

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/699

<u>Applicant</u>	Mr. WAN Ma Sing represented by Metro Planning and Development Company Limited
<u>Site</u>	Lot 1532 RP (Part) in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
<u>Site Area</u>	About 447 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Temporary Public Vehicle Park (Private Car) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary public vehicle park (private car) for a period of three years on the application site (the Site) (**Plan A-1**). The Site is zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without planning permission.
- 1.2 According to the applicant’s submission, 14 parking spaces (2.5m x 5m each) are provided for private vehicles on the Site (**Drawing A-1**). The car park will operate from 7 a.m. to 11 p.m. on a daily basis including Sundays and public holidays serving the villagers of Kan Tau Tsuen. The Site is accessible via a local track to Sha Tau Kok Road – Lung Yeuk Tau (**Plan A-2**). The applicant submitted proposed drainage and landscape plans in supporting the application (**Drawings A-2 to A-3**).
- 1.3 In support of the application, the applicant has submitted application form with attachments received on 28.5.2019 (**Appendix I**) in support of the application.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the application forms at **Appendix I**. They can be summarised as follows:

- (a) the proposed development is temporary in nature, which would not violate the long term planning intention of the “AGR” zone, the Site could be converted to agricultural use whenever there is a demand;
- (b) the scale, nature, form and layout of the proposed development is compatible with the surrounding environment;
- (c) the proposed development has been paved for a long time so that no site formation works will be carried out;
- (d) the operation hours of the proposed development is 7 a.m. to 11 p.m. daily including Sundays and public holidays. No operation will be held outside the operation hours;
- (e) similar public vehicle parks have been approved by the Board on a temporary basis. Those approved public vehicle parks are found to the west of the Sites within the same “AGR” zone. As such, sympathetic consideration should be given to the current application;
- (f) the applicant submitted landscape and tree preservation proposal, drainage proposal and estimated traffic generation to demonstrate that the proposed development would not generate significant impacts to the surrounding environment;
- (g) the land within Kan Tau Tsuen is mainly zoned for “Village Type Development” (‘V’) for Small House developments. The land adjoining the ‘V’ zone is therefore suitable for the use of public vehicle park to meet the parking demand of the villagers; and
- (h) some temporary uses such as public vehicle park and training centre within the same “AGR” zone where the Site falls within are approved by the Board.

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. 31A) by posting site notice and sending a notice to the Ta Kwu Ling Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner / Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advised that the Site is currently part of the subject of an active enforcement case against an unauthorized development involving use of place for parking of vehicles. An Enforcement Notice was issued on 24.6.2019 to the notice recipients requiring the discontinuance of the unauthorized development by 24.9.2019.

5. Previous Application

There is no previous application for the Site.

6. Similar Applications

- 6.1 There are six similar applications involving two sites within or partly within “AGR” zone on the Lung Yeuk Tau and Kwan Tei South area in the vicinity of the Site for temporary public vehicle park and related use(s).
- 6.2 Of them, four similar applications (No. A/NE-LYT/414, 495, 556 and 645) involving the same site for temporary public vehicle park for private cars and light goods vehicles or renewal of the same applied use were approved with conditions by the Rural and New Town Planning Committee (the Committee) between March 2010 and July 2018 mainly on the considerations that the developments were not incompatible with the surrounding land uses; the developments would unlikely cause any significant adverse impacts on the traffic, environment, drainage and landscape of the area; there were previous planning approvals granted on the site for the same use and the applicants had complied with all approval conditions; and there was no adverse comment from concerned departments.
- 6.3 The other two similar applications (No. A/NE-LYT/586 and 691) involving the same site were approved with conditions by the Committee between May 2016 and May 2019 mainly on the similar grounds as the four other approved similar applications mentioned in paragraph 6.2 above.
- 6.4 Details of these similar applications are at **Appendix II** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-3b and A-4)

7.1 The Site is:

- (a) mainly flat, paved, fenced off and being used as car park without planning permission; and
- (b) accessible from Sha Tau Kok Road – Lung Yeuk Tau via a local track (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) situated at the fringe of a village development with mostly village houses to the east, and fallow agricultural land to its north and south intermixed with some vacant land;
- (b) to the immediate east is a vehicle car park without planning permission falling within the same “AGR” zone. It is the subject of planning application (No. A/NE-LYT/698) which will be considered by the Committee at the same meeting;
- (c) further east and southeast are mostly village houses which is the village proper of Kan Tau Tsuen; and
- (d) to the west is vacant land with some wild grasses.

