

REVIEW OF APPLICATION NO. A/HSK/116
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Temporary Public Vehicle Park
(Private Cars and Light Goods Vehicles Not Exceeding 5.5 Tonnes)
with Ancillary Car Beauty Services and Office
for a Period of 3 Years
in “Village Type Development” Zone,
Lots 1804(Part), 1805(Part), 1808RP, 1809 RP(Part) and 1817(Part)
in D.D. 124, San Lee Uk Tsuen, Yuen Long**

1. Background

1.1 On 21.11.2018, the applicant, Mr. Tang Chun Kee represented by New Creation Consultant Engineering Company Limited, sought planning permission for temporary public vehicle park (private cars and light goods vehicles not exceeding 5.5 tonnes) with ancillary car beauty services and office 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 “Village Type Development” (“V”) on the approved Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/2 (**Plans R-1a and 1b**).

1.2 On 18.1.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:

three previous planning permissions for the same use granted on the Site by the Board are revoked due to non-compliances with approval condition(s). Approval of the application with repeated non-compliances with approval condition(s) would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

1.3 For Members’ reference, the following documents are attached:

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| (a) RNTPC Paper No. A/HSK/116 | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 18.1.2019 | (Annex B) |
| (c) Secretary of the Board’s letter dated 1.2.2019 | (Annex C) |

2. Application for Review

On 14.2.2019, the applicant, under section 17(1) of the Ordinance applied for a review of the RNTPC’s decision to reject the application (**Annex D**). In support of the review, the applicant submitted the following documents:

- (a) Letter from the applicant applying for review received on 14.2.2019 (**Annex D**)
- (b) Letter from the applicant dated 13.3.2019 (received on 14.3.2019) (**Annex E**) providing background information regarding to the non-compliance with approval conditions of the previous application No. A/HSK/60 (*Further information (FI) accepted but not exempted from publication and recounting requirement*)

3. Justifications from the Applicant

The justifications/responses put forward by the applicant in support of the review application are detailed in the letter at **Annex E**. They are summarised as follows:

- (a) The applicant did not notice that the compliance period of approval conditions on the submission of drainage proposal and landscape proposal was shortened from 6 months to 3 months until he received the revocation letter from Planning Department (PlanD).
- (b) The drainage facilities and landscape on the Site were severely destructed by Typhoon Mangkhut and hence more time was needed to reconstruct the facilities.

4. Background of the Site

The Site is not subject to any planning enforcement action.

5. The Section 16 Application

The Site and Its Surrounding Areas

- 5.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC was described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
 - (a) fenced, hard-paved and currently vacant (**Plans R-4a and 4b**); and
 - (b) accessible from a local track from Tin Ha Road (**Plan R-3**).
- 5.3 The surrounding areas have the following characteristics: (**Plans R-2 and R-3**)
 - (a) to the north is a site for parking of vehicles;
 - (b) to the east are some residential dwellings and vacant land;
 - (c) to the south are village cluster of San Lee Uk Tsuen, an orchard, agricultural land and unused land; and
 - (d) to the west is a nullah. To the immediate southwest is a site for storage of metal ware. To the further southwest is a factory. To the northwest across the

nullah are sites for open storage.

Planning Intention

- 5.4 There has been no change in planning intention of the concerned “V” zone as mentioned in paragraph 8 of **Annex A** which is recapitulated below.
- 5.5 The planning intention of “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

