

TOWN PLANNING BOARD

TPB Paper No. 10829

**For Consideration by
the Town Planning Board on 13.5.2022**

**REVIEW OF APPLICATION NO. A/NE-TK/740
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Private Vehicle Park (Private Cars and Light Goods
Vehicles Only) for a Period of 3 Years in “Agriculture” Zone
Lots 474 S.BB, 474 S.BI, 474 S.BK, 474 S.BR, 474 S.BT, 474 S.BV, 474 S.BX, 474 S.BY,
474 S.BZ, 474 S.CA, 474 S.CB, 475 S.B, 475 S.D, 475 S.G, 475 S.I, 475 S.L, 475 S.M, 475
S.N, 475 S.P, 475 S.Q, 475 S.R and 475 S.S in D.D. 23, Po Sam Pai, Ting Kok, Tai Po**

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1. Background

- 1.1 On 13.12.2021, the applicant, Mr. CHOW Chiu Hang, sought planning permission for a proposed temporary private vehicle park (private cars and light goods vehicles only) at the application site (the Site) for a period of 3 years under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 28.1.2022, 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 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 planning justification in the current submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applicant failed to demonstrate in the submission that the development would not result in adverse landscape impacts on the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TK/740 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 28.1.2022 (Annex B)
 - (c) Secretary of the Board’s letter dated 18.2.2022 (Annex C)

2. Application for Review

On 24.2.2022, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application with written representation in support of the review application (**Annex D**).

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 D** as summarized below:

- (a) the subject application was considered by RNTPC together with a similar application (No. A/NE-TK/739) for temporary private vehicle park at the same meeting. It was misleading to Members of RNTPC and unfair to the applicant of the subject application, as the two cases are different on the following aspects:
 - (i) while the subject application involves 17 parking spaces for personal use by the landowners of the Site, Application No. A/NE-TK/739 involves a fair number of parking spaces owned by only two landowners likely for profit-making purpose;
 - (ii) for the subject application, the site condition has remained unchanged since the respective landowners purchased the Site in 2018. In contrast, the owners of Application No. A/NE-TK/739 have undertaken vegetation clearance and site formation works in the past two years;
 - (iii) the owners of the subject application has discontinued the unauthorized car parking use at the Site immediately upon Planning Department (PlanD)'s enforcement action. On the contrary, the owners of Application No. A/NE-TK/739 continue the unauthorized car parking use disregarding PlanD's enforcement action;
- (b) a number of Small House developments have been approved in the surrounding areas. The owners have no intention for agricultural rehabilitation at the Site. The proposed car park use will not result in adverse environmental impacts on the surrounding areas;
- (c) the owners have not undertaken any vegetation clearance nor site formation works to alter the landscape character of the area; and
- (d) the proposed car park use will help address the shortage of parking spaces in the nearby areas.

4. **The Section 16 Application**

Background

- 4.1 The Site is part of the subject of a planning enforcement case (No. E/NE-TK/149) against unauthorized development (UD) involving parking of vehicles (**Plan R-2**). Enforcement Notice (EN) was issued on 11.10.2021 requiring the discontinuation of the UD by 11.12.2021. The case is under monitoring, and prosecution may be taken if the EN is not complied with.

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

- 4.2 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC was described in

paragraph 7 of **Annex A**. The latest situation is set out as follows.

4.3 The Site is:

- (a) currently covered with overgrown and with some canopies previously used as car shelters;
- (b) accessible via a local track connecting with Tung Tsz Road and Ting Kok Road; and
- (c) part of the wider area comprising a number of sub-divided private lots, each of a size similar to a standard private car parking space. The said area is subject of planning enforcement action against unauthorized car parking use as mentioned in paragraph 4.1.

4.4 The surrounding areas are predominantly rural in character with vacant land, vegetated areas, village houses and temporary structures. Car parking is observed at the immediate southwest of the Site within the area under planning enforcement action as mentioned in paragraph 4.3(c) above. Dense woodland with burial grounds is found about 10m to the west of the Site within the “Green Belt” (“GB”) zone on the same OZP. About 45m to the south is an area previously used as a car park without planning permission (the site of Application No. A/NE-TK/739 rejected by the RNTPC on 28.1.2022) which is currently vacant and being reinstated with grass. To the further south and southeast of the Site are the village proper of San Tau Kok and Po Sam Pai respectively. Active and fallow agricultural land are found to the northeast and southeast.