8. Planning Intention

The planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area is to primarily 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.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

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

- (a) the lot under application is Old Schedule Lot held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement for acquiring access. The government shall accept no responsibility in such arrangement, and there is no guarantee that any adjoining government land will be allowed for the vehicular access of the vehicle park use; and
- (b) if the application is approved, the owner of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by government in its landlord's capacity and there is no guarantee that it will be approved. If the STW application is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

Traffic

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

- (a) the applicant should substantiate the traffic generation and attraction from and to the Site and advise the traffic impact to the nearby road links and junctions;
- (b) the applicant should demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site and manoeuvring within the Site, preferably using the swept path analysis;
- (c) the applicant should advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site;
- (d) it is noted that the Site is not directly connected to Sha Tau Kok Road – Ma Mei Ha. The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety;

- (e) the vehicular access between the Site and Sha Tau Kok Road – Ma Mei Ha are not managed by the Transport Department. The applicant should seek comment from the responsible party. The applicant should also demonstrate the satisfactory manoeuvring along this vehicular access, preferably using the swept path analysis; and
- (f) unless the applicant could satisfactorily address his concerns, he cannot render support to the application from the traffic engineering point of view.

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

he has no comment on the application from highways viewpoint. The vehicular access leading from Sha Tau Kok Road – Ma Mei Ha to the Site is not under his purview.

Agriculture

9.1.4 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The hard paved Site can still be used for agricultural activities such as greenhouses, plant nurseries, etc.. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations being provided to the satisfaction of his department; and
- (b) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

9.1.6 Comments of the Chief Building Surveyor/ New Territories West, Buildings Department (CBS/NTW, BD):

- (a) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (b) any temporary shelters or converted containers for

storage/washroom/first-aid room/ site office are considered as temporary buildings are subject to control under Building (Planning) Regulations (B(P)R) Pt. VII;

- (c) the Site shall be provided with means of obtaining access thereto from a street under the B(P)R 5 and emergency vehicular access shall be provided under the B(P)R 41D;
- (d) if the Site is not abutting on a specified street having a width not less than 4.5m wide, the development intensity shall be determined under B(P)R19(3) at the building plan submission stage; and
- (e) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at building plan submission stage.

Environment

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

- (a) it is noted that the Site will not involve parking of heavy goods vehicle nor container truck. The applicant is advised to follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” issued by DEP; and
- (b) there was no environmental complaint against the Site during the past three years.

Drainage

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

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicants to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Water Supply

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

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, 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.

Landscape Aspect

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is located in an area of rural landscape character surrounded by village houses, open storage and vehicles. The use under the application is considered not incompatible with the surrounding environment. It is observed that the Site have been hard paved and already in operation with no significant existing vegetation. Significant adverse impact on existing landscape resources arising from the proposed development is not anticipated; and
- (c) since there is no major public frontage along the site boundary, should the Board approve the application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

District Officer's Comments

9.1.11 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Kan Tau Tsuen supported the proposal mainly on the grounds that there are insufficient parking spaces in the village, which leads to illegal parking on the road sides; approval of the application can provide more parking spaces and thus alleviate the parking problem in the area. The Chairman of Fanling District Rural Committee and the incumbent North District Council of the subject constituency had no comments on the proposal.

9.2 The following government departments have no comment on / no objection to the application:

- (a) Director of Fire Services (D of FS); and
- (b) Project Manager (New Territories East), Civil Engineering and Development Department (PM(NTE), CEDD).

