

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-LYT/714**

- Applicant** : Mr. WAI Siu Kan represented by Mr. WONG Sun Wo William
- Site** : Lot 1828 (Part) in D.D. 76, Ma Mei Ha Leng Tsui, New Territories
- Site Area** : About 1,025 m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Barbecue Site with Ancillary Office for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for a proposed temporary barbecue site with ancillary office for a period of three years at 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) notwithstanding that the use is not provided for under the Notes of the OZP.
- 1.2 The proposed development comprises three one-storey structures for ancillary office, rain shelter and a portable toilet respectively with a total floor area of 343 m<sup>2</sup> (**Drawing A-1**). An uncovered area at the centre of the Site will be used for barbecue area. Four private car parking spaces (measuring 5 m x 2.5 m) and one parking space for light goods vehicle (measuring 7 m x 3.5 m) will be provided in the northern portion of the Site near the ingress/egress (**Drawing A-1**). As proposed by the applicant, the parking space for light goods vehicle will only be used before 11 a.m. daily. The Site is accessible via Sha Tau Kok Road – Ma Mei Ha. The daily operation hours are between 11:00 a.m. to midnight from Mondays to Sundays including public holidays. The site layout plan, drainage and landscape plans submitted by the applicant are at **Drawings A-1 to A-3**.
- 1.3 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received by the Board on 5.9.2019.

## 2. **Justifications from the Applicant**

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

- (a) The Site is in close proximity to Sha Tau Kok Road – Ma Mei Ha. There is a shortfall of barbecue sites in the area;
- (b) the Site is away from domestic structures. The proposed use would not create adverse impact to the nearby residents; and
- (c) the application is on a temporary basis for a period of three years.

## 3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is one of the “current land owners”. In respect of the other “current land owners, the applicant 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 obtaining consent of other “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

## 4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is the subject of an enforcement case (E/NE-LYT/233) (**Plan A-2**). An Enforcement Notice (EN) against storage use was issued on 23.7.2019 requiring the authorized development to be discontinued on or before 23.10.2019. According to the latest site inspection, the Site is largely vacant. The case will be kept monitoring according to the established procedures.

## 5. **Previous Application**

- 5.1 The Site is the subject of a previous application (No. A/NE-LYT/93) for temporary open storage of construction materials for a period of 12 months. The application was rejected by the Board on review on 11.10.1996 mainly on the considerations that the proposed development was not in line with the planning intention of the "AGR" zone for the area which was to retain and safeguard good agricultural land for agricultural purposes; the proposed development was not compatible with the surrounding land uses which were predominantly rural and agricultural in character; and the approval of the application would set an undesirable precedent for other similar applications.
- 5.2 Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.

## 6. **Similar Application**

There is no similar application for temporary barbecue site use in the same “AGR” zone in the vicinity of the Site in Lung Yeuk Tau and Kwan Tei South area.

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

7.1 The Site is:

- (a) paved and fenced off;
- (b) is largely vacant; and
- (c) located to the southeast of Sha Tau Kok Road – Ma Mei Ha.

7.2 The surrounding areas have the following characteristics:

- (a) mainly a mixed rural landscape character dominated by vacant land, open storage use, warehouse and some active/fallow agricultural land;
- (b) to the immediate north is fallow agricultural land use, and further north are some temporary structures for warehouse use;
- (c) to the west and east is some vacant land covered by wild grass; and
- (d) to the south are active agricultural land use and plant nursery with some temporary structures.

## **8. Planning Intention**

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

## **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 Site comprises a private lot which is an Old Schedule Lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;
- (b) the total built-over area of the existing structures on the Site exceeds the proposed development parameters;
- (c) the existing structures on the Site were erected without approval from his

office. The aforesaid structures are not acceptable under the lease concerned and this office reserves the right to take necessary lease enforcement actions against the aforesaid structures; and

- (d) if the application is approved, the owner of the lot 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 is approved, its commencement date would be backdated to the first date of the 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.

