

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/820

- Applicant** : Shun Yu Development Consultant Limited represented by R-riches Property Consultants Limited
- Site** : Lots 2435 (Part) in D.D. 83, Lung Yeuk Tau, Fanling, New Territories
- Site Area** : 2,051m² (about)
- Land Status** : New Grant No. 22694 (for private residential use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19
- Zonings** : “Agriculture” (“AGR”) (97% of the application site)
“Residential (Group C)” (“R(C)”) ¹ (3% of the application site)
- Application** : Proposed Temporary Public Vehicle Park (PVP) (Excluding Container Vehicle) for a Period of Three Years and associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary PVP (excluding container vehicle) for a period of three years and associated filling of land at the application site (the Site). The application will serve to regularize the land filling works within the “AGR” zone. The Site largely falls within “AGR” zone on the OZP (**Plan A-1**). According to the covering notes of the OZP, temporary use or development of any land or building not exceeding a period of three years and filling of land within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is paved and currently vacant.
- 1.2 According to the applicant, 54 parking spaces for private vehicles and 6 light goods vehicles will be provided on the Site (**Drawing A-1**). The Site is accessible via Lung Ma Road (**Plan A-1**). The proposed development will operate 24 hours daily, including public holidays. There will be a 1-storey temporary structure with a total GFA of 18m² serving as site office to support the daily operation of the proposed temporary PVP. The Site has

¹ About 3% of the Site falls within “R(C)” zone on the OZP, which could be considered as minor boundary adjustment and not included in the planning assessment.

been filled with asphalt and gravel of not more than 0.2m in depth. The proposed layout plan submitted by the applicant is shown in **Drawings A-1**.

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

- (a) Application Form with attachments received on 7.12.2023 (Appendix I)
- (b) Further Information (FI) received on 16.1.2024[^] (Appendix Ia)

[^] *accepted and exempted from the publication and recounting requirements*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed at **Appendix I**, as summarized below:

- (a) in view of the growing population and shortage of parking spaces in the area, the proposed PVP could cater for the parking needs of residents nearby (e.g. Queen's Hill public housing development);
- (b) the proposed development is not incompatible with the surrounding land uses and approval of the application on a temporary basis of three years would not frustrate the long-term planning intention of the "AGR" zone and would better utilize land resources;
- (c) as traffic generation and attraction of the proposed development is insignificant, adverse traffic impact on the surrounding road network is not anticipated; and
- (d) the applicant undertakes to strictly follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (CoP) issued by Environmental Protection Department to minimize environmental impacts on and nuisances to the surrounding areas.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is not the "current land owner" but 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.31B) by posting site notice and sending notice to the Fanling District Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection.

4. **Background**

Part of the Site is subject to planning enforcement action against unauthorized parking of vehicles (No. E/NE-LYT/269) (**Plan A-2**). Enforcement Notice was issued on 15.6.2023 requiring the landowner to discontinue the unauthorized vehicle parking by 15.9.2023. A recent site inspection revealed that the Site was largely vacant. The case was currently under close monitoring by the Planning Authority.

5. Previous Applications

- 5.1 The Site forms part of five previous s.16 applications (No. A/DPA/NE-LYT/83, A/NE-LYT/210, 230, 231 and 546) submitted by different applicants from the current application (**Plan A-1**). Among them, two applications (No. A/DPA/NE-LYT/83 and A/NE-LYT/231) were approved for proposed low-density residential development with recreational facilities with the same parameters (i.e. domestic plot ratio of 0.2 and building height restriction of 6m (2 storeys)) in 1996 and 2002 respectively. The planning permission for the proposed low-density residential development under application No. A/NE-LYT/231 remains valid as the relevant building plan and lease modification have been approved/completed in 2010 and 2022 respectively.
- 5.2 The remaining three previous applications (No. A/NE-LYT/210, 230 and 546) involve various temporary uses. Application No. A/NE-LYT/210 (proposed temporary container trailer for a period of 3 years), A/NE-LYT/230 (temporary agricultural trade wholesale market for a period of 2 years) and A/NE-LYT/546 (proposed temporary open storage of construction machinery and material for a period of 3 years) were rejected by the Committee in 2001, 2002 and 2014 respectively, which are considered not relevant to the current application.
- 5.3 Details of the previous applications are summarized at **Appendix II** and the locations are shown on **Plan A-1**.

