

TOWN PLANNING BOARD

TPB Paper No. 10875

**For Consideration by
the Town Planning Board on 16.12.2022**

**REVIEW OF APPLICATION NO. A/NE-LK/145
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Private Vehicle Park (Private Car) for a Period of 3 years
and Filling of Land in “Agriculture” Zone,**

**Lots 1406 S.A ss.1, S.A RP, S.B, S.C and RP in D.D. 39,
Ma Tseuk Leng, Sha Tau Kok, New Territories**

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1. Background

- 1.1 On 6.6.2022, the applicant, Mr. FONG Chung Kwok, Ben, sought planning permission for a proposed temporary private vehicle park (private car) for a period of 3 years and filling of land at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11 (Plan R-1).
- 1.2 On 29.7.2022, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:
- the proposed development was not in line with the planning intention of the “AGR” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong justification in the current submission for a departure from the planning intention, even on a temporary basis.
- 1.3 For Member’s reference, the following documents are attached:
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| (a) RNTPC Paper No. A/NE-LK/145 | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 29.7.2022 | (Annex B) |
| (c) Secretary of the Board’s letter dated 12.8.2022 | (Annex C) |

2. Application for Review

On 15.8.2022, the applicant applied, under section 17(1) of the Ordinance for a review of the RNTPC’s decision to reject the application (Annex D1). On 27.9.2022, the applicant submitted written representation in support of the review application (Annex D2).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annex D2** as summarized below:

- (a) the proposed vehicle park is relatively small in scale. Possible impacts on the village, if any, are considered minimal;
- (b) the proposed development is temporary in nature, the Site could be reinstated for future agricultural use;
- (c) there are a number of approved Small House applications in close proximity to the Site. Hence, the proposed vehicle park is not incompatible with the surrounding environment, and the proposed vehicle park could address local parking needs and alleviate illegal parking issues nearby; and
- (d) similar applications involving vehicle parks in “AGR” zone were approved in nearby areas (e.g. Applications No. A/NE-LYT/586, A/NE-LYT/749 and A/NE-STK/21) (**Plan R-1b**).

4. The Section 16 Application

Background

4.1 The Site is currently not subject to any active planning enforcement action.

The Site and Its Surrounding Areas (Plans R-1a to R-4b)

4.2 The latest situation of the Site and its surrounding areas are similar to the time of the consideration of the s.16 application by the RNTPC as described in paragraph 7 of **Annex A** and is set out as follows.

4.3 The Site is:

- (a) vacant and covered with grass; and
- (b) accessible via a local track leading to Sha Tau Kok Road to the south.

4.4 The surrounding areas are predominantly rural in character with village houses and active/fallow agricultural land. The village proper of Ma Tseuk Leng is situated at the further north of the Site across a local road.

Planning Intention

4.5 There has been no change of planning intention of the “AGR” zone as mentioned in paragraph 8 of **Annex A**, 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.

Previous Applications

4.6 The Site, in part or in whole, is the subject of three previous planning applications (No. A/NE-LK/94, 95 and 135) for proposed Small House developments. These previous

applications are not relevant to the subject application as they are for different uses.

4.7 Details of the previous applications are summarized at **Annex E**.

Similar Applications

4.8 There is no similar application within the “AGR” zone under the OZP.

4.9 Three similar applications for temporary public vehicle park (No. A/NE-LYT/586, A/NE-LYT/749 and A/NE-STK/21) within the “AGR” zone in other OZPs as quoted by the applicant in the written representation (**Annex D2**) for the subject review application are summarized below for reference:

- Application No. A/NE-LYT/586 was approved by the RNTPC on 13.5.2016 mainly on the grounds that there were similar approved applications in the vicinity of the site; and the temporary vehicle park mainly served the parking needs of Ng Uk Tsuen which was inaccessible by vehicles due to topographic constraints (i.e. bounded by Tan Shan River to the north and knolls to the south);
- Application No. A/NE-LYT/749 was approved by the RNTPC on 25.6.2021 mainly on the grounds that the site was the subject of previous approvals since 2007; it was formed and hard paved; and the Director of Agriculture, Fisheries and Conservation (DAFC) advised that he had no strong view against the application as the site was well cemented and has been used as car park with low potential for agricultural rehabilitation back in 2007; and
- Application No. A/NE-STK/21 was approved by the RNTPC on 11.6.2021 mainly on the grounds that the site was the subject of previous approvals for public vehicle park; and the public vehicle park would support the leisure and recreational developments (i.e. serving the adjacent Sha Tau Kok Farm) in the area.

