

**Minutes of 1322<sup>nd</sup> Meeting of the  
Town Planning Board held on 12.7.2024**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Ms Doris P.L. Ho

Chairperson

Mr Stephen L.H. Liu

Vice-chairperson

Ms Sandy H.Y. Wong

Mr Daniel K.S. Lau

Mr Stanley T.S. Choi

Mr K.W. Leung

Mr Ricky W.Y. Yu

Professor Roger C.K. Chan

Dr Venus Y.H. Lun

Mrs Vivian K.F. Cheung

Mr Vincent K.Y. Ho

Mr Ben S.S. Lui

Mr Timothy K.W. Ma

Professor Bernadette W.S. Tsui

Ms Kelly Y.S. Chan

Dr C.M. Cheng

Mr Daniel K.W. Chung

Dr Tony C.M. Ip

Mr Ryan M.K. Ip

Professor Simon K.L. Wong

Mr Derrick S.M. Yip

Chief Traffic Engineer (New Territories East)  
Transport Department  
Mr K.L. Wong

Chief Engineer (Works)  
Home Affairs Department  
Ms Fancy L.M. Cheung

Assistant Director (Environmental Assessment)  
Environmental Protection Department  
Mr Terence S.W. Tsang

Director of Lands  
Mr Andrew C.W. Lai

Director of Planning  
Mr Ivan M.K. Chung

Deputy Director of Planning/District  
Ms Donna Y.P. Tam

Secretary

**Absent with Apologies**

Professor Jonathan W.C. Wong

Mr Rocky L.K. Poon

Professor B.S. Tang

Mr Simon Y.S. Wong

**In Attendance**

Assistant Director of Planning/Board  
Ms Caroline T.Y. Tang

Chief Town Planner/Town Planning Board  
Ms W.H. Ho

Senior Town Planner/Town Planning Board  
Ms Bonnie K.C. Lee

## **Agenda Item 1**

[Open Meeting]

### Confirmation of Minutes of the 1320<sup>th</sup> Meeting held on 14.6.2024

[The item was conducted in Cantonese.]

1. The draft minutes of the 1320<sup>th</sup> meeting were circulated to Members on 27.6.2024. After incorporating Members' comments on paragraphs 9 and 43, the minutes were confirmed on 5.7.2024.

## **Agenda Item 2**

[Open Meeting]

### Matters Arising

[The item was conducted in Cantonese.]

(i) Reference Back of Approved Outline Zoning Plan

2. The Secretary reported that on 11.6.2024, the Secretary for Development referred the approved Ma Tau Kok Outline Zoning Plan (OZP) No. S/K10/30 to the Town Planning Board for amendment under section 12(1A)(a)(ii) of the Town Planning Ordinance. The reference back of the OZP was notified in the Gazette on 21.6.2024.

(ii) Hearing Arrangement for Consideration of Representations on Draft Outline Zoning Plan

3. The Secretary reported that the item was to seek Members' agreement on the hearing arrangement for consideration of representations in respect of the draft Tin Shui Wai Outline Zoning Plan (OZP) No. S/TSW/17. The Secretary briefly introduced that on 12.4.2024, the draft Tin Shui Wai OZP was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the two-month exhibition period, two valid representations were received. In view of the similar nature of the representations, the hearing of the representations was recommended to be considered by the full Town Planning Board (the full

Board) collectively in one group. To ensure efficiency of the hearing, a maximum of 10 minutes presentation time would be allotted to each representer in the hearing session. Consideration of the representations by the full Board was tentatively scheduled for August 2024.

4. The Board agreed to the hearing arrangement in paragraph 3 above.

(iii) New Town Planning Appeal Received

Town Planning Appeal No. 1 of 2024

Proposed House (New Territories Exempted House – Small House) in “Agriculture” Zone, Lot 623 RP in D.D. 8, Ma Po Mei Village, Lam Tsuen, Tai Po, New Territories  
Application No. A/NE-LT/762

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5. The Secretary reported that a Notice of Appeal was received by the Appeal Board Panel (Town Planning) (TPAB) on 11.6.2024 against the decision of the Town Planning Board (the Board) on 26.4.2024 to reject on review an application (No. A/NE-LT/762) for a proposed house (New Territories Exempted House – Small House). The site fell within an area zoned “Agriculture” (“AGR”) on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11.