6. Similar Applications

- 6.1 There has been 9 similar applications within/partly within the “AGR” zone on the Lung Yeuk Tau and Kwan Tei South OZP in the vicinity of the Site over the past five years.
- 6.2 Six of them (No. A/NE-LYT/689, 704, 706, 742, 747, 777) involving five sites within the “AGR” zone for the same use² (ranging from 11 to 40 carparking spaces) were approved by the Committee mainly on considerations that the development was not incompatible with the surrounding land uses; the development would unlikely cause any significant adverse traffic, drainage, environmental and landscape impacts on the surrounding areas; no adverse departmental comments except from the Agriculture, Fisheries and Conservation Department (AFCD); and the Site was the subject of previous planning approvals³.
- 6.3 Application No. A/NE-LYT/806 straddling “R(C)” and “AGR” zone for a proposed temporary PVP with 64 carparking spaces was approved by the Committee on 27.10.2023 mainly on considerations that C for T supported the application as it could relieve the shortage of parking spaces in the area and address acute illegal parking problems observed in the vicinity of Ma Liu Shui San Tsuen, particularly along Hai Wing Road and Dao Yang Road; and the “AGR” portion of the site had been formed and used intermittently for storage/workshop uses since the 1990s.

² The scale of the latest approved applications involving five sites are: 26 (application no. A/NE-LYT/689), 24 (application no. A/NE-LYT/704), 11 (application no. A/NE-LYT/742), 40 (application no. A/NE-LYT/747), 4 (application no. A/NE-LYT/752) and 21 (application no. A/NE-LYT/777) parking spaces respectively.

³ Applications No. A/NE-LYT/704, 742, 747 and 777 were the subject of previous approvals for the same use.

- 6.4 The remaining two applications (No. A/NE-LYT/718 and 795), situated on a different pieces of “AGR” zone for the same use (**Plan A-1**) were rejected by the Committee and the Board on review on 6.3.2020 and 1.12.2023 respectively mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone. For application No. A/NE-LYT/718, the applicant also failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas.
- 6.5 Details of the similar applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) flat and paved;
- (b) located at the west of Queen’s Hill public housing development in Lung Yeuk Tau and to southeast of the town centre of Fanling; and
- (c) accessible via Lung Ma Road at its immediate east leading to Sha Tau Kok Road – Lung Yeuk Tau.

7.2 The surrounding areas are mainly a mixed rural landscape character dominated by low-rise residential buildings, village houses, fallow agricultural land, vacant land and some temporary structures for metalware workshop, warehouses and car repairing. To its further southeast is Queen’s Hill public housing development (**Plan A-1**).

8. Planning Intentions

- 8.1 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government departments as set out in paragraph 9.2 below, other government departments consulted have no objection to/no adverse comment on the application. Their general comments on the application and advisory comments are provided at **Appendices IV** and **V** respectively.
- 9.2 The following government departments have adverse comments on the application:

Land Administration

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

- (a) the Site forms part of the Lot 2435 in D.D. 83 (the Lot), which is held under Conditions of Exchange (C of E) dated 27.4.2022. According to the C of E, the Lot is for private residential purposes and subject to a building covenant period up to 30.6.2027;
- (b) the proposed PVP is in breach of the user restriction under SC (7) which restricts the Lot to private residential use only. Any assignment or underletting of the proposed public vehicle park or any part thereof is not permitted under SC (17); and
- (c) the proposal does not comply with the lease conditions. If the applicant submits any application to change the lease conditions in future, LandsD is at its absolute discretion to consider whether to accept or not.

Agriculture and Nature Conservation

9.2.2 Comments of the Director of Agriculture, Fisheries and Conservation (DFAC):

- the Site falls within the AGR” zone and is generally vacant. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the proposed development is not supported from agricultural perspective.

9.3 District Officer (North), Home Affairs Department (DO(N), HAD) has relayed the following local views on the application:

- he has consulted the locals regarding the application. The Chairman of Fanling District Rural Committee supports the application. The Chairman of Lung Shan Area Committee provides views that the Site should be kept clean with clear traffic signage to ensure smooth traffic entering/exiting Lung Ma Road. Indigenous Inhabitant Representatives and the Resident Representatives of Lung Yeuk Tau and Ma Liu Shui San Tsuen have not replied to his office.