Previous Applications

- 5.6 The Site is involved in five previous planning applications No. A/YL-PS/320, 442, 536, A/HSK/23 and 60. Details of the previous applications are summarised at **Appendix II** of **Annex A** and their locations are shown on **Plan R-1b**.
- 5.7 Application Nos. A/YL-PS/320, A/YL-PS/442 and A/HSK/60 for temporary public vehicle park for private cars and light goods vehicles with ancillary car beauty services (and office) were approved with conditions by the RNTPC for a period of 3 years on 13.8.2010, 25.4.2014 and 6.7.2018 respectively mainly on grounds that temporary use would not frustrate the long-term use planning intention of the “V” zone, the applied use was not incompatible with the surrounding land uses, and the development would unlikely generate significant adverse environmental, traffic, drainage and landscape impacts on the surrounding areas. However, application No. A/YL-PS/320 was revoked on 26.4.2011 due to non-compliance with approval condition on prohibiting parking of goods vehicles exceeding 5.5 tonnes. Application No. A/HSK/60 was revoked on 6.10.2018 due to non-compliance with approval condition on submission of condition record of the existing drainage facilities. Application No. A/YL-PS/442 was revoked on 4.1.2016 due to non-compliance with approval conditions on prohibiting vehicle repair activities, prohibiting parking/storage of vehicles without valid licence, prohibiting parking of vehicles exceeding 5.5 tonnes, and requirement for posting notice indicating the types of vehicles allowed to enter/be parked at the Site.
- 5.8 Application No. A/YL-PS/536 for temporary minibus seating assembling workshop, open storage of minibus and storage of vehicle seating and parts with ancillary office for a period of 3 years and application No. A/HSK/23 for temporary open storage of new vehicles (minibus) with ancillary office for a period of 3 years were rejected by the Board on review on 18.8.2017 and by the RNTPC on 10.11.2017 respectively for the reasons of not in line with the planning intention, not compatible with surrounding land uses, failure to demonstrate no adverse environmental impact, not comply with TPB PG-No. 13E in that the application site fell within Category 4 areas, and no strong planning justification to demonstrate exceptional circumstances, and undesirable precedent.

- 5.9 The current application is submitted by the same applicant of the approved applications No. A/YL-PS/320, A/YL-PS/442 and A/HSK/60 which were subsequently revoked as described in paragraph 5.7 above. The major development parameters of the current application (No. A/HSK/116) are the same as the last approved application (No. A/HSK/60), which are tabulated as follows:

	Application No. A/HSK/116
Site Area	About 2,628m ²
Applied Use	Proposed Temporary Vehicle Park (Private Cars and Light Goods Vehicles) with Ancillary Car Beauty Services and Office for a Period of 3 Years
Maximum Floor Area (non-domestic)	807.25m ²
No. of Structures	3 (Site office, car beauty service centre and storeroom for car beauty service)
Maximum Height of Structures	1 storey (2.5m - 4.6m)
No. of Private Car Parking Spaces	24 spaces (5m x 2.5m each)
No. of Light Goods Vehicle Parking Spaces	4 spaces (7m x 3.5m each)
Operation Hours	7:00 a.m. to 12:00 a.m. (midnight) daily (including Sundays and public holidays)

Similar Application

- 5.10 There is one similar application (No. A/YL-PS/500) for temporary public vehicle park (private cars and light goods vehicles) for a period of 3 years within the same “V” zone, which was approved by the RNTPC on 22.1.2016. Details of this similar application are summarised at **Appendix III** of **Annex A** and its location is shown on **Plan R-1a**.

6. Comments from Relevant Government Departments

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 9.1 and 9.2 of **Annex A**. Relevant government departments have been further consulted.
- 6.2 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A**.
- (a) District Land Officer/Yuen Long, Lands Department (DLO/YL, LandsD)
 - (b) Assistant Commissioner for Transport/New Territories (AC for T/NT);
 - (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
 - (d) Project Manager (West), Civil Engineering and Development Department

- (PM(W)), CEDD);
- (e) Director of Environmental Protection (DEP);
 - (f) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
 - (g) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
 - (h) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
 - (i) Director of Food and Environmental Hygiene Department (D of FHD);
 - (j) Director of Fire Services (D of FS); and
 - (k) Director of Agriculture, Fisheries and Conservation (DAFC).

6.3 The following government departments maintain their previous views of having no comment on the s.16 application as stated in paragraph 9.2 of **Annex A**.

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Leisure and Cultural Services (DLCS);
- (c) Commissioner of Police (C of P); and
- (d) District Officer (Yuen Long) (DO(YL)).

7. Public Comments on the Review Application Received During Statutory Publication Period

On 22.2.2019 and 22.3.2019, the review application and its FI were published for public inspection for three weeks accordingly. During the first and second statutory public inspection periods, which ended on 15.3.2019 and 12.4.2019 respectively, one public comment from a private individual was received. The commenter objected to the application on the grounds that the previous three planning approvals had been revoked by the Board for not complying with the approval condition(s) (**Annex F**).

8. Planning Considerations and Assessments

8.1 The application is for a review of RNTPC's decision on 18.1.2019 to reject the subject application for proposed temporary public vehicle park (private cars and light goods vehicles not exceeding 5.5 tonnes) with ancillary car beauty services and office use at the Site zoned "V" on the OZP (**Plan R-1a**). The application was rejected for the reason of setting of an undesirable precedent for similar applications subject of repeated revocations of planning approval due to non-compliance with approval conditions, thus nullifying the statutory planning control mechanism.