6. The review application was rejected by the Board for the following reasons:

- (a) the proposed 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 submission for a departure from the planning intention; and
- (b) land was still available within the “Village Type Development” (“V”) zone of Tai Mong Che and Ma Po Mei which was primarily intended for Small House development. It was considered more appropriate to concentrate the

proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

7. Members noted that the hearing date of the appeal was yet to be fixed and agreed that the Secretary would act on behalf of the Board in dealing with the appeal in the usual manner.

(iv) Appeal Statistics

8. The Secretary reported that as at 4.7.2024, two cases were yet to be heard by the Appeal Board Panel (Town Planning) and two appeal decisions were outstanding.

9. Details of the appeal statistics were as follows:

Allowed	45
Dismissed	177
Abandoned/Withdrawn/Invalid	214
Yet to be Heard	2
Decision Outstanding	2
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Total	440

**Sha Tin, Tai Po and North District**

**Agenda Item 3**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-TK/793

Proposed House (New Territories Exempted House – Small House) in “Green Belt” Zone, Lot 391 S.A in D.D. 28, Lung Mei, Tai Po

(TPB Paper No. 10974)

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[The item was conducted in Cantonese.]

Presentation and Question Sessions

10. The following representatives of the Planning Department (PlanD) and the applicant's representative were invited to the meeting at this point:

Ms Margaret H.Y. Chan - District Planning Officer/Shu Tin, Tai Po and North (DPO/STN)

Mr Jeffrey P.K. Wong - Senior Town Planner/Shu Tin, Tai Po and North (STP/STN)

Mr Yam Sai Ling - Applicant's Representative

11. The Chairperson extended a welcome and explained the procedures of the review hearing. She then invited PlanD's representatives to brief Members on the review application.

12. With the aid of a PowerPoint presentation, Mr Jeffrey P.K. Wong, STP/STN, PlanD briefed Members on the background of the review application including the application site (the Site) and the surrounding areas, the applicant's proposal and justifications, the consideration of the application by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and the planning considerations and assessments as detailed in TPB Paper No. 10974 (the Paper). As there had been no major change in planning circumstances since the consideration of the section 16 (s.16) application, PlanD maintained its previous view of not supporting the application.

[Mr Stanley T.S. Choi and Ms Kelly Y.S. Chan joined the meeting during PlanD's presentation.]

13. The Chairperson then invited the applicant's representative to elaborate on the review application.

14. Mr Yam Sai Ling, the applicant's representative, made the following main points:

- (a) the Site and its adjacent site obtained planning permissions for Small House (SH) development some years ago, and a SH was subsequently built at the adjacent site. As the applicant of the previously approved application (No.

A/NE-TK/476) (the previous applicant) at the Site passed away, the SH grant issued by the Lands Department (LandsD) was no longer valid. As such, the current applicant acquired the Site recently and wished to use it for SH development;

- (b) the Site was already hard-paved and no tree would be affected. The proposed SH development at the Site would not have adverse landscape impact on the surrounding area;
- (c) the Site was situated among a cluster of village houses. There were existing village houses to the south and east of the Site and some village houses to the north and west of the Site were under construction. As the Site was surrounded by existing SHs and village houses under construction, approval of SH development at the Site should not be considered as a proliferation of SHs outside the “Village Type Development” (“V”) zone nor a contravention of the planning intention of the “Green Belt” (“GB”) zone to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl;
- (d) the Site was already hard-paved and could not be used as a passive recreational outlet, and hence the proposed SH development at the Site would not deviate from the planning intention of the “GB” zone to provide passive recreational outlets;
- (e) PlanD’s estimation of land availability within the “V” zone for SH development by deducting the land occupied by roads, existing and approved village houses, Tsz Tong, graves, etc. was noted. However, the actual land available for SH development within the “V” zone was less than that estimated by PlanD due to various factors. For example, the land surrounding Tsz Tong and graves could not be used for SH development as villagers would object to any SH development thereat. The land close to ‘Pai Lau’ and a large piece of land in Lung Mei reserved for the development of village office could not be used for SH development either. Besides, even a plot of land with an area of 1,500 square feet did not necessarily mean it



could accommodate two SHs. The site configuration would also affect the actual number of SHs that could be accommodated; and

- (f) should the Board approve the application, approval conditions could be imposed to require the applicant to carry out landscaping works with a view to enhancing the environment.