10. Public Comments Received During Statutory Publication Period (Appendix VI)

On 15.12.2023, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Chairman of the Fanling District Rural Committee supports the application. Kadoorie Farm and Botanic Garden Corporation and an individual express concerns on whether the application should be approved if it involves an active enforcement case.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary PVP (excluding container vehicle) for a period of 3 years on a site largely zoned “AGR”. The proposed temporary development within the “AGR” zone is not in line with the planning intention of the “AGR” zone as detailed in paragraph 8.1 above. As the Site possesses potential for agricultural rehabilitation, DAFC does not support the application from the agricultural perspective and indicates that the Site could be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. Nevertheless, the Site forms part of the approved scheme for the proposed low-density residential development since 1996. As relevant building plan has been approved before the lapse of the application, the proposed low-density residential development is considered to have commenced and the planning permission remains valid. Also, lease modification was also completed in 2022 and hence the Site is entitled for the proposed low-density residential development. According to the applicant, the proposed temporary use is to serve residents nearby (e.g. Queen’s Hill public housing development). Taking into account this and the assessment below, approval of the application on a temporary basis for a period of three years could be tolerated.
- 11.2 The application serves to regularize the land filling works undertaken at the Site. Filling of land within the “AGR” zone requires planning permission as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, Chief Engineer/Mainland North of Drainage Services Department (CE/MN of DSD) and Director of Environmental Protection (DEP) have no objection to the application from drainage and environmental perspectives.
- 11.3 The Site is accessible via Lung Ma Road at its immediate east which connects to Sha Tau Kok Road – Lung Yeuk Tau (**Plans A-1**). The proposed temporary PVP will provide 54 private car parking spaces and 6 light goods vehicles parking spaces. It is located in a mixed rural landscape plains comprising low-rise residential buildings, village houses, active/fallow agricultural land, and some temporary structures for metalware workshop, warehouses and car repairing (**Plan A-2**). Although the approval of the application may alter the landscape character of the “AGR” zone, the Site is entitled to be developed for a low-density residential development under previously approved application with approved building plan and completed lease modification. Chief Town Planner/Urban Design & Landscape, Planning Department has no further comment in this regard.
- 11.4 DLO/N of LandsD considers that the proposed PVP is be a breach of the user restriction under SC (7) which restricts the concerned lot to private residential use only under the New Grant No. 22964 as detailed in paragraph 9.2.1. The applicant has been advised to follow up the issue with LandsD which could be dealt with separately under the land regime. Other relevant government departments consulted, including the Commissioner for Transport, DEP, CE/MN of DSD, Chief Engineer/Construction, Water Supplies Department, Director of Fire Services, Project Manager (North)/North Development Office of Civil Engineering and Development Department, and Chief Building Surveyor/New Territories West, Buildings Department have no adverse comment on or no objection to the application.
- 11.5 There has been 9 similar applications within/straddling the “AGR” zone on the Lung Yeuk Tau and Kwan Tei South OZP in the vicinity of the Site over the past five years. 7 of them were approved mainly on considerations as detailed in paragraphs 6.2 and 6.3. The

remaining two similar applications (No. A/NE-LYT/718 and A/NE-LYT/795) rejected by the Committee/the Board on review are located in the different “AGR” zone in Kwan Tei Tsuen. Taking into account the history and context of the Site as detailed in paragraphs above, the planning consideration and circumstances of the current application is different from the rejected applications.

- 11.6 Regarding the public comment on the enforcement action in paragraph 10, Planning Authority would follow up the enforcement action separately as detailed in paragraph 4. For the local comments conveyed by DO(N) of HAD and public comments on the application as detailed in paragraphs 9.3 and 10 above, government departments’ comments and planning assessments regarding the background as detailed in paragraphs 5.1 and 11.1 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account local comments conveyed by DO(N) of HAD and public comments as detailed in paragraphs 9.3 and 10 respectively, the Planning Department considers that the proposed temporary development 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 three years until 26.1.2027. 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 the Site at any time during the planning approval period;
- (b) only private car and light goods vehicles 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) the submission of a 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 26.7.2024;
- (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 26.10.2024;
- (e) in relation to (d) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations 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 26.7.2024;

- (g) in relation to (f) above, the implementation of the fire service installations 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 26.10.2024;
- (h) the submission of run-in/out proposal within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 26.7.2024;
- (i) in relation to (h) above, the implementation of run-in/out proposal within 9 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 26.10.2024;
- (j) if any of the above planning condition (a), (b) 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; and
- (k) if any of the above planning condition (c), (d), (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.

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 and associated filling of land are not in line with the planning intention of the "AGR" zone which is to retain primarily 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 for 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 applicant.

14. Attachments

Appendix I

Application Form with Attachments received on 7.12.2023

Appendix Ia	FI received on 16.1.2024
Appendix II	Previous Applications
Appendix III	Similar S.16 Applications for Temporary PVP in the vicinity of the application site within the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South Area
Appendix IV	Government Departments’ General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Proposed Layout 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
JANUARY 2024