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 Application

4.6 There is no previous application at the Site.

Similar Applications

4.7 When the s.16 application was considered by the RNTPC on 28.1.2022, there was one similar application (No. A/NE-TK/636) for temporary vehicle park within the same “AGR” zone in the vicinity of the Site. At the same meeting on 28.1.2022, another similar application (No. A/NE-TK/739) was considered by the RNTPC. Since then, the number of similar applications remains unchanged.

4.8 Application No. A/NE-TK/636, proposing 60 parking spaces for private cars and 20 parking spaces for light goods vehicles for a period of 3 years, was rejected by the RNTPC on 6.4.2018 for the reasons of being not in line with the planning intention of the “AGR” zone; failing to demonstrate no adverse

landscape and traffic impacts; and setting of undesirable precedent for similar applications. Application No. A/NE-TK/739, proposing 9 parking spaces for private cars for a period of 3 years, was rejected by the RNTPC on the same grounds for rejecting the subject s.16 application as set out in paragraph 1.2 above.

- 4.9 Details of the above applications are summarized at **Annex E** and their locations are shown on **Plans R-1** and **R-2**.

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. All maintain their previous views on the s.16 application and have no further comments on the review application. In relation to the reasons for rejection of the s.16 application, the views of the Director of Agriculture, Fisheries and Conservation (DAFC) and Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) are recapitulated as follows:

Agriculture

5.2.1 Comments of the DAFC:

- the Site falls within an “AGR” zone and is currently a piece of formed land. There are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water source is 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 application is not supported from agricultural point of view.

Landscape

5.2.2 Comments of the CTP/UD&L, PlanD:

- (a) some reservations on the application from landscape planning perspective;
- (b) the Site is currently covered with wild grass with some temporary structures. No existing tree is observed within the Site. Based on the aerial photos taken in 2017 to 2021, vegetation within the Site and its immediate surroundings were gradually cleared and site formation works have been carried out since 2017 (**Plan R-3**);
- (c) the Site is located in an area of rural inland plains landscape character comprising mainly vacant land, vegetated areas, village houses and temporary structures, with dense woodland found at its west within the “GB” zone on the same OZP. The proposed

use is considered not entirely incompatible with the surrounding environment. Nevertheless, there is concern that approval of the application may encourage similar applications within the area. The cumulative impact of approval of such applications may further alter the landscape character and degrade the landscape quality of the “AGR” zone; and

- (d) given that the Site is not bounded by prominent public frontage, should the application be approved by the Board, it is considered unnecessary to impose landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

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

- 6.1 On 4.3.2022, the review application was published for public inspection. During the statutory public inspection period, which ended on 25.3.2022, two public comments were received from individuals objecting to the application mainly on the grounds of being not in line with the planning intention of the “AGR” zone, involving UD, and causing adverse traffic, environmental and fire safety concerns.
- 6.2 Nine 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 28.1.2022 for reasons that the development was not in line with the planning intention of the “AGR” zone and would result in adverse landscape impacts. To support the review application, the applicant contends that the subject application should be given different considerations from those for the nearby application (No. A/NE-TK/739) as the subject application involves car parking for personal use by the relevant landowners, no changes to the site condition and no unauthorized use upon PlanD’s enforcement action while Application No. A/NE-TK/739 involves car parking use likely for profit-making purpose, vegetation clearance and site formation works in recent years and continuation of unauthorized use upon PlanD’s enforcement action. The applicant also claims that the relevant landowners under current application have no intention for agricultural rehabilitation on the Site, and the proposed car parking use will help address the shortage of parking spaces in the area. Nevertheless, there is no material change in the planning circumstances. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid.
- 7.2 The application is for a proposed temporary private vehicle park for a period of 3 years, involving 17 parking spaces for private cars and light goods vehicles for use by the concerned landowners. Regarding the applicant’s claim that the subject application should be given different considerations from those for the nearby application (No. A/NE-TK/739), it should be noted that Application No. A/NE-TK/739 is also for temporary private vehicle park for a