10. Public Comments Received During Statutory Publication Period

On 4.6.2019, the application was published for public inspection. During the statutory public inspection period, four public comments were received (**Appendix III**). World Wide Fund For Nature Hong Kong, The Hong Kong Bird Watching Society and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning

intention of “AGR” zone; the approval of application would encourage “destroy first, build later”; approval of application will set an undesirable precedent to the future similar applications within the “AGR” zone; and the application is to legitimize the unapproved land uses. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary public vehicle park for a period of 3 years on the Site, which falls entirely on an area zoned “AGR” on the OZP. The vehicle park for 14 private car parking spaces 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. DAFC does not support the application from the agricultural development point of view. The applicant has not provided any strong justifications in the submission to justify a departure from the planning application of the “AGR” zone, even on a temporary basis.
- 11.2 The Site is located at the west of Kan Tau Tsuen near the existing village proper and surrounded mostly by village houses, fallow farmland, vacant land and temporary structures (**Plan A-2**). The applied temporary public vehicle park is considered not entirely incompatible with the surrounding area where village houses, temporary structures, active/fallow agricultural land can be found (**Plan A-3**). Since significant adverse impact on existing landscape resources arising from the proposed development is not anticipated, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective.
- 11.3 C for T does not support the application from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary public vehicle park will not cause adverse traffic impact on the surrounding areas in that the applicant has to satisfactorily address the aspects of traffic generation/attraction from and to the Site, pedestrian safety management and vehicle manoeuvring, etc.. DEP has no objection to the application as the Site will not involve parking of heavy goods vehicle nor container truck, but advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimize any potential environmental impacts to the nearby residents should the application be approved by the Board. Other government departments consulted, including CE/MN, DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 It is noted that vegetation clearance followed by hard paving have already taken place at the Site prior to the planning application (**Plans A-3a and A-3b**). An Enforcement Notice (EN) was issued against the use of the site for parking of vehicles and requested the notice recipients to discontinue the unauthorized development by 24.9.2019. The approval of the temporary car park use would encourage similar applications within the “AGR” zone resulting in more vegetated areas being turned into hard paved areas. It would set an undesirable precedent for similar applications and encourage similar site/vegetation clearance prior to obtaining planning permission, i.e. “destroy first, built later” activities. The cumulative effect of approving similar applications will inevitably degrade the landscape character of the “AGR” zone.
- 11.5 There are six similar applications involving two sites within the same “AGR” zone to the southwest of the Sites. All those applications were approved by the Committee between March 2010 and May 2019 (**Plan A-1**) mainly on the considerations that the

developments would unlikely cause any significant adverse impacts on the traffic, environment, drainage and landscape of the area; there were previous planning approvals granted on the site for the same use and the applicants had complied with all approval conditions; and there was no adverse comment from concerned departments. As the applicant fails to demonstrate no adverse traffic impact on the area, the circumstance of the subject application is different from those approved applications.

- 11.6 The supporting comments conveyed by DO(N), HAD are noted. As for three public comments objecting to the application as detailed in paragraph 10 above, Government departments' comments and planning assessment above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary use under application does not support the application for the following reasons:

- (a) the development is not in line with the planning intention of the "AGR" zone which is to primarily 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 submission to justify a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate in the submission that the development would not cause adverse traffic impact on the surrounding areas.

- 12.2 Alternative, 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 3 years until 19.7.2022. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 11 p.m. and 7 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 or enter/exit the Site at any time during the planning approval period;
- (c) no medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, 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) 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;
- (e) no car washing, vehicle repair, dismantling, paint spraying or other workshop

activities is allowed on the Site at any time during the planning approval period;

- (f) the peripheral fencing on the Site should be maintained at all times during the planning approval period;
- (g) 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 19.1.2020;
- (h) in relation to (g) 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 19.4.2020;
- (i) the submission of proposals for water supplies for firefighting 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 19.1.2020;
- (j) in relation to (i) above, the provision of water supplies for firefighting 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 19.4.2020;
- (k) the submission of traffic management measures within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 19.1.2020;
- (l) in relation to (k) above, the implementation of traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 19.4.2020;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e) 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;
- (n) if any of the above planning conditions (g), (h), (i), (j), (k) or (l) 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
- (o) 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 at **Appendix IV**.

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 reject the application, Members are invited what reason(s)

for rejection should be given to the applicant.

- 13.3 Alternatively, 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.

14. Attachments

Appendix I	Application form with attachments received on 28.5.2019
Appendix II	Similar s.16 Applications within the “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Proposed Drainage Plan
Drawing A-3	Proposed Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3b	Aerial Photos
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2019**