4.10 The locations of the similar applications as quoted by the applicant are shown on **Plan R-1b**.

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. All except District Officer (North), Home Affairs Department (DO(N), HAD) maintain their previous views on the s.16 application and have no further comments on the review application. Her new/updated comment are summarized as follows:

District Officer

5.2.1 Comments of DO(N), HAD:

- he has consulted the locals regarding the application. The Resident Representative (RR) of Ma Tseuk Leng San Uk Ha objects to the application on the ground that land should be reserved for small house development; and the applicant should seek consent from the local villagers. The Chairman of the Sha Tau Kok District Rural Committee (STKDRC),

the incumbent North District Councillor of N16 Constituency, the Chairman of Lung Shan Area Committee and the Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng San Uk Ha have no comment on the application.

- 5.3 In relation to the reason for rejection of the s.16 application, the view of DAFC is recapitulated as follows:

Agriculture

5.3.1 Comments of the DAFC:

- he does not support the application from agricultural perspective. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water sources are available. The Site possesses potential for agricultural rehabilitation and can be used for other agricultural activities such as open-field cultivation, greenhouses and plant nurseries.

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

- 6.1 On 26.8.2022 and 7.10.2022, the review application was published for public inspection. During the statutory public inspection period, a total of 24 public comments were received. Among them, 17 are supporting comments, five are objecting comments and two indicate no comment on the application.
- 6.2 The Chairman of STKDRC and 16 individuals support the application mainly on consideration that there is demand for car parking spaces; the number of parking spaces for village residents living nearby are insufficient; and agricultural land nearby have been abandoned and the proposed development could better utilize land resources. The other five objecting comments submitted by the Kadoorie Farm and Botanic Garden Corporation and individuals object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; no justification has been made in support of the review application; the Site is suitable for agricultural purposes; and approval of the application would set a precedent for similar cases in the “AGR” zone; and the development would cause adverse traffic and environmental impacts on the surrounding areas and increase fire risks, thus affecting the safety and quality of life of residents living nearby. Two comments submitted by the Chairman of the Sheung Shui District Rural Committee indicate no comment on the application.
- 6.3 Three public comments raising objection to the application were received at the s.16 application stage, which are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The subject s.16 application was rejected by the RNTPC on 29.7.2022 on the ground that the development was not in line with the planning intention of the “AGR” zone. To support the review application, the applicant has submitted written representation claiming that the proposed development is small in scale and possible impacts on the village are considered minimal; the proposed development is not incompatible with the surrounding environment which is dominated by village houses; and the proposed use could address the shortage of car parking spaces in the area and alleviate illegal parking

issues in the vicinity of the Site. The applicant also claims that similar applications have been approved in the nearby areas. Nevertheless, there has been no material change in the planning circumstances since the s.16 application was rejected. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid.

Planning Intention of the "AGR" zone

- 7.2 The Site falls within an area zoned "AGR" (**Plan R-1a**). The proposed use is not in line with the planning intention of the "AGR" zone. DAFC maintains his view of not supporting the application from the agricultural point of view as there are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water sources are available. The Site possesses potential for agricultural rehabilitation. There is no strong justification in the review submission for a departure of such planning intention, even on a temporary basis.