Planning intention of "V" zone

8.2 The subject application is for temporary public vehicle park (private cars and light goods vehicles not exceeding 5.5 tonnes) with ancillary car beauty services and office use at a site zoned "V" on the OZP. The planning intention of the "V" zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. The proposed use is considered not entirely in line with the planning intention of the "V" zone. DLO/YL, LandsD advises that

there is no Small House application being processed at the Site. Approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “V” zone.

Incompatible with surrounding areas

- 8.3 The nature of use and scale of the proposed development is considered not incompatible with the surrounding land uses which are predominantly occupied by village houses intermixed with agricultural land (**Plans R-2a and 2b**).

Repeated revocation of planning approval

- 8.4 The Site is the subject of previous three planning permissions for similar temporary public vehicle park (private cars and light goods vehicles not exceeding 5.5 tonnes with ancillary car beauty services (and office) (Nos. A/YL-PS/320, 442 and A/HSK/60) submitted by the same applicant granted in 2010, 2014 and 2018. These planning approvals were subsequently revoked due to non-compliance with the approval conditions regarding the prohibition of parking of goods vehicles exceeding 5.5 tonnes and/or prohibiting vehicle repairs activities, storage of vehicles without valid licence, requirement for posting notice indicating the types of vehicles allowed to enter/be parked on the Site, and submission of condition record of the existing drainage facilities. In this regard, it should be noted that the three previous applications covering the Site with similar use and layout were all submitted by the same applicant. In effect, the applicant has yet to demonstrate sincerity to comply with the approval condition(s) since the first grant of planning approval in 2010. Whilst the applicant undertakes in the current application to comply with the approval conditions, similar proposals were also suggested for the previous application No. A/HSK/60, which was approved on 6.7.2018 but later revoked on 6.10.2018. Approval of the application with repeated non-compliances with approval condition(s) would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

Public comment

- 8.5 There is 1 public comment from a private individual objecting to the review application on ground that there was no change to the Site since the application was rejected and previous applications were revoked due to non-compliance of approval conditions. The planning considerations and assessments above are also relevant.

9. Planning Department’s Views

- 9.1 Based on the assessments made in paragraph 8, having taken into account the public comment as mentioned in paragraph 7, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 18.1.2019, the Planning Department maintains its previous view of not supporting the review application for the following reason:

three previous planning permissions for the same use granted on the Site by the Board were revoked due to non-compliance of the approval condition(s). Approval of the application with repeated non-compliances with approval condition(s) would

set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

- 9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until **14.6.2022** and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 12:00 a.m. (midnight) and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle repair, dismantling, paint spraying or workshop activity, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (c) no vehicle without valid license issued under the Road Traffic Ordinance, as proposed by the applicant, is allowed to be parked/stored on the Site at any time during the planning approval period;
- (d) no medium and heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (e) a notice shall be posted at a prominent location of the Site at all times to indicate that only private cars and light goods vehicles not exceeding 5.5 tonnes as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to enter/be parked on the Site during the planning approval period;
- (f) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (g) the submission of the condition record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **14.9.2019**;
- (h) in relation to (g) above, the existing drainage facilities shall be maintained at all times during the planning approval period;
- (i) all screen planting including trees and shrubs within the Site shall be maintained in good condition during the planning approval period;
- (j) the submission of a fire service installations proposal within **3** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **14.9.2019**;
- (k) in relation to (j) above, the implementation of the fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by

14.12.2019;

- (l) the provision of fencing of the Site within **3** months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **14.9.2019;**
- (m) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (h) or (i) 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
- (n) if any of the above planning conditions (g), (j), (k) or (l) is not complied with by the above 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**.

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 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 date when the validity of the permission should expire.

11. Attachments

Plans R-1a and 1b	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a and 4b	Site Photos
Annex A	RNTPC Paper No. A/HSK/116
Annex B	Extract of minutes of the RNTPC Meeting held on 18.1.2019
Annex C	Secretary of the Board's letter dated 1.2.2019
Annex D	Letter from the applicant applying for review received on 14.2.2019
Annex E	FI dated 13.3.2019 and received on 14.3.2019
Annex F	Public comment received during statutory publication period of the review application
Annex G	Recommended advisory clauses