

TOWN PLANNING BOARD

TPB Paper No. 10945

**For Consideration by
the Town Planning Board on 1.12.2023**

**REVIEW OF APPLICATION NO. A/NE-LYT/795
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Public Vehicle Park (Private Car Only)
for a Period of Three years in “Agriculture” Zone**

**Lots 466 (Part) and 470 (Part) in D.D.83
and Adjoining Government Land, Kwan Tei, Fanling, New Territories**

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Kwan Tei, Fanling, New Territories

1. Background

- 1.1 On 19.5.2023, the applicant, Mr LAU Wing On, represented by Toco Planning Consultants Limited, sought planning permission for a proposed temporary public vehicle park (PVP) (private car only) for a period of three years at the application site (the Site) under s.16 of the pre-amended Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19 (**Plan R-1a**). The Site involves two portions, i.e. Site A (the eastern portion of about 420m²) and Site B (the western portion of about 485m²). Site A is the subject of a valid planning application No. A/NE-LYT/742 for temporary PVP involving 11 carparking spaces, while Site B involving 19 proposed carparking spaces is currently vacant and not the subject of any approved planning permission for temporary PVP (Drawing A-1 of **Annex A**).
- 1.2 On 14.7.2023, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reason:
- the proposed development was not in line with the planning intention of the “AGR” zone, which was to retain primarily 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 planning justification for a departure from the planning intention, even on a temporary basis.
- 1.3 For Members’ reference, the following documents are attached:
- | | |
|---|--------------------|
| (a) RNTPC Paper No. A/NE-LYT/795 | (Annex A) |
| (b) Extract of minutes of the RNTPC meeting held on 14.7.2023 | (Annex B) |
| (c) Secretary of Town Planning Board’s letter dated 28.7.2023 | (Annex C) |

2. Application for Review

On 18.8.2023, the applicant applied under s.17(1) of the Ordinance for review of the RNTPC’s decision to reject the application (**Annex D1**). On 11.9.2023, the applicant’s representative submitted further information (FI) providing detailed planning justifications 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 the submission at **Annex D2**, as summarized below:

Sympathetic/Appropriate Considerations should be Given to Serve Public Interest

- (a) according to the Notes of the OZP, some non-agricultural uses are either permitted uses under Column 1 or uses under Column 2 which may be permitted with or without conditions on application to the Board within the “AGR” zone. As such, non-agricultural uses including PVP may be permitted within the “AGR” zone based on individual merits of each application rather than solely considering the planning intention. In addition, among the total of 37 public comments received during the public inspection period (paragraph 10 of **Annex A**), 33 are supporting comments submitted by villagers. Two Indigenous Inhabitant Representatives (IIRs) of Kwan Tei also support the application, which demonstrates the genuine need of temporary PVP to improve the livelihood in Kwan Tei. The approval of the current application could improve the traffic condition and safety within the village, and maximize the utilization and efficiency of vacant land. Commissioner for Transport (C for T) also considers the application tolerable for three years;

Government’s Relaxation to Allow Suitable Ecologically Non-sensitive Areas for Brownfield Operations

- (b) the Government has been utilizing abandoned agricultural land for temporary brownfield operation and has stepped up assistance for displaced brownfield operators to relocate their businesses elsewhere. The Site, currently vacant, could be put in good use to allow a temporary PVP as technical requirements have been fully addressed;

“AGR” Zone at the Site is Not Active

- (c) there has been no agricultural programme at the Site. There is a previous application No. A/DPA/NE-LYT/84 approved in 1996 for proposed residential development with recreational facilities covering Site B. Although the scheme under such application was not implemented, the Site could be better utilized for alternative uses and approval of the application would not frustrate the long-term planning intention of the “AGR” zone;

Inconsistency in Planning Consideration and Assessments

- (d) there are several approved temporary applications for PVP within “AGR” zone on the OZP. For example, planning application No. A/NE-LYT/777 (**Plan R-1b**) for temporary PVP with similar justifications as the current application was approved by the RNTPC on 13.1.2023. The application site under application No. A/NE-LYT/777 is completely concrete-paved with temporary structures while the current Site does not involve any structures and part of the Site could be easily reinstated for future agricultural rehabilitation if needed;
- (e) the RNTPC Paper (**Annex A**) states that there is no similar application within the same “AGR” zone for the same temporary use in the vicinity of the area. However, there is a similar application No. A/NE-LYT/742. If the current application should be

considered as a fresh application, then it would be more justifiable to recognize application No. A/NE-LYT/742 as a separate similar application;