Small in Scale and Minimal Impacts

- 7.3 The application is for a proposed temporary private vehicle park for a period of 3 years with filling of land, involving a site area of about 409m² providing 14 parking spaces for private cars for use by nearby villagers. The applicant claims that the proposed development is small in scale and the possible impacts to the village would be minimal. Although the Site is considered small in area, it forms part of a larger "AGR" zone involving active/fallow agricultural land with potential for agricultural rehabilitation. DAFC maintains his view of not supporting and indicates that the Site could be used for other potential agricultural activities such as open-field cultivation, greenhouses/plant nursery, and hence, should be reserved for agricultural use. Relevant government departments consulted, including CE/MN of DSD, DEP, D of FS, CE/C of WSD and HKPF have no adverse comment on/no objection to the review application.

Compatibility with Surrounding Land Uses

- 7.4 The proposed vehicle park is considered not incompatible with the surrounding land uses, which are mainly village houses, vacant land, active/fallow agricultural land and clusters of woodland (**Plan R-3**). In this regard, CTP/UD&L, PlanD has no objection to the review application from landscape planning perspective.

Addressing Parking Demand and Alleviating Illegal Parking Issues

- 7.5 In respect of the applicant's claim that the proposed vehicle park could address local parking demand and alleviate the problem of illegal parking in Ma Tseuk Leng, C for T maintains her view of having no in-principle objection to the review application from traffic engineering point of view. However, it is considered that provision of vehicle park should better be confined to areas intended for development purpose such as those within the "V" zone. Illegal parking issue should be tackled by traffic enforcement action instead of undesirable proliferation of rural vehicle park. Local parking needs should be addressed separately in suitable areas.

Similar Approved Applications

- 7.6 According to the applicant's justification, there are three similar applications in the Lung Yeuk Tau and Sha Tau Kok areas approved by the RNTPC (No. A/NE-LYT/586, A/NE-LYT/749 and A/NE-STK/21). The similar applications quoted by the applicant in paragraph 4.9 above are distant from the Site and are covered by different OZPs. These

applications were approved mainly on grounds of their unique planning circumstances including previous approvals and low potential for agricultural rehabilitation, etc. As such, the planning circumstances of the current application are different from the applications quoted by the applicant. There is no similar application for vehicle park approved within the "AGR" zone under the OZP.

- 7.7 One supporting comment from the Chairman of STKDRC as conveyed by DO(N), HAD is noted. Regarding the public comments objecting to the review application as detailed in paragraph 6 above, government departments' comments and planning assessments 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 detailed in paragraph 6 and given that there has been no material change in the planning circumstances since the consideration of the subject application by the RNTPC, Planning Department maintains its previous view of not supporting the review for the following reason:

- the proposed development is not in line with the planning intention of the AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the current submission for a departure from the planning intention, even on a temporary basis.

- 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 3 years until 16.12.2025. 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 6:30 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle without valid licence issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations is allowed to be parked/stored on the Site at any time during the planning approval period;
- (c) only private car as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) 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 16.6.2023;
- (e) in relation to (d) 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 16.9.2023;

- (f) in relation to (e) above, the implemented drainage facilities at the Site should be maintained at all times during the planning approval period;
- (g) the submission of proposals for water supplies for fire-fighting 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 16.6.2023;
- (h) in relation to (g) above, the implementation of proposals for water supplies for fire-fighting 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 16.9.2023;
- (i) if any of the above planning condition (a), (b), (c) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning condition (d), (e), (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

The recommended advisory clauses are attached at **Annex G**.

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 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.

10. Attachments

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| Plan R-1a to R-1b | Location Plans |
| Plan R-2 | Site Plan |
| Plan R-3 | Aerial Photo |
| Plans R-4a to R-4b | Site Photos |
| Annex A | RNTPC Paper No. A/NE-LK/145 |
| Annex B | Extract of Minutes of the RNTPC Meeting Held on 29.7.2022 |
| Annex C | Secretary of the Board's Letter dated 12.8.2022 |
| Annex D1 | Applicant's Letter dated 15.8.2022 |
| Annex D2 | Written Representation from the Applicant's Representative received on 27.9.2022 |

Annex E

Annex F

Annex G

Previous Applications

Public Comments on the Review Application

Recommended Advisory Clauses

PLANNING DEPARTMENT

DECEMBER 2022