

**REVIEW OF APPLICATION NO. A/NE-FTA/184**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Public Vehicle Park  
for a Period of 3 Years in “Agriculture” Zone  
Lots 558 RP (Part), 559 RP (Part), 561 RP (Part), 562 S.F (Part), 563 (Part) and  
564 S.B (Part) in D.D. 89, Sha Ling, Sheung Shui, New Territories**

**1. Background**

- 1.1 On 4.4.2018, the applicant, Oriental One Limited, sought planning permission for proposed temporary public vehicle park for a period of 3 years at the application site (the Site) under Section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/16 (**Plan R-1**).
- 1.2 On 1.6.2018, the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- “(a) the proposed temporary use under application is not in line with the planning intention of the “AGR” zone for the Fu Tei Au and Sha Ling area, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
  - (b) the applicant fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
  - (c) the approval of the application will set an undesirable precedent for similar applications within the same “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.”
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-FTA/184 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 1.6.2018 (Annex B)
  - (c) Secretary of Town Planning Board’s letter dated 15.6.2018 (Annex C)

## 2. **Application for Review**

- 2.1 On 20.6.2018, the applicant applied, under Section 17(1) of the Ordinance, for a review of the Committee's decision to reject the application (**Annex D**). In support of the review, the applicant submitted a written representation on 21.8.2018 (**Annex E**).
- 2.2 At the request of the applicant (**Annex F**), the Board agreed on 9.11.2018 to defer making a decision on the review application for one month pending the preparation of further information (FI) to address the departmental comments. The applicant submitted FI (**Annex G**) on 12.11.2018 and the review application is rescheduled for consideration by the Committee on 25.1.2019.

## 3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the applicant's written representation and FI at **Annexes E and G**. They are summarised as follows:

### Different Nature As Compared With Previous Applications

- (a) Two previous applications (No. A/NE-FTA/159 and 174) involving the Site were submitted by different applicants from the current application. The applicants of the previous applications adopted the "destroy first, develop later" approach and cleared the vegetation on the Site. The unauthorised site formation took place under the previous applications. In contrast, the applicant of the current application has been keeping the Site vacant when seeking for planning permission. No site formation work was conducted under the current application. As such, the applicant shall not be held responsible for the unauthorised site formation of the Site.
- (b) The nature of the current application is different from the previous applications. Applications No. A/NE-FTA/159 and 174 for temporary parking of container tractors and trailers for sale with ancillary office and temporary vehicle repair workshop for medium goods vehicle, heavy goods vehicle, coach and container tractor respectively were rejected by the Committee in October 2016 and July 2017 respectively mainly on the considerations that the applications did not comply with the Town Planning Board Guidelines for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' (TPB PG-No. 13E). Since the current application for parking of vehicles does not involve open storage and port back-up uses and the nature of the applied use is different from the two previously rejected applications, using these two previously rejected applications in support of the consideration to reject the current application is considered not appropriate.

### Local Needs of Parking Spaces

- (c) The Site is located in a rural area in New Territories and there is no proper vehicle park in the vicinity of the Site. There is not much financial incentive attracting people to operate proper vehicle park in the area and not all residents in New Territories own private land for parking uses. The applicant has tried other ways in seeking suitable land for parking purpose by enquiring relevant Government departments including Home Affairs Department, Lands Department and Transport Department. Based on the replies from these departments, it is apparent that the Government has no proposal for such development in the Sha Ling area.

- (d) Should the villagers' parking needs can be met by suitable car park provision in the vicinity, such planning application for vehicle park is not required.

#### Planning Enforcement/Reinstatement of Land

- (e) The Site is involved in an active enforcement case for parking of vehicles and storage use. The Site is currently vacant and no development will be taken place prior to obtaining planning permission. In order to comply with the Enforcement/Reinstatement Notice, the Site should be reinstated to vegetated land before making the planning application and carry out the site formation works for parking of vehicles upon obtaining the planning permission. Such arrangement for making planning application is meaningless and a waste of resources. The applicant should not be held responsible for the unauthorized site formation works. Sympathetic consideration should be given to the current application.

#### Environmental and Landscape Aspects

- (f) Regarding the adverse comments mainly from the Director of Agriculture, Fisheries and Conservation, the Chief Town Planner/Urban Design & Landscape, Planning Department and the Director of Environmental Protection (DEP), the applicant submitted a copy of tenancy agreement signed on 10.2.2018 (**Annex G**) to prove that the tree felling/ vegetation clearance for site formation at the Site was not undertaken by him. The applicant states that the existing vegetation within the Site is mainly grass with no amenity value and there is no agricultural activity on the Site. Given the Site was already formed under the previous applications, the potential for agricultural rehabilitation is low. Local residents have no intention to perform agricultural activities too. The applicant also undertakes to increase the planting of 46 trees to 89 trees along the site boundary should the application be approved. The green buffer will alleviate the visual impact of the proposed development and the trees to be planted will compensate the loss by vegetation clearance in the past. The applicant considers that the Government departments should be more lenient to the application in order to make best use of the land resources.
- (g) In response to DEP's comment on the domestic structures in the vicinity of the Site within 100 m of the site boundary, the applicant claims that vehicle park is a necessary ancillary use for nearby residents. As such, the proposed development should not be incompatible with the surrounding land uses and would not generate nuisances. The proposed vehicle park can improve the environment by orderly parking the vehicles within the Site instead of parking randomly around the area. The applicant also undertakes to follow the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses".

#### Public Comments

- (h) Despite the huge number of local objections, it is noted that majority of the public comments submitted are similar and based on three to four templates with similar wording. Regarding the public comment from the descendants of "Tso Tong" (祖堂) who objected to the application mainly on the grounds that the applicant illegally occupies the Site including Lots 559 RP and 563 in D.D. 89 owned by the "Tso Tong" without seeking consents from them and local villagers, the applicant claims that he rents the relevant lots from the manager of the "Tso Tong". They can simply terminate the contract if they object to the application. Therefore, the self-claimed

descendants of “Tso Tong” are in fact individuals who do not represent the “Tso Tong”.

#### 4. **The Section 16 Application**

*The Sites and its Surrounding Area* (**Plans R-1, R-2**, aerial photo on **Plan R-3b** and site photos on **Plans R-4a and R-4b**)

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the Committee were described in paragraphs 7.1 and 7.2 of **Annex A**. There has not been any major change in planning circumstances of the area since then (**Plan R-2**).
- 4.2 The Site is:
- (a) accessible via a local track leading to Man Kam To Road (**Plan R-2**);
  - (b) flat, formed, partly fenced off and covered with wild grass and trees along its boundary (**Plans R-4a and R-4b**); and
  - (c) used for parking of vehicles (a total of about 16 vehicles including 12 medium/heavy goods vehicles and 4 container vehicles) as revealed by site inspection on 17.12.2018 without a valid planning permission.
- 4.3 The surrounding area has the following characteristics:
- (a) to its immediate southeast and southwest are formed land adjoining the Site used for parking of vehicles without a valid planning permission (**Plan R-2**). The area to the southeast of the Site was hard paved with a total of about 4 medium/heavy goods vehicles and 2 container vehicles parked on the site as revealed by site inspection on 17.12.2018. The area to the southwest of the Site was formed and a total of about 7 vehicles including 3 medium/heavy goods vehicles, 3 container vehicles and one private car were parked on the site as revealed by site inspection on 17.12.2018;
  - (b) to its immediate north and northwest is a public toilet and Man Kam To Road across which are some water pipelines and some temporary domestic structures (**Plan R-2**);
  - (c) to its northeast and east are some temporary domestic structures, parking of vehicles and a warehouse respectively, and to its southeast are mixed uses of open storage, vacant land and temporary domestic structures; and
  - (d) to the further southwest and west are vacant land and some temporary domestic structures.

#### *Planning Intention*

- 4.4 The planning intention of the “AGR” zone in Fu Tei Au and Sha Ling 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.

#### Background

- 4.5 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site forms part of an active enforcement case (**Plan R-2**) for parking of vehicles and storage use (including deposit of containers). Enforcement Notice (EN) (No. E/NE-FTA/151) was issued on 15.6.2017 requiring the concerned owners to discontinue the unauthorised development (UD). Compliance Notice was issued on 13.12.2017 as the UD was discontinued. On 15.12.2017, a Reinstatement Notice was issued requiring the concerned owners to remove all fill materials and grass the Site by 15.3.2018. As part of the Site has not been reinstated upon expiry of the Reinstatement Notice, prosecution action has been instigated.
- 4.6 As the UD alleging use for place for parking of vehicles and storage use (including deposit of containers) was subsequently re-activated at part of the Site, another EN (No. E/NE-FTA/171) was issued to the lot owners on 3.1.2019 requiring discontinuance of the UD by 3.3.2019 (**Plan R-2**).

#### Previous Applications

- 4.7 The Site is the subject of two previous applications (**Plan R-1**) (No. A/NE-FTA/159 and 174) for temporary parking of container tractors and trailers for sale with ancillary office and temporary vehicle repair workshop for medium goods vehicle, heavy goods vehicle, coach and container tractor submitted by different applicants from the current application. Both applications were rejected by the Committee in October 2016 and July 2017 respectively mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone; the applications did not comply with the TPB PG-No. 13E in that the proposed developments were not compatible with the surrounding land uses; there was no previous planning approval; there were adverse departmental comments; and the applicants failed to demonstrate that the proposed developments would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and the approval of the applications would set an undesirable precedent for similar applications within the same “AGR” zone. Details of the applications are summarised at Appendix II of **Annex A** and their locations are shown on **Plan R-1**.

#### Similar Application

- 4.8 There is no similar application for temporary public vehicle park within the “AGR” zones in the vicinity of the Site in the Fu Tei Au and Sha Ling area.

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

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the relevant Government departments have been further consulted and their views on the review application are summarised as follows:

## **Environment**

### 5.2.1 Comments of the Director of Environmental Protection (DEP):

- (a) having examined the review application and the FI (**Annexes E and G**), he advises that tree felling for site formation at the Site prior to obtaining planning permission was not the reason of EPD's previous objection to the application;
- (b) considering that there is no change in environmental circumstances, and the development proposal remains unchanged, he maintains his view of not supporting the application since there are domestic structures in the vicinity of the Site within 100 m of the site boundary, the closest ones are located to the immediate northeast at a distance of about 7 m (**Plan R-2**); and
- (c) his other comments on the s.16 application are still valid:
  - (i) there were a total of six environmental complaints against the Site in the past three years. Five complaints (including four substantiated and one non-substantiated) relating to waste pollution and one substantiated complaint relating to suspected landfilling were received in 2016; and
  - (ii) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses".

## **Landscape**

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

- (a) Having examined the review application and the FI (**Annexes E and G**), it is noted that the landscape proposal in **Annex E** can provide some screening. Nevertheless, she maintains her view of objecting to the application since the approval of the application would encourage similar "development first and application later" applications in the "AGR" zone. Her other comments are still valid:
  - (i) compared the aerial photo of 2016 (under previous application No. A/NE-FTA/174) to latest photo of 2018 (**Plan R-3b**), there is no significant change in the rural landscape character comprising of tree clusters and woodland, domestic structures, open storages, government facilities and some active and fallow farmlands. Enforcement Notice was served to the Site in 2017 and then Reinstatement Notice was issued to the concerned parties but has not yet been complied with. There are quite a number of open storages in the area which are unauthorised developments and Enforcement Notices were served;

- (ii) aerial photo of 1991 reveals that majority of the Site was once a fish pond and land/pond filling, dumping and site formation were noted. Her site record dated 23.4.2018 reveals that the Site is fenced off with patches of wild grasses along its boundary. Some areas are hard paved, container tractors and construction materials are found. Though currently there is no tree within the Site but she found that about 30 trees noted at her first site visit in 2015 were removed (**Plan R-3a**). Although no significant adverse impact on the landscape resource arising from the proposed use is anticipated, approval of the application would encourage similar “development first and application later” cases. These piecemeal developments will lead to cumulative adverse impact causing gradual degradation of the landscape resources and change of landscape character in the area; and
- (iii) should the application be approved by the Board, approval conditions on the submission and implementation of landscape proposal are recommended.

### **Agriculture**

#### **5.2.3 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):**

- (a) having examined the review application and the FI (**Annexes E and G**), she clarifies that tree felling at the Site was not a reason of AFCD’s previous objection to the application. Her other comments are still valid:
  - (i) she does not support the application from agriculture point of view; and
  - (ii) the Site is a paved vehicle park. Agricultural infrastructures such as water supply and road access are available. The Site can be used as greenhouse cultivation or plant nursery. The Site possesses potential for agricultural rehabilitation.

### **District Officer’s Comments**

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

- (a) he has further consulted the locals. The incumbent North District Council (NDC) member of the subject constituency and the Resident Representative of Lo Wu have no comment on the application.
- (b) The Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representatives and Resident Representative of San Uk Ling object to the application mainly on the ground that the proposed development will worsen the traffic congestion problem in

Man Kam To Road. 打鼓嶺沙嶺村居民福利會 raises objection to the application on the considerations of incompatibility with the surrounding areas; adverse traffic and drainage impacts; nuisances and safety issues to villagers; not intended to serve the needs of local villagers; setting of an example of “destroy first, develop later” since site formation work has been carried out prior to obtaining planning permission; the illegal occupation of the Site including Lots 563 and 559 RP in D.D. 89 owned by the “Tso Tong” without seeking consents; and the actual occupied area is larger than that mentioned in the application.

- 5.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A** which are recapitulated below:

**Land Administration**

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

- (a) the Site comprises private lots. Lots 558 RP (Part), 559 RP (Part), 561 RP (Part), 563 (Part) and 564 S.B (Part) in D.D. 89 are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access. Lot 562 S.F (Part) in D.D. 89 is Old Schedule lot held under the Block Government lease (demised for agricultural and house use) without any guarantee of right of access;
- (b) the Government land along the north-western boundary of the Site will be affected by CEDD’s project, namely “PWP Item No. 5758CL Site Formation and Associated Infrastructural works for development of Columbarium, Crematorium and Related Facilities at Sandy Ridge Cemetery – Widening of Sha Ling Road and Construction of Roads B and C”. Meanwhile, the applicant should make his own arrangement for acquiring access. The Government shall accept no responsibility in such arrangements; and
- (c) if the application is approved, the owners 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 is approved, its commencement date will 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/rent and administrative fees as considered appropriate by his office.

**Traffic**

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



- (a) he considers the application can be tolerated from traffic engineering viewpoint;
- (b) it is noted that the proposed vehicular access to the Site is via a local village track connecting Man Kam To Road. Vehicles can manoeuvre within the Site without reversing on the public road; and
- (c) the Site connects Man Kam To Road via a local village track which is not managed by the Transport Department.

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

the section of Man Kam To Road adjacent to the Site is under HyD's maintenance purview. However, the vehicular access leading from Man Kam To Road to the Site falls on unallocated Government land which is outside HyD's maintenance purview. The applicant is required to sort out the maintenance responsibility of the affected unallocated Government land with DLO/N.

**Drainage**

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

- (a) he has no in-principle objection to the application from the public drainage point of view;
- (b) the Site is in an area where no public sewer connection is available;
- (c) should the application be approved, an approval condition on the submission and implementation of drainage proposal is recommended to ensure that it will not cause adverse impact to the adjacent area; and
- (d) the general requirements in the drainage proposal are appended in Appendix III of **Annex A**.

**Building Matters**

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

- (a) there is no record of submission of the proposed temporary structures to the Building Authority for approval and the BD is not in a position to offer comments on their suitability for the use related to the application;
- (b) the proposed temporary building/structure is subject to the control of Part VII of the Building (Planning) Regulations. The proposed drainage works shall comply with Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations. Both

the building works and drainage works require prior approval and consent under the Buildings Ordinance (BO); and

- (c) the applicant should be reminded of the followings:
- (i) if the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any approved use under the application;
  - (ii) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorized Buildings Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
  - (iii) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
  - (iv) if the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
  - (v) in connection with the above, the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulations respectively;
  - (vi) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)Rs at the building plan submission stage; and
  - (vii) detailed comments under the BO will be provided at the building plan submission stage.

### **Fire Safety**

#### **5.3.6 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 (FSIs) and water supplies for firefighting being provided to the satisfaction of his department;

- (b) emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (c) detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

### **Water Supply**

#### **5.3.7 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 his/her 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.

5.4 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application as below:

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (b) Commissioner of Police (C of P); and
- (c) Director of Electrical and Mechanical Services (DEMS).

## **6. Public Comments on the Review Application Received During Statutory Publication Periods**

6.1 On 29.6.2018 and 31.8.2018, the review application was published for public inspections. During the statutory public inspection periods, a total of 236 public comments were received (**Annex H**). A NDC member (**Annexes H-1 to H-2**) and the Chairman of Sheung Shui District Rural Committee (**Annex H-3**) indicated no comment on the application whereas another NDC member objects to the application since the Site is in close vicinity to residential houses and the heavy traffic generated by the proposed development will cause noise nuisance and safety threats to residents (**Annex H-4**).

6.2 Eight Sha Ling villagers (**Annexes H-5 to H-12**) and 219 individuals (**Annexes H-13 to H-231**) object to the application mainly on the following grounds:

- (a) the proposed development is not in line with the planning intention of "AGR" zone;
- (b) the proposed development is not compatible with the surrounding areas dominated by village houses, resulting in adverse visual impact;

- (c) the proposed development will cause adverse drainage impact since the Site is in a low-lying area with unauthorised site formation works. The applicant has not submit any drainage management / mitigation proposal;
  - (d) the heavy traffic generated by the proposed development will cause adverse environmental impacts, including air and noise pollution, which will affect residents' health;
  - (e) the proposed development will worsen the existing traffic congestion problem in Man Kam To Road;
  - (f) the access road to the Site is the only access road for residents nearby and the large number of vehicles entering to/exiting from the Site may threaten their safety;
  - (g) the proposed development is an example of “destroy first, develop later” since site formation work has been conducted prior to obtaining planning permission. The Site is now being used for the applied use without a valid planning permission;
  - (h) the proposed development is not intended to serve the needs of local villagers who can park their own vehicles in vicinity of their village houses. There are enough parking spaces for villagers;
  - (i) the Site has potential for agricultural rehabilitation and reinstatement of pond; and
  - (j) the approval of this application would set an undesirable precedent for similar applications.
- 6.3 Two comments from 打鼓嶺沙嶺村居民福利會 (with a total of 118 signatures from the Sha Ling villagers) (**Annexes H-232 and 233**) raising objection to the application is the same as the one conveyed by DO(N) of HAD as detailed in paragraph 5.2.3 above.
- 6.4 The World Wide Fund for Nature Hong Kong (**Annexes H-234 and 235**) and Designing Hong Kong (**Annex H-236**) also raise objection to the application with reasons including the proposed development is not in line with the planning intention of “AGR” zone; it is a “develop first, apply later” case as the Site has been formed and hard paved prior to seeking planning approval; the applicant agreed that the Site possesses potential for agricultural rehabilitation in his written representation (**Annex E**); the proposed development cannot solve the shortage of parking and the Government should take responsibility in long term planning; and the approval of this application would set an undesirable precedent for similar applications.
- 6.5 The public comments received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

## 7. Planning Considerations and Assessments

- 7.1 The applicant sought planning permission for proposed temporary public vehicle park for a period of 3 years at the Site. The application was rejected by the Committee on 1.6.2018 on the grounds that the development is not in line with the planning intention of “AGR” zone; the applicant fails to demonstrate in the submission that the development would have no adverse environmental impact on the surrounding areas; and the approval of application will set an undesirable precedent for similar applications.
- 7.2 To support the review application, the applicant has provided written representations (**Annexes E and G**) mainly stating that the planning circumstances of the previous applications are different from the current application; the proposed development will meet the local needs of parking spaces; the applicant should not be held responsible for tree felling/ vegetation clearance for site formation previously undertaken at the Site; while the Enforcement Notice had been complied with, it will be a waste of resource if the Site is required to be reinstated before the application is approved; there are mitigation measures to address adverse departmental comments; and the local objection regarding the illegal occupation of “Tso Tong” land is invalid.
- 7.3 Regarding the applicant’s claim of different planning circumstances of the previously rejected applications, it should be noted that the Site is the subject of two previous applications (No. A/NE-FTA/159 and 174) for temporary parking of container tractors and trailers for sale with ancillary office, and proposed vehicle repair workshop for medium goods vehicle, heavy goods vehicle, coach and container tractor respectively, which were rejected by the Committee in October 2016 and July 2017 with reasons as detailed in paragraph 4.7 above. Since the nature of the applied uses under the two previously rejected applications are different from the current application, the TPB PG-No. 13E is not applicable in the current application. The current application was rejected on the grounds of not in line with the planning intention of “AGR” zone, there are adverse environmental and landscape impacts and the setting of undesirable precedent for similar applications for temporary vehicle park within the same “AGR” zone. It should be stressed that the application was assessed individually based on the applied use instead of container vehicle parking or vehicle repair workshops under previously rejected applications.
- 7.4 According to the CTP/CEP of PlanD, the Site is the subject of an active enforcement case (**Plan R-2**) for parking of vehicles and storage use (including deposit of containers) which is being processed and monitored according to the established procedures. Reinstatement Notice was issued to the concerned parties on 15.12.2017 with the requirements to remove all fill materials and to grass the land. As part of the Site has not been reinstated, prosecution action has been instigated. Moreover, as the UD alleging use for place for parking of vehicles and storage use (including deposit of containers) was subsequently re-activated at the Site, another EN (No. E/NE-FTA/171) was issued on 3.1.2019 requiring discontinuance of the UD by 3.3.2019 (**Plan R-2**). Hence, the subject application should not be assessed based on the “destroyed” state of the Site. While the applicant submitted a copy of tenancy agreement covering part of the Site signed in February 2018 (**Annex G**) and claimed that the Site was left vacant since making the planning application in April 2018, it should be noted that the Site was used for parking of heavy goods vehicles without a valid planning permission as revealed in the site inspections between April and December 2018 (**Plans R-4a and R-4b**). According to the latest site inspection on

17.12.2018, 16 vehicles were observed on Site while all of them were medium/ heavy goods vehicles or container vehicles.

- 7.5 The Site falls entirely within an area zoned “AGR” on the Fu Tei Au and Sha Ling OZP (**Plan R-1**). 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC maintains his view of not supporting the application from agriculture point of view since the Site possesses potential for agricultural rehabilitation. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of the “AGR” zone, even on a temporary basis.
- 7.6 The Site is situated in an area of rural landscape character comprising domestic structures, warehouse and open storage (**Plan R-2**). The proposed temporary public vehicle park is considered not entirely incompatible with the surrounding land uses. Nevertheless, CTP/UD&L of PlanD maintains her view of objecting to the application noting that about 30 trees within the Site were removed since 2015 (**Plans R-3a and R-3b**). Land/pond filling, dumping and site formation were noted. Although the applicant undertakes to plant more trees in the revised landscape proposal (**Annex E**), approval of the application would encourage similar “development first and application later” cases. These piecemeal developments will lead to cumulative adverse impact causing gradual degradation of the landscape resources and change of landscape character in the area.
- 7.7 DEP maintains his view of not supporting the application as there are sensitive receivers (i.e. temporary domestic structures) in the vicinity of the Site and the closest one is located to the immediate northeast of a distance of about 7 m (**Plan R-2**). The proposed development is likely to have adverse environmental impact on the surrounding areas. From traffic engineering viewpoint, C for T considers the application can be tolerated since vehicles can manoeuvre within the Site without reversing on the public road. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on / no objection to the application.
- 7.8 The applicant states that the proposed temporary vehicle park is to serve the residents/villagers nearby. It should be noted that according to the 236 public comments received, over 130 submissions from villagers/individuals object to the application based on the possible noise impact arising from the proposed development. Also, the Site has good potential for agricultural rehabilitation and the applicant fails to demonstrate in the submission that the development would not cause adverse environmental and landscape impacts on the surrounding area.
- 7.9 There is no similar application for temporary public vehicle park within the same “AGR” zone in the Fu Tei Au and Sha Ling area. As such, the approval of the application will set an undesirable precedent for similar applications within the same “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- 7.10 Regarding applicant’s claim on the unauthorised site formation carried out by the applicants under the previous applications and the invalid public comment on the

illegal occupation of “Tso Tong” land, it should be noted that land ownership and land dispute should not be a material consideration of the Board in considering each planning application. Regarding the other local objections and adverse public comments as detailed in paragraphs 5.2.4 and 6 respectively, relevant Government departments’ comments and planning assessment above are relevant.

## **8. Planning Department’s Views**

8.1 Based on the assessments made in paragraph 7 and having taken into account the public comments in paragraph 6 above and given that there is no major change in the planning circumstances since the consideration of the subject application by the Committee on 1.6.2018, the Planning Department does not support the review application for the following reasons:

- (a) the proposed temporary use under application is not in line with the planning intention of the “AGR” zone for the Fu Tei Au and Sha Ling area, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
- (b) the applicant fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
- (c) the approval of the application will set an undesirable precedent for similar applications within the same “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

8.2 Alternatively, should the Board 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 25.1.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no operation between 11:30 p.m. and 7:30 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 25.7.2019;
- (c) 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 25.7.2019;
- (d) in relation to (c) 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 25.10.2019;

- (e) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 25.7.2019;
- (f) in relation to (e) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 25.10.2019;
- (g) the submission of proposals for fire service installations and water supplies for firefighting 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 25.7.2019;
- (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 25.10.2019;
- (i) if planning condition (a) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (b), (c), (d), (e), (f), (g) or (h) 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
- (k) 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

8.3 The recommended advisory clauses are attached at **Annex I**.

### **9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the Committee's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review 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.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reasons for rejection should be given to the applicant.



**10. Attachments**

<b>Drawing R-1</b>	Layout Plan
<b>Drawing R-2</b>	Landscape Proposal
<b>Plan R-1</b>	Location Plan
<b>Plan R-2</b>	Site Plan
<b>Plans R-3a and R-3b</b>	Aerial Photos taken in 2015 and 2018
<b>Plans R-4a and R-4b</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/NE-FTA/184
<b>Annex B</b>	Extract of Minutes of the RNTPC Meeting held on 1.6.2018
<b>Annex C</b>	Secretary of the Town Planning Board's Letters dated 15.6.2018
<b>Annex D</b>	Letter received on 20.6.2018 from the applicant applying for a review of the RNTPC's decision
<b>Annex E</b>	Written representation received on 21.8.2018
<b>Annex F</b>	Letter received on 18.10.2018 requesting for deferment of consideration of the review application
<b>Annex G</b>	Written representation received on 12.11.2018
<b>Annex H</b>	Public Comments
<b>Annex I</b>	Recommended Advisory Clauses

**PLANNING DEPARTMENT  
JANUARY 2019**

**TPB PAPER NO. 10511  
FOR CONSIDERATION BY  
THE TOWN PLANNING BOARD  
ON 25.1.2019**

**REVIEW OF APPLICATION NO. A/NE-FTA/184  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Public Vehicle Park for a Period of 3 Years  
in “Agriculture” Zone  
Lots 558 RP (Part), 559 RP (Part), 561 RP (Part), 562 S.F (Part), 563 (Part) and  
564 S.B (Part) in D.D. 89, Sha Ling, Sheung Shui, New Territories**