

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HT/14

- Applicant** : Mr. HUI Kwok Wah Victor
- Site** : Lots 76 S.E ss.1, 76 S.E ss.2, 76 S.E ss.9 to 76 S.E ss.14 in D.D. 76, San Uk Tsai, Fanling, New Territories
- Site Area** : About 169.9m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hok Tau Outline Zoning Plan (OZP) No. S/NE-HT/5
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Private Car Park for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary private car park for a period of three years on the application site (the Site) (**Plan A-1**). The Site is zoned “AGR” on the approved Hok Tau OZP No. S/NE-HT/5. According to the Notes of the OZP, 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 used for the applied use without valid planning permission.
- 1.2 According to the applicant’s submission, six parking spaces for private car are provided within the Site for serving the residents of adjacent village houses (i.e. Nos. 191, 193 and 195), which fall within an area zoned “Village Type Development” (**Drawing A-1** and **Plan A-2**). Parking shade covering the Site has been erected, with a total floor area of 169.9 m² (**Drawing A-2**). The car park operates 24 hours daily. The Site is accessible via a local track to Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**). The applicant submitted site plans in supporting the application (**Drawings A-1** and **A-2**).
- 1.3 In support of the application, the applicant has submitted the Application Form with attachments which was received on 30.7.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the application form at **Appendix I**. They can be summarised as follows:

- (a) the village houses are not well-served by public transport. The residents of the village houses (i.e. Nos. 191, 193 and 195) located in the vicinity of the Site (**Drawing A-2**) have genuine need to use private car daily, and there is no legal or public space in the village for proper car parking;
- (b) the Site is solely for private use of land owners who are the residents of these village houses. The Site is not for commercial use;
- (c) improper parking on pavement not only affects the safety of road users, but also blocks the free movement of large vehicles, thus the planning application is submitted seeking for proper parking space at the Site;
- (d) the Site zoned “AGR” is not suitable for agricultural use as it is subject to pollution caused by roadside vehicles; and
- (e) should the Site be fenced off for agricultural use, the width of road will be reduced by about 1.6m. In view of public interest, the lot owners are willing to allow other large vehicles using part of the relevant lots as access road. The parking shade erected at the Site can serve as a shelter for the villagers waiting for minibus nearby.

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 obtaining consents of two other “current land owners”. 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 currently part of the subject of an active enforcement case against an unauthorized development involving use of place for parking of vehicles and storage use (including deposit of containers). An Enforcement Notice (EN) was issued on 21.3.2019 to the notice recipients requiring the discontinuance of the unauthorized development by 21.6.2019. According to the latest site inspection, the unauthorized development on the Site still continued. Prosecution action may be considered.

5. Previous Application

There is no previous application for the Site.

6. **Similar Application**

There is no similar application for private car park and related use(s) within or partly within the “AGR” zone in the vicinity of the Site in Hok Tau area.

7. **The Site and Its Surrounding Areas** (Plans A-1 to A-3 and Plans A-4a to A-4b)

7.1 The Site is:

- (a) shaded, paved and being used as a private car park without planning permission;
- (b) separated by an area for open storage use which is not under the current application (**Plan A-2**); and
- (c) accessible from Sha Tau Kok Road –Ma Mei Ha via a local track (**Plan A-1**).

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 west and south intermixed with some vacant land;
- (b) to the east and northeast are mostly village houses which is the village proper of San Uk Tsai (**Plan A-2**); and
- (c) to the immediate north and south is some fallow agricultural land with tree groups.

8. **Planning Intention**

The planning intention of the “AGR” zone in Hok Tau 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 for acquiring access. The Government should accept no responsibility in such arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the applied use;

- (b) the actual occupation area does not tally with the application;
- (c) the existing structures on the Site were erected without approval from his office (**Plans A-4a and A-4b**). The aforesaid structures are not acceptable under the lease concerned. This office reserves the right to take enforcement actions against the aforesaid structures; and
- (d) if the application is approved, the individual owner of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The applications for STW will be considered by government in its landlord's capacity and there is no guarantee that they will be approved. If the STW applications are approved, their 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) the applicant should advise the traffic generation and attraction from and to the Site and the traffic impact to the nearby road links and junctions;
- (b) the applicant should provide the layout of the private vehicle park;
- (c) the applicant should demonstrate the satisfactory manoeuvring of vehicles entering and exiting from the Site, manoeuvring within the Site, ingress/egress arrangement, preferably using the swept path analysis;
- (d) the applicant should advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site;
- (e) the applicant should advise the provision and management of pedestrian facilities to ensure pedestrian safety;
- (f) 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. The applicant should also demonstrate the satisfactory manoeuvring along this vehicular access, preferably using the swept path analysis; and
- (g) unless the applicant could satisfactorily address his concerns, he cannot render support to the application from the traffic engineering point of view.

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 access road adjacent to the Site is not maintained by Highways Department.

Agriculture

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

the Site is currently a cemented car park covered by shelter. 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.

