/NE-LYT/699, all other applications were approved by the Committee between March 2010 and May 2019 (**Plan A-1**) mainly on the considerations that the developments would unlikely cause any significant adverse impacts on the traffic, environment, drainage and landscape of the area; there were previous planning approvals granted on the site for the same use and the applicants had complied with all approval conditions; and there was no adverse comment from concerned departments. For application No. A/NE-LYT/699, it was rejected by the Committee in July 2019 mainly on grounds of not in line with planning intention of “AGR” zone and adverse traffic impact caused on the surrounding areas. The circumstance of the current application is similar to those approved applications.
- 11.6 Regarding the public comments objecting to the application as detailed in paragraph 10 above, Government departments’ comments and planning assessments 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 the temporary use under application 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 15.11.2022. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 11 p.m. and 7 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle without valid licence issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations is allowed to be parked/stored on the Site at any time during the planning approval period;
- (c) only private car as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) a notice should be posted at a prominent location of the Site to indicate that only private car as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (e) no car washing, vehicle repair, dismantling, paint spraying or other workshop activities is allowed on the Site at any time during the planning approval period;
- (f) the maintenance of peripheral fencing on Site at all times during the planning approval period;
- (g) 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 15.5.2020;
- (h) in relation to (g) above, the provision of drainage facilities 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 15.8.2020;
- (i) the submission of proposals for water supplies for firefighting and fire service installations 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 15.5.2020;
- (j) in relation to (i) above, the provision of water supplies for firefighting and fire service installations within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.8.2020;
- (k) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) 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; and
- (l) if any of the above planning conditions (g), (h), (i) or (j) 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.

Advisory Clauses

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

- 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 to primarily 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. There is no strong planning justification in the submission to justify 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 applicants.

14. Attachments

Appendix I	Application Form with attachments received on 27.8.2019
Appendix Ia	Further Information received on 26.9.2019
Appendix Ib	Further Information received on 23.10.2019
Appendix Ic	Further Information received on 31.10.2019
Appendix II	Previous Application
Appendix III	Similar s.16 Applications within the "AGR" zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos