

TOWN PLANNING BOARD

TPB Paper No. 10585

**For Consideration by
the Town Planning Board on 25.10.2019**

**REVIEW OF APPLICATION NO. A/NE-TK/671
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Public Vehicle Park (Private Cars Only)
for a Period of 3 Years in “Agriculture” Zone**

Lots 246 S.A (Part), 247, 249 and 250 RP (Part) in D.D. 23, Ting Kok, Tai Po, N.T.

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1. Background

- 1.1 On 27.5.2019, the applicant, Sea Well (Hong Kong) Limited represented by Lawson David and Sung Surveyors Limited, sought planning permission for a proposed temporary public vehicle park (private cars only) for a period of three years at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls entirely within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 19.7.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) 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. There is no strong planning justification in the submission for a departure from the planning intention of “AGR” zone, even on a temporary basis; and
 - (b) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications in the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the landscape character of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TK/671 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 19.7.2019 (Annex B)
 - (c) Secretary of Town Planning Board’s letter dated 2.8.2019 (Annex C)

2. Application for Review

On 6.8.2019, the applicant’s representative applied, under s.17(1) of the Ordinance, for review of the RNTPC’s decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. **Background**

- 3.1 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site was subject to previous enforcement action (Ref. E/NE- TK/116). Enforcement Notice (EN) against storage use was issued on 8.3.2018 and Compliance Notice (CN) was issued on 28.12.2018 as the storage use was discontinued. Reinstatement Notice (RN) was also issued on 7.1.2019 and CN was issued on 8.5.2019 as the Site was reinstated.
- 3.2 The Site is currently not involved in any active planning enforcement case.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1, R-2, R-3 and R-4)

- 4.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC 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.
- 4.2 The Site is:
- (a) covered by grass and fenced off; and
 - (b) accessible from Tung Tsz Road via a local track.
- 4.3 The surrounding areas are predominantly rural in character with village houses, vacant land and tree groups. To the east and the west are the village proper of San Tau Kok and Wai Ha respectively. Some of the land areas in close proximity to the Site are used for parking of vehicles without planning permission and are subject to enforcement action.

Planning Intention

- 4.4 The planning intention of the “AGR” zone 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.

Previous Application

- 4.5 The Site is not involved in any previous planning application.

Similar Application

- 4.6 There is no similar application within the same “AGR” zone.

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, relevant Government departments have been further consulted, and they have no further comments on the review application and maintain their previous views on the s.16 application in paragraph 9 of **Annex A**, which are recapitulated as follows:

Land Administration

5.2.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of 4 private lots in D.D. 23, Ting Kok, which are held under Block Government Lease demised for agricultural purpose. No structure shall be erected on the lots without prior approval from LandsD;
- (c) a recent inspection revealed that the Site was vacant and no structure was found thereon;
- (d) should the application be approved by the Board, the lot owners are required to submit application for short term waiver (STW) to LandsD should they wish to erect any structure on the Site. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fees as considered appropriate; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) comments from the owners of the affected lots and the maintenance responsibility parties should be sought for the approaching road as necessary.

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

- (a) no comment on the application; and
- (b) the local track branching from Tung Tsz Road, which is proposed to serve as access to the Site, is not maintained by HyD.

Agriculture and Nature Conservation

5.2.4 Comments of the Director of Agriculture, Fisheries & Conservation (DAFC):

- (a) the Site is overgrown with grass. Nevertheless, agricultural infrastructure such as road access and water source is available. The Site possesses potential for agricultural rehabilitation. As such, the application is not supported from agricultural development point of view; and
- (b) should the application be approved by the Board, the applicant should be reminded to confine the proposed development within the Site, and to implement necessary precautionary measures to minimize any potential impact on the marsh in the nearby "Conservation Area" zone, which is on the opposite side of Tung Tsz Road.

Environment

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

- (a) no comment on the application;
- (b) it is noted that the temporary car park is intended for private car use, which does not involve generation of heavy vehicles;
- (c) the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites"; and
- (d) there was no environmental complaint related to the Site received in the past three years.

Landscape

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

- (a) some reservations on the application from the landscape planning perspective;
- (b) the Site is bounded by Tung Tsz Road to the south and local access road to the north. The Site is situated in an area of rural landscape character comprising scattered tree groups and village houses. No similar application was previously approved by the Board within the same "AGR" zone;

- (c) the original vegetation on the Site had been cleared as shown on aerial photo of 2017 (**Plan A-3b** of **Annex A**). According to his recent site inspection, the Site is vacant and covered with grasses and groundcovers. Saplings of native trees including *Ficus microcarpa* (細葉榕), *Ficus hispida* (對葉榕) and *Macaranga tanariux* (血桐) in fair to good condition are found along the site boundary. Referring to the layout plan submitted by the applicant, existing saplings are not in direct conflict with the proposed development. Although significant adverse impact arising from the proposed development on landscape resources within the Site is not anticipated, approval of the application may encourage similar temporary use in the area, which would lead to degradation of the rural landscape character in the vicinity; and
- (d) in view that the Site is not bounded by prominent public frontage, should the application be approved by the Board, it is considered unnecessary to impose condition for submission and implementation of landscape proposal.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas;
- (c) while there are DSD's public stormwater drains in this area, the proposed use should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) there is existing public sewers in the vicinity of the Site. The applicant should follow the established procedures and requirements for connecting sewers from the Site to the public sewerage system. A connection proposal should be submitted for approval beforehand. Moreover, the sewerage connection will be subject to DSD's technical

audit, for which an audit fee will be charged; and

- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

Water Supply

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

- (a) no objection to the application; and
- (b) for the provision of water supply to the proposed use, 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.

Fire Safety

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

- (a) no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction; and
- (b) in consideration of the design/nature of the application, FSIs are anticipated to be required. Therefore, the applicant is advised to submit the relevant layout plans incorporated with the proposed FSIs for approval. The applicant should also be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the locations of the proposed FSIs to be installed should be clearly marked on the layout plans.

5.3 The following Government departments maintain their previous views of having no comment on the review application:

- (a) Project Manager/North, Civil Engineering and Development Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Director of Electrical and Mechanical Services;
- (d) Commissioner of Police; and
- (e) District Officer/Tai Po, Home Affairs Department.

6. Public Comments Received During Statutory Publication Period (Annex E)

6.1 On 16.8.2019, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from The Hong Kong Bird Watching Society and Designing Hong Kong

Limited objecting to the application mainly on the grounds of not being in line with the planning intention of “AGR” zone; causing adverse ecological and environmental impacts; being “destroy first, build later”; and setting of an undesirable precedent.

- 6.2 Three public comments, all objecting to the application, received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application for a proposed temporary public vehicle park for 33 private car parking spaces was rejected by the RNTPC on 19.7.2019 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; and setting undesirable precedent. The applicant has not submitted any written representation in support of the review application.
- 7.2 The proposed development is not in line with the planning intention of “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 does not support the application from agricultural development point of view as agricultural infrastructure such as road access and water source is available, and the Site possesses potential for agricultural rehabilitation. The applicant has not provided any strong planning justifications in the submission to justify a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 7.3 The Site, being covered with grass and fenced off, is situated in an area of rural landscape character comprising scattered tree groups and village houses (**Plans R-2 and R-3**). CTP/UD&L of PlanD advises that the original vegetation on the Site had been cleared as shown on the aerial photo of 2017. Although significant adverse impact arising from the proposed development on landscape resources within the Site is not anticipated, approval of the review application may encourage similar temporary use in the area, which would lead to degradation of the rural landscape character in the vicinity. Thus, he has some reservations on the review application from the landscape planning perspective.
- 7.4 C for T has no in-principle objection to the review application from traffic engineering point of view. Other relevant Government departments consulted including H(GEO) of CEDD, CE/C of WSD, CE/MN of DSD, CHE/NTE of HyD, C of P and D of FS have no objection to or no adverse comment on the review application.
- 7.5 The Site is not the subject of any previous application, and there is no similar application for the same use within the same “AGR” zone. It should be noted that some of the land areas in close proximity to the Site (**Plan R-2**) are currently used for parking of vehicles without planning permission and are subject to enforcement action. In view of the above, approving the review application would set an undesirable precedent for similar applications in the same “AGR” zone, the cumulative effect of approving such similar applications will inevitably degrade the landscape character of the “AGR” zone.

- 7.6 Regarding the public comments objecting to the application on the grounds as detailed in paragraph 6 above, Government departments' comments and the planning assessments in above paragraphs are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) 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. There is no strong planning justification in the submission for a departure from the planning intention of "AGR" zone, even on a temporary basis; and
 - (b) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications in the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the landscape character of the area.
- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **25.10.2022**. The following conditions of approval and advisory clauses are also 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 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 vehicle dismantling, inspection, maintenance, repairing, cleansing, paint spraying or other workshop activities is allowed on the Site at any time during the planning approval period;
- (e) the maintenance of peripheral fencing on Site at all times during the planning approval period;

- (f) 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 25.4.2020;
- (g) in relation to (f) above, the implementation of drainage proposal 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 25.7.2020;
- (h) the submission of fire service installations (FSIs) and water supplies for fire-fighting proposal 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 25.4.2020;
- (i) in relation to (h) above, the implementation of FSIs and water supplies for fire-fighting proposal 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 25.7.2020;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (e) 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;
- (k) if any of the above planning conditions (f), (g), (h) or (i) 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
- (l) upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

- 8.3 The recommended advisory clauses are attached at **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, 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 date when the validity of the permission should expire.

10. Attachments

Drawings R-1 to R-3	Vehicular access, indicative layout and landscape proposal submitted by the applicant
Plan R-1	Location plan
Plan R-2	Site plan
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-TK/671
Annex B	Extract of minutes of the RNTPC meeting held on 19.7.2019
Annex C	Secretary of the Town Planning Board's letter dated 2.8.2019
Annex D	Email and Letter received on 16.8.2019 from the applicant's representative applying for a review of the RNTPC's decision
Annex E	Public Comments
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
OCTOBER 2019**