period of 3 years, involving 9 parking spaces for private cars for use by the applicant and his family. Despite the difference in the number of land owners involved, the nature of the two cases is similar. Furthermore, previous aerial photographs reveal that vegetation clearance and site formation works have been undertaken on both sites of Application No. A/NE-TK/739 and the subject application since 2016 and 2017 respectively. It is noted that the site under the subject application was covered with overgrown with no paving and car parking use has been discontinued at the time of consideration of the s.16 application, while that under Application No. A/NE-TK/739 was hard-paved with car parking use continued at the time of consideration. These differences have been reflected in the papers for consideration by the RNTPC at the meeting on 28.1.2022. The RNTPC, after giving consideration to the planning assessments and departmental comments, decided that both cases should be rejected for the same reasons, as set out in paragraph 1.2 above. The rejection grounds for the subject application remain valid.

- 7.3 The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok OZP No. S/NE-TK/19 (**Plan R-1**). The proposed use 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 purpose. Regarding the applicant’s claim that the landowners have no intention for agricultural rehabilitation at the Site, DAFC maintains his view of not supporting the application from agricultural point of view as there are active agricultural activities in the vicinity, and agricultural infrastructure such as road access and water sources is available. The Site possesses potential for agricultural rehabilitation and can be used for agricultural activities including open-field cultivation, greenhouses, plant nurseries etc. The applicant has not provided strong planning justifications in the submission to justify a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 7.4 The Site is part of a wider area comprising a number of sub-divided private lots each of a size similar to a standard private car parking space. It is also subject of planning enforcement action against unauthorized car parking use. Regarding the applicant’s claim that no change to the site situation has been made by the landowners since their purchase of the Site in 2018, past aerial photos reveal that vegetation within the Site and its immediate surroundings was cleared and site formation works have been carried out since 2017 (**Plan R-3**). CTP/UD&L of PlanD advises that the proposed use is not entirely incompatible with the surrounding environment which are predominantly vegetated areas, dense woodland and village houses. Nevertheless, she has reservation on the application from landscape planning perspective as approval of the application may encourage similar applications, the cumulative impact of which would further alter the landscape character and degrade the landscape quality of the “AGR” zone.
- 7.5 Regarding the applicant’s claim that the proposed car park use could address the shortage of parking spaces in the area, it should be noted that all applications should be considered on individual merits taking into account any technical impacts on the area and relevant departmental views. For this case, DAFC does not support the application and CTP/UD&L, PlanD has

reservation on the application. All other government departments consulted have no comment on the review application.

- 7.6 The Site is not subject of any previous planning application. There are two similar applications (No. A/NE-TK/636 and 739) within the same “AGR” zone in the vicinity of the Site, which were both rejected by the RNTPC for reasons summarised in paragraph 4.8 above. The circumstances for rejecting these applications are largely applicable to the current one.
- 7.7 Regarding the public comments objecting to the review application as detailed in paragraph 6.1 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, having taken into account the public comments in paragraph 6.1 and given that there is 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 application for the following reasons:
- (a) the proposed use 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; and
 - (b) the applicant fails to demonstrate in the submission that the proposed use would not result in adverse landscape impact to 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 3 years until 13.5.2025. 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) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are 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 13.11.2022;

- (d) in relation to (c) above, the implementation 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 13.2.2023;
- (e) the submission of a proposal for fire service installations (FSIs) and water supplies for fire-fighting 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 13.11.2022;
- (f) in relation to (e) above, the implementation of FSIs and water supplies for fire-fighting 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 13.2.2023;
- (g) if any of the above planning conditions (a) or (b) 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
- (h) if any of the above planning conditions (c), (d), (e) or (f) 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 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-1 | Location Plan |
| Plan R-2 | Site Plan |
| Plan R-3 | Aerial Photos |
| Plan R-4 | Site Photos |
| Annex A | RNTPC Paper No. A/NE-TK/740 |
| Annex B | Extract of Minutes of the RNTPC Meeting Held on 28.1.2022 |
| Annex C | Secretary of the Board's Letter dated 18.2.2022 |
| Annex D | Applicant's Letter dated 24.2.2022 |

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| Annex E | Similar Applications |
| Annex F | Public Comments on the Review Application |
| Annex G | Recommended Advisory Clauses |

**PLANNING DEPARTMENT
MAY 2022**