15. As the presentations of the PlanD's representative and the applicant's representative had been completed, the Chairperson invited questions from Members.

#### *Site Conditions*

16. Some Members raised the following questions:

- (a) noting that the Site was described as "currently covered with wild grass and partly occupied by some construction materials" in paragraph 9 of Annex A of the Paper, whether the Site was currently hard-paved as mentioned by the applicant's representative, and whether there were drainage pipes to the west and north of the Site;
- (b) the meaning of 'hard-paved'; and
- (c) whether the Site, which was a private land and already hard-paved, would be converted back to a green belt-like environment should the planning application be rejected.

17. In response, with the aid of a visualiser, Ms Margaret H.Y. Chan, DPO/STN, PlanD made the following main points:

- (a) the Site was currently hard-paved and partly occupied by wild grass, construction materials and tractors. Drains had been laid along the western and northern peripheries of the Site. The Site was the subject of a previous application (No. A/NE-TK/476) submitted by a different applicant for the same use, which was approved by RNTPC in 2013. While the time for

commencement of development under the previously approved application was extended to 8.11.2021, the planning permission lapsed on 9.11.2021. The previous applicant obtained a SH grant from LandsD in 2014, and some infrastructure works such as paving the Site and laying drains were carried out. However, as the previous applicant passed away, the SH grant for the Site was no longer valid. LandsD advised that there was no valid SH grant application covering the Site at the juncture;

- (b) 'hard-paved' meant that the Site was paved with concrete; and
- (c) since the Site was located on a private lot, the Site would unlikely be converted back to a green belt-like environment should the application be rejected.

18. With reference to a photo submitted by the applicant in Annex D of the Paper, a Member said that the Site seemed to be covered by sand and gravel and occupied by some construction materials, and asked whether the Site was already hard-paved. In response, Mr Yam Sai Ling, the applicant's representative, said that the Site was currently hard-paved and no information was available at hand regarding the sources of the sand/gravel and construction materials on the Site. The construction materials might be placed by the construction workers of the adjacent sites under construction.

#### *Similar Applications*

19. Two Members raised the following questions:

- (a) given that the Site was surrounded by a similar approved application (No. A/NE-TK/664) to its immediate northwest, and other sites with SHs under construction to its north and west, whether the development progress of those SHs would be a relevant consideration for the subject application; and
- (b) the major considerations for approving a similar application (No. A/NE-TK/580) to the further northeast of the Site.

20. In response, with the aid of some PowerPoint slides, Ms Margaret H.Y. Chan, DPO/STN, PlanD made the following main points:

- (a) the site to the immediate northwest of the Site was the subject of an application (No. A/NE-TK/664) approved in March 2019 with the time for commencement of development extended to March 2027. No SH grant application was being processed by LandsD. In considering the subject application, the existing conditions of the Site and its surrounding areas, as well as the Site being the subject of two previously approved applications, would be taken into account. According to assessment criterion (d) of the 'Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/SH in New Territories' (the Interim Criteria), application for NTEH/SH with previous planning permission lapsed would be considered on its own merits. In general, proposed development which was not in line with the criteria would normally not be allowed. Sympathetic consideration might be given if there were specific circumstances to justify the cases, such as the site was an infill site among existing NTEHs/SHs, the processing of the SH grant was already at an advance stage. In that regard, the Site could not be considered as an infill site among existing NTEHs/SHs as there was a vacant area to its northwest, and the approved SH applications to the north and west of the Site were still under construction. Besides, no SH grant was being processed at the Site. Hence, there were no specific circumstances that warranted sympathetic consideration of the subject application under assessment criterion (d) of the Interim Criteria; and
- (b) application No. A/NE-TK/580 was approved by RNTPC in 2016 mainly on the sympathetic consideration that the site was the subject of a previously approved application submitted by the same applicant, the site was an infill site (the concerned site was in an elongated configuration situated in between two village houses), and the processing of the concerned SH grant was at an advance stage. As the planning circumstances of the subject application were different from application No. A/NE-TK/580, sympathetic consideration of that application was not applicable to the subject application.