Fire Safety

9.1.5 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

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

- (a) if the existing structures are erected on the leased land without approval of the Buildings Department (BD) (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the captioned application;
- (b) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority (BA) 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 BO;
- (c) the shades for car park are considered as temporary buildings which are subject to control under Building (Planning) Regulation (B(P)R) Pt. VII;
- (d) 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;
- (e) 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)R 19(3) at the building plan submission stage; and
- (f) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be

provided at building plan submission stage.

Environment

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

- (a) no objection to the application from the environmental viewpoint;
- (b) 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
- (c) there was no environmental complaint against the Site during the past three years.

Drainage

9.1.8 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

9.1.9 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

9.1.10 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 hard paved with no existing vegetation situated in an area of rural landscape character surrounded by village houses and cluster of trees. The applied use is considered not entirely incompatible with the surrounding environment. Significant adverse impact arising from the applied use under the application on existing landscape resources is not anticipated; and
- (c) since there is limited space within the Site for meaningful landscape treatment, should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

District Officer's Comments

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

she has consulted the locals regarding the application. The Chairman, First Vice-Chairman and Vice-Chairman of Fanling District Rural Committee, the Resident Representative (RR) of Kan Tau Tsuen, Tan Chuk Hang and San Uk Tsai, and the Indigenous Inhabitant Representative (IIR) of Sze Tau Leng object to the application mainly on the considerations that there is suspected unauthorized building works at the Site; the applied use will aggregate the traffic conditions and cause difficulty for reversing of vehicle; and the change of land use will cause adverse drainage impact on the surrounding areas. The IIR of Leng Pei Tsuen supports the application. The IIRs of Kan Tau Tsuen and San Uk Tsai 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 Development Office), Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 6.8.2019, the application was published for public inspection. During the statutory public inspection period, seven public comments were received (**Appendix II**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden, Designing Hong Kong, the First Vice-Chairman and the Vice-Chairman of Fanling District Rural Committee, and an individual object to the application mainly on the grounds that the proposed 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 will set an undesirable precedent to future similar applications within the "AGR" zone; the development will cause adverse traffic impact and there is room for parking if the houses are set back or carports are erected on the ground floor of their houses.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary private vehicle park for a period of 3 years on the Site, which falls entirely within an area zoned “AGR” on the OZP. The vehicle park for six private car parking spaces 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. The applicant has not provided any strong justifications in the submission to justify a departure from the planning intention of the “AGR” zone, even on a temporary basis.
- 11.2 The Site is shaded, paved and located at the west of San Uk Tsai near the existing village proper and surrounded mostly by village houses, fallow farmland and vacant land (**Plan A-2**). The temporary private vehicle park is considered not entirely incompatible with the surrounding areas where village houses, tree groups and fallow agricultural land can be found (**Plan A-3**). Since significant adverse impact on existing landscape resources arising from the development is not anticipated, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective.
- 11.3 C for T does not support the application from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary private vehicle park will not cause adverse traffic impact on the surrounding areas in that the applicant has to satisfactorily address the aspects of traffic generation/attraction from and to the Site, pedestrian safety management and vehicle manoeuvring, etc. 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 Government departments consulted, including CE/MN, DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 The Site is currently part of the subject of an active enforcement action against unauthorized use of place for parking of vehicles and storage use (including deposit of container) and the concerned notice recipients have been requested to discontinue the unauthorized development by 21.6.2019. According to the latest site inspection, the unauthorized development on the Site still continued. Prosecution action may be considered.
- 11.5 There are no similar applications within the same “AGR” zone under the OZP. The approval of the application would encourage similar applications within the “AGR” zone resulting in more vegetated areas being turned into hard paved areas. It would set an undesirable precedent for similar applications within the “AGR” zone and encourage similar site/vegetation clearance prior to obtaining planning permission. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 11.6 Regarding the local objections conveyed by DO(N), HAD and adverse public comments objecting to the application as detailed in paragraphs 9 and 10 above respectively, 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 does not support the temporary use under the application for the following reasons:

- (a) the 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 such planning intention, even on a temporary basis;
- (b) the applicant fails to demonstrate in the submission that the development would not cause adverse traffic impact on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

12.2 Alternative, 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 20.9.2022. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no vehicle without valid licence issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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 20.3.2020;
- (f) in relation to (e) 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 20.6.2020;
- (g) 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 20.3.2020;

- (h) in relation to (g) 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 20.6.2020;
- (i) the submission of traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 20.3.2020;
- (j) in relation to (i) above, the implementation of traffic mitigation measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 20.6.2020;
- (k) if any of the above planning conditions (a), (b), (c) or (d) 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;
- (l) if any of the above planning conditions (e), (f), (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; and
- (m) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 reject the application, Members are invited what reason(s) for rejection should be given to the applicants.
- 13.3 Alternatively, should the Committee decide to approve the applications, 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. Attachments

Appendix I	Application Form with attachments received on 30.7.2019
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Site Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**