Planning Approval would Provide Necessary Traffic Enforcement Action

- (f) as C for T has no enforcement power in the villages, approval of the current application with approval conditions would provide necessary traffic enforcement action as compared to the existing undesirable proliferation of illegal roadside parking in the area; and

The Proposed Number of Parking Spaces is Minimal

- (g) Site A is the subject of two previously approved application for temporary PVP involving 11 parking spaces, while Site B is subject of a previously rejected application No. A/NE-LYT/718 for proposed temporary PVP involving 58 private cars and 5 light goods vehicles parking spaces. The applicant also submitted two more applications (No. A/NE-LYT/766 and 792) with smaller site area and number of parking spaces as compared with application No. A/NE-LYT/718. The current application only proposes 19 parking spaces at Site B, which still cannot fully meet the demand of the villagers. However, it is considered an optimal compromised scheme to address both the departmental concerns and the villagers' needs.

4. The Section 16 Application

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

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by the RNTPC is described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change in the situation since then.
- 4.2 The Site is:
 - (a) mainly flat and partly covered with self-seeded vegetation with some trees of common species in the western part of the Site (Site B), while the eastern portion (Site A) is paved and used for a temporary PVP with planning permission (application no. A/NE-LYT/742); and
 - (b) accessible from Sha Tau Kok Road – Lung Yeuk Tau via a local track.
- 4.3 The surrounding areas are predominantly rural in character intermixed with tree clusters, active/fallow agricultural land, vacant land, village houses and a pond. A local track is located at its immediate east which connects to Sha Tau Kok Road – Lung Yeuk Tau. The village proper of Kwan Tei Village is located to the east.

Planning Intention

- 4.4 There has been no change in the planning intention of the subject “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.

Background

- 4.5 As mentioned in paragraph 4 of **Annex A**, parts of the Site are the subject of two previous planning enforcement cases against unauthorized parking of vehicles (**Plan R-2**). Site A is the subject of a previous planning enforcement case No. E/NE-LYT/198 with its Cancellation Notice issued on 9.11.2015 after the approval of planning application No. A/NE-LYT/568. Site B is the subject of a previous planning enforcement case No. E/NE-LYT/241. As unauthorized parking of vehicles had been discontinued, Reinstatement Notice (RN) and Compliance Notice for RN were issued on 17.6.2021 and 4.2.2022 respectively.

Previous Applications

- 4.6 As detailed in paragraph 5 of **Annex A**, part of the Site is the subject of three previous planning applications (No. A/NE-LYT/568, 718 and 742) considered by the RNTPC for temporary PVP. Application Nos. A/NE-LYT/568 and 742 involving 11 parking spaces at Site A for a period of three years submitted by a different applicant were approved by the RNTPC on 7.8.2015 and 5.2.2021 respectively. They were approved mainly on considerations that the development was not incompatible with the surrounding land uses; and the development would unlikely cause any significant adverse traffic drainage, environmental and landscape impacts. All approval conditions under Application No. A/NE-LYT/742 had been complied with and the planning permission is valid until 5.2.2024.
- 4.7 Application no. A/NE-LYT/718 covering a larger site area than Site B for proposed temporary PVP involving 58 private vehicles and 5 light goods vehicles parking spaces submitted by the same applicant as the current application was rejected by the RNTPC on 6.3.2020 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone and the applicant failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas. The same applicant submitted a total of four similar temporary PVP applications involving Site B. Apart from the application No. A/NE-LYT/718, applications No. A/NE-LYT/711, 766 and 792 submitted by the same applicant covering the part of the Site had been withdrawn. Among them, application Nos. A/NE-LYT/766 and 792 were withdrawn after the issue of the relevant RNTPC Papers.
- 4.8 There was a previous application No. A/DPA/NE-LYT/84 for a different permanent use (i.e. residential development with recreational facilities) which has lapsed in 2002. It is considered not relevant to the subject application for proposed temporary PVP.
- 4.9 Details of the above previous applications are summarized at **Annex E** and their locations are shown on **Plan R-1a**.

Similar Applications

- 4.10 When the s.16 application was considered by the RNTPC on 14.7.2023, there was no similar application within the same “AGR” zone for the same temporary use in the vicinity of the area over the past five years. Subsequently, a similar application No. A/NE-LYT/806 (**Plans R-1a** and **Plan R-1b**) straddling both “AGR” and “Residential (Group C)” (“R(C)”) for temporary PVP to further west of the Site near Ma Liu Shui

San Tsuen was approved by the RNTPC 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.