*Interim Criteria and the More Cautious Approach*

21. Some Members raised the following questions:

- (a) background and details of the adoption of the more cautious approach by the Board in considering applications for SH development, and whether the current Board was bounded by the approach adopted by the Board of the previous terms;
- (b) whether the adoption of the more cautious approach by the Board was stipulated in any public documents for public information; and
- (c) whether applications for SH development would be rejected by the Board if they did not meet the criteria of being an infill site, the processing of the SH grant was not at an advanced stage, and the applicant was different from that of the previously approved application.

22. In response, Ms Margaret H.Y. Chan, DPO/STN, PlanD made the following main points:

- (a) in considering if there was a general shortage of land in meeting the SH demand, factors including the number of outstanding SH applications provided by LandsD, the 10-year SH demand forecast provided by the village representatives and the land available within the “V” zone for SH development would be taken into account. Since the 10-year SH demand forecast provided by the village representatives could not be verified, the Board had formally adopted a more cautious approach since August 2015. Under the more cautious approach, in considering if there was a general shortage of land in meeting the SH demand, more weighting would be put on the number of outstanding SH applications being processed by LandsD, amongst others;
- (b) the more cautious approach was formally adopted by the Board in its meeting

on 14.8.2015, and the Board's discussion was recorded in the relevant minutes of meeting. The more cautious approach had been consistently applied to consider SH applications as reflected in the relevant application papers and minutes since then and the public should be aware of the approach; and

- (c) each application for SH development would be considered based on its individual merits taking into account the Interim Criteria, the more cautious approach and other relevant considerations, as appropriate.

*Others*

23. Two Members raised the following questions:

- (a) when the applicant acquired the Site; and
- (b) given that the current application was submitted mainly due to the passing away of the previous applicant, whether sympathetic consideration could be given to the current application.

24. In response, Ms Margaret H.Y. Chan, DPO/STN, PlanD made the following main points:

- (a) according to the land registry record, the applicant acquired the Site on 22.9.2023; and
- (b) land ownership was not a material planning consideration and the Interim Criteria would be duly observed in considering applications for SH development.

25. Some Members asked the applicant's representative the following questions:

- (a) whether the Site was acquired by the applicant in view of the fact that the Site was already hard-paved and surrounded by some existing SHs/village houses

under construction;

- (b) whether the applicant had gone through the rejection reasons put forward by RNTPC. Given no material changes in site conditions and planning circumstances, whether the applicant had any new information to support his review application and whether the applicant would anticipate the Board to consider the application based on its individual circumstances;
- (c) whether the applicant was aware of the formal adoption of the more cautious approach by the Board in considering applications for SH development; and
- (d) whether the applicant had engaged legal representatives in processing the land transaction, as legal representatives should usually understand the relevant guidelines/criteria in considering planning applications for SH development.

26. In response, Mr Yam Sai Ling, the applicant's representative, made the following main points:

- (a) he clarified that he was the applicant's friend, not an agent/consultant. He did not receive any remuneration for representing the applicant to attend the meeting. The applicant did not have any intention to destroy the Site first and apply for planning permission later. When the applicant acquired the Site, it was already hard-paved and drainage pipes had been laid at the peripheries of the Site. The drainage pipes were laid by the owner of the adjacent SH which was supposed to be built together with the SH at the Site, with a view to sharing the management and maintenance responsibilities of the drainage pipes as stipulated in relevant leases;
- (b) the applicant should have gone through RNTPC's rejection reasons and understood that there were no material changes in site conditions and planning circumstances. However, the applicant did not have the opportunity to attend the RNTPC meeting at the s.16 application stage to elaborate on his justifications for the application. At the s.17 review stage, he could represent the applicant to explain to the Board the actual physical

condition of the Site and its surrounding areas (i.e. the Site was already hard-paved and surrounded by some existing SHs/village houses under construction, the actual land available within the “V” zone was less than that estimated by PlanD, etc.), which should warrant sympathetic consideration by the Board. The Board was urged to consider each application based on its individual circumstances, rather than applying the guidelines in a rigid manner;