### **Food and Environmental Hygiene**

#### 9.1.2 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) the operation of any food business should be under a food licence / restricted food permit issued by Food and Environmental Hygiene Department (FEHD). If the operator intends to operate a restaurant business in the territory, a restaurant licence should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132). For the operation of other types of food business, relevant food licences / restricted food permits should be obtained from FEHD in accordance with Cap. 132.; and
- (b) the operation of the business should not cause any environmental nuisances and/or hygiene problems at the application site and its vicinities. The operator of the Site is responsible for the removal and disposal of any trade waste generated from the commercial activities at their expenses.

### **Traffic**

#### 9.1.3 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 shall justify the adequacy of the parking spaces and loading/unloading spaces in the Site relating to the number of vehicles visiting the Site;
- (c) the applicant should advise the width of the vehicular access and indicate the location of the access on a plan;
- (d) the applicant should demonstrate the satisfactory manoeuvring of vehicles entering and exiting from the Site and manoeuvring within the Site, preferably using the swept path analysis;
- (e) the applicant should advise the management/control measures to be

implemented to ensure no queuing of vehicles outside the Site;

- (f) the Site is not directly connected to Sha Tau Kok Road – Ma Mei Ha. The applicant should advise the provision and management of pedestrian facilities to ensure pedestrian safety;
- (g) the vehicular access between the Site and Sha Tau Kok Road – Ma Mei Ha is not managed by Transport Department. The applicant should seek comment from the responsible party; and
- (h) in view of the above, he could not render support to the application.

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

The access road adjacent to the Site is not maintained by Highways Department.

**Environment**

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

- (a) it is noted that portable toilet(s) would be provided, no food would be processed and prepared and no food would be washed on the Site;
- (b) she has no objection to the application from environmental viewpoint;
- (c) according to her record, there was no environmental complaint related to the Site in the past three years; and
- (d) the applicant should follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP) issued by the EPD. In particular, the applicant should pay attention to advice related to potential noise nuisance and sewage issues stated in the COP.

**Landscape**

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

- (a) she has no objection to the application from the landscape planning perspective;
- (b) based on aerial photo of 2019, the Site is located in an area of rural landscape character surrounded by village houses and temporary structures. The proposed use is considered not entirely incompatible with the surrounding environment. It is observed that the Site has been hard paved with no significant existing vegetation;
- (c) in view of the above, significant adverse impact on existing landscape

resources arising from the proposed development is not anticipated; and

- (d) since the Site is set back from Sha Tau Kok Road – Ma Mei Ha, with existing vegetation buffer, there is no major public frontage along the site boundary. Should the Board approve this 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.

### **Drainage**

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

- (a) he has no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that the proposed use will not cause adverse impact to the adjacent area; and
- (c) the Site is within an area where connection to existing public sewerage network is available in the vicinity (**Plan A-2**). Should the applicant choose to connect the proposed drainage system to DSD's networks, a connection proposal should be submitted to DSD's agreement. After obtaining agreement, the applicant should follow the established procedures and submit the proposal for approval. The sewerage connection will be subject to DSD's technical audit, for which an audit fee will be charged.

### **Building Matters**

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

- (a) there is no record of approval of the Building Authority (BA) for the existing buildings/structures existing at the Site and BD is not in a position to offer comments on their suitability for the proposed use;
- (b) before any new building works are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (c) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;

- (d) any temporary shelters or converted containers for storage/washroom/first-aid room/site office or other use are considered as temporary buildings are subject to the control of Part VII of the Building (Planning) Regulations (B(P)Rs);
- (e) the Site shall be provided with means of obtaining access thereto from a street under Regulation 5 of B(P)Rs and emergency vehicular access shall be provided under Regulation 41D of B(P)Rs;
- (f) if the Site is not abutting on a specified street having a width not less than 4.5 m, the development intensity shall be determined by the BA under Regulation 19(3) of the B(P)Rs at the building plan submission stage; and
- (g) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.

### **Fire Safety**

#### 9.1.9 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 and water supplies for firefighting being provided to his satisfaction; and
- (b) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Agriculture**

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

the Site is currently paved and occupied by several temporary structures. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can 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.

### **District Officer's Comments**

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

she has consulted the locals regarding the application. The Chairman, First Vice-chairman and Vice-chairman of Fanling District Rural Committee object to the application on the considerations that the Site is surrounded by domestic structures, which would create nuisances to the nearby residents; and the proposed

use would also cause traffic and environmental problems. The North District Council member of subject Constituency, the Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Leng Tsai have no comment on the application.

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

- (a) Comments of the Commissioner of Police (C of P);
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

## **10. Public Comments Received During Statutory Publication Period**

On 13.9.2019, the application was published for public inspection. During the statutory public inspection period, nine public comments were received (**Appendix III**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Chairman, First Vice-chairman and Vice-chairman of Fanling District Rural Committee, Kadoorie Farm and Botanic Garden Corporation, The Hong Kong Bird Watching Society, Designing Hong Kong Limited, WWF-HK and an individual object to the application mainly on the considerations that the Site is surrounded by domestic structure, which would create nuisances to the nearby residents; the proposed use would also cause traffic and environmental problems; and the proposed use is not in line with planning intention of “AGR” zone; approval of the application would further legitimize the current misuse of “AGR” zone and the setting of an undesirable precedent; the Site is associated with unauthorized development involving open storage; and active agricultural activities are observed nearby and the Site should be returned for farming activity.

## **11. Planning Considerations and Assessments**

11.1 The Site falls within an area zoned “AGR”. The proposed temporary barbecue site 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. In this regard, DAFC does not support the application from agriculture point of view since the Site possesses potential for agricultural rehabilitation for greenhouse cultivation or plant nursery with agricultural infrastructures such as road access and water source available and agricultural activities found in the vicinity of the Site. There is no strong planning justification in the submission to justify for a departure from the planning intention, even on a temporary basis.

11.2 The Site is surrounded by a mixed rural landscape character dominated by village houses and temporary structures. The proposed use is considered not entirely incompatible with the surrounding environment. The Site has been hard paved with no significant existing vegetation and significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. As such, CTP/UD&L, PlanD has no objection from landscape planning of view.



- 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 proposed development will not cause adverse traffic impact on the surrounding environment. The applicant should address the traffic issues in relation to satisfactory manoeuvring of vehicles entering and exiting the Site; justification of adequacy of parking spaces provided in the Site; and provision and management of pedestrian facilities to ensure no queuing up of vehicles outside the Site. DEP has no objection to the application and advises that the applicant should follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the EPD in order to minimize any possible environmental nuisance. Other Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on or no objection to the application.
- 11.4 There is no similar application for temporary barbecue site in the same “AGR” zone in the vicinity of the Site under the OZP. The approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 11.5 Regarding the adverse local comments conveyed by DO(N), HAD and public comments as detailed in paragraphs 9.1.11 and 10 above respectively, Government departments’ comments and planning assessments above are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local comments conveyed by DO(N), HAD and the public comments mentioned in paragraphs 9.1.11 and 10 above, the Planning Department does not support the proposed development under the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area 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 intentions, even on a temporary basis;
  - (b) the applicant fails to demonstrate in the submission that the development would not cause adverse traffic impact on the surrounding areas; and
  - (c) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 12.2 Alternatively, 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 1.11.2022. The following conditions of approval and advisory clauses are suggested for Members’ reference:

### Approval Conditions

- (a) no operation between midnight and 11:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 1.5.2020;
- (c) 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 1.5.2020;
- (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 1.8.2020;
- (e) the submission of proposals for fire service installations and water supplies for firefighting 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 1.5.2020;
- (f) in relation to (e) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 1.8.2020;
- (g) the submission of a traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 1.5.2020;
- (h) in relation to (g) above, the implementation of traffic improvement 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 1.8.2020;
- (i) if any of the above planning condition (a) 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
- (j) if any of the above planning conditions (b), (c), (d), (e), (f), (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.

### 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 the permission.

- 13.2 Should the Committee decide to reject the application, Members are invited to advise 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**

<b>Appendix I</b>	Application Form with attachments received on 5.9.2019
<b>Appendix II</b>	Previous s.16 application
<b>Appendix III</b>	Public Comments
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Proposed Drainage Plan
<b>Drawing A-3</b>	Proposed Landscape Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**