- 4.11 As shown on **Plan R-1b**, five other similar applications in a different piece of “AGR” zone to further west of the Site (about 1.1km from the Site) are found over the past five years. These applications (No. A/NE-LYT/689, 704, 706, 747 and 777) involving four sites for PVP use¹, (ranging from 21 to 40 carparking spaces), were approved by the RNTPC between May 2019 and January 2023 mainly on considerations that the use was not incompatible with the surrounding land uses; unlikely cause 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 subject of previous planning approvals².
- 4.12 Details of the above similar applications are summarized at **Annex F** and their locations are shown on **Plan R-1a** and **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 and Appendix III of **Annex A**. Their advisory comments, if any are at Appendix IV of Annex A and recapped at **Annex H**.
- 5.2 For the review application, the relevant government departments have been further consulted. Director of Agriculture, Fisheries and Conservation (DAFC) and C for T maintain their previous views on the s.16 application in paragraph 9.2 and Appendix III of **Annex A**, as recapitulated below:

Agriculture and Nature Conservation

5.2.1 Comments of DAFC:

- maintains his view that the Site falls within the “AGR” zone and is abandoned. 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, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the proposed development is not supported from agricultural perspective.

¹ 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), 40 (application no. A/NE-LYT/747), and 21 (application no. A/NE-LYT/777) parking spaces respectively.

² Applications No. A/NE-LYT/704, 747 and 777 were the subject of previous approvals for the same use.

Traffic

5.2.2 Comments of C for T:

- (a) maintains view that the planning application is tolerable for three years from traffic engineering point of view; and
- (b) the access road linking the Site and Sha Tau Kok (Lung Yeuk Tau) is not managed by Transport Department.

5.3 All other relevant government departments maintain their previous views of having no objection to/no adverse comment on the s.16 application and have no further comments on the review application. Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD) under the s.17 application are as follows:

- (a) two IIRs of Kwan Tei and the IIR of Fu Tei Pai support the application as the proposed temporary PVP would provide more carparking spaces which are in shortage for Kwan Tei Village;
- (b) the Chairman of Fanling District Rural Committee has no comment on the application while the Chairman of Lung Shan Area Committee suggests that the proposed development should be kept tidy and clean with clear traffic instruction; and
- (c) the incumbent North District Councilor of N18 Constituency, the Resident Representative (RR) of Fu Tei Pai and the RR of Kwan Tei have not replied to HAD.

6. Public Comments Received During Statutory Publication Period

- 6.1 On 1.9.2023 and 22.9.2023, the review application and FI were published for public inspection. During the respective 3-week statutory public inspection periods, a total of 45 public comments were received (**Annex G**). While two public comments made by the Chairman of Sheung Shui District Rural Committee indicate no comment on the application, 40 public comments by individuals in standard form support the application as the proposed temporary PVP would provide additional carparking spaces to solve the illegal parking as carparking is in shortage in Kwan Tei Village. The remaining three public comments made by Kadoorie Farm & Botanic Garden Corporation (KFBG) and two 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 and the applicant fails to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; the applicant has not obtained the landowner’s consent of the concerned lots; approval of the application would set an undesirable precedent for extending the carparking use within the “AGR” zone and induce environmental impact.
- 6.2 37 public comments (one indicates no comment, 33 supporting comments and three adverse comments) 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 application was rejected by the RNTPC on 14.7.2023 for reason as detailed in paragraph 1.2 above. To support the review application, the applicant has submitted written justifications as summarized in paragraph 3 above. Although there has been no major material change in the planning circumstances since the RNTPC's consideration of the subject application in July 2023, the planning consideration and assessments below are in response to the applicant's justifications provided in the review application.
- 7.2 The "AGR" zone is intended 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 provision for PVP use within the "AGR" zone under the OZP. Nevertheless, temporary use including temporary PVP not exceeding a period of three years could be submitted for the Board's consideration which may grant or refuse to grant permission based on its individual merits of the proposal. Given that the Site possesses potential for agricultural rehabilitation, DAFC maintains his view of not supporting the review application from agricultural perspective and indicates that the Site could be used for open field cultivation, greenhouses, etc., and should be reserved for agricultural use. There are no strong justifications in the submission to justify a departure from the planning application of the "AGR" zone, even on a temporary basis. The opposing comments as detailed in paragraphs 6.1 also echo that the proposed temporary PVP would not be in line with the planning intention of the "AGR" zone and would set an undesirable precedent for extending the carparking use within the "AGR" zone. Further proliferation of car parks to the rural agricultural land could induce adverse environmental impact.
- 7.3 C for T maintains his view that the temporary PVP is tolerable on temporary basis of three years from traffic engineering point of view. Nevertheless, having regard to the "AGR" zone of the Site and its western part (Site B) is covered with vegetation, the Planning Department (PlanD) considers that public carparking provision should be located in areas intended for development purposes from planning point of view. Parking problem should be addressed by provision of car parks at suitable locations with necessary traffic enforcement action instead of allowing undesirable proliferation of rural car parks in the "AGR" zone.
- 7.4 As detailed in paragraph 4.10, when considering the s.16 application, there was no similar application within the same "AGR" zone for the same temporary use in the vicinity of the area as shown on Plan A-1 of **Annex A**. Application No. A/NE-LYT/777 as quoted by the applicant is located in a different "AGR" zone near Wing Hing Wai which is at least 1.1km away from the current application site (**Plan R-1b**). A total of five similar applications including application No. A/NE-LYT/777 were found in a different piece of "AGR" zone on the same OZP over the past five years. They were approved by the RNTPC mainly on considerations as detailed in paragraph 4.11, and mostly involved previous planning approvals. Compared with the current application, application No. A/NE-LYT/777 is located in a different "AGR" zone and has been hard paved even before the first approval in 2019. It was approved by the RNTPC on 13.1.2023 mainly on consideration that the application site was largely the same as the previous approval obtained for temporary PVP (Application No. A/NE-

LYT/706) in 2019 with the same number of vehicle parking spaces and a slight reduction in site area. The planning circumstances of the application No. A/NE-LYT/777 is different from the current one which includes an area covered with vegetation under “AGR” zoning and involves additional carparking spaces.

- 7.5 After consideration of the s.16 application, a similar application No. A/NE-LYT/806 straddling both “AGR” and “R(C)” zones near Ma Liu Shui San Tsuen (**Plan R-1a**) was approved by the RNTPC on 27.10.2023, mainly on considerations as detailed in paragraph 4.9. Compared with the newly approved similar application No. A/NE-LYT/806, the current application solely falls within “AGR” zone which is currently covered with self-seeded vegetation and some trees of common species, and vegetation clearance would be required; while the approved similar application straddles between “R(C)” and “AGR” zones with support from C for T as it could relieve the shortage of parking spaces in the area and address acute illegal parking problem observed in the vicinity of Ma Liu Shui San Tsuen, and its “AGR” portion of the application site has been formed and used intermittently for storage/workshop uses since the 1990s.
- 7.6 The proposed temporary PVP application is not subject to the Town Planning Board Guidelines No. 13G said Guidelines, which concerns temporary brownfield use.
- 7.7 Regarding the public comments objecting and concerning to the review application as mentioned in paragraph 6 above, government departments’ comments and the planning assessments above are relevant.

8. **Planning Department’s Views**

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6, Planning Department does not support the review application 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, 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, even on a temporary basis.
- 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 three years until **1.12.2026**. 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 Ordinance is allowed to be parked/stored on the Site at any time during the planning approval period;
- (b) only private cars 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 1.6.2024;
- (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 1.9.2024;
- (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 1.6.2024;
- (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 1.9.2024;
- (h) if any of the above planning conditions (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;
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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
- (j) 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 H**.

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 permission should be valid on a temporary basis.

10. Attachments

Plan R-1a to 1b	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial photo
Plan R-4a to 4b	Site Photos
Annex A	RNTPC Paper No. A/NE-LYT/795
Annex B	Extract of Minutes of the RNTPC Meeting held on 14.7.2023
Annex C	Secretary of the Town Planning Board's Letter dated 28.7.2023
Annex D1	Letter dated 17.8.2023 from the Applicant's Representative Applying for a Review of the RNTPC's Decision
Annex D2	Letter dated 11.9.2023 from the Applicant's Representative Providing Further Justifications in Support of the Review Application
Annex E	Previous Applications
Annex F	Similar Applications
Annex G	Public Comments
Annex H	Recommended Advisory Clauses

**PLANNING DEPARTMENT
DECEMBER 2023**