- (c) the applicant, who was a layman and a villager, simply understood that a planning application for SH development was required in the “GB” zone. The applicant might not have much knowledge of the Interim Criteria and the more cautious approach; and
- (d) it was believed that the applicant had engaged legal representatives in handling the land transaction. However, he had no information on whether the legal representatives had advised the applicant regarding the requirement for planning permission.

27. As Members had no further question to raise, the Chairperson said that the hearing procedure for the review application had been completed. The Board would further deliberate on the review application in the absence of the applicant’s representative and would inform the applicant of the Board’s decision in due course. The Chairperson thanked PlanD’s representatives and the applicant’s representative for attending the meeting. They left the meeting at this point.

#### Deliberation Session

28. At the invitation of the Chairperson, the Secretary made the following main points in response to a Member’s concern about the Interim Criteria and the more cautious approach:

- (a) the Board was a statutory body established under section 2 of the Town Planning Ordinance (the Ordinance) and its conduct was subject to the provisions of the Ordinance. In considering planning applications, the Board had to adhere to the statutory documents such as the Notes of the

Outline Zoning Plans;

- (b) from time to time, the Board promulgated TPB guidelines and assessment criteria such as the Interim Criteria promulgated in 2007 and the ‘Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance’ promulgated in 2022. Those guidelines/assessment criteria were to enable the Board to assess planning applications for different developments/uses such as NTEH/SH and solar panels in a consistent manner. They also provided guidance to the public on matters such as the general principles and criteria adopted by the Board in considering planning applications. While the guidelines and assessment criteria were non-statutory, they were relevant documents to be taken into account by the Board in considering planning applications. The decision to approve or reject an application rested entirely with the Board based on relevant guidelines/assessment criteria, other land use planning considerations, and the individual merits and circumstances of each case; and
- (c) there was scope for the Board to interpret flexibly the Interim Criteria, for example, how to interpret “an infill site among existing NTEHs/SHs” under assessment criterion (d) of the Interim Criteria. However, any decision that would lead to inconsistency with the Board’s established practice in considering planning applications should be based on compelling reasons and with strong justifications. For example, sympathetic consideration had been given to approve a similar application (No. A/NE-TK/580) in 2016. RNTPC at that time considered that the concerned site in an elongated configuration and being situated in between two village houses at its east and west could be regarded as an infill site based on its specific circumstances. Recently, the Board had discussed the interpretation of “existing NTEHs/SHs” and considered that it should refer to the NTEHs/SHs which were physically in existence. For the current application, while the site to the immediate northwest of the Site was covered by an approved application (No. A/NE-TK/664) with validity of the planning permission up to 2027, no SH grant application was being processed by LandsD and SH development at the concerned site was yet to be realised. The Board should consider whether



such a situation could be regarded as “an infill site among existing NTEHs/SHs” based on previous discussion and considerations.

29. The Chairperson had the following remarks:

- (a) the Interim Criteria promulgated in 2007 was a public document, setting out the major principles and criteria adopted by the Board in considering planning applications for SH development. According to assessment criterion (a) of the Interim Criteria, sympathetic consideration might be given if not less than 50% of the proposed NTEH/SH footprint fell within the village ‘environs’ of a recognised village and there was a general shortage of land in meeting the demand for SH development in the “V” zone of the village. In considering if there was a general shortage of land in meeting the SH demand, factors including the number of outstanding SH applications provided by LandsD, the 10-year SH demand forecast provided by the village representatives and the land available within the “V” zone for SH development had been taken into account. Since the 10-year SH demand forecast provided by the village representatives could not be verified by relevant government departments and its accuracy and basis were in doubt, the Board had formally adopted a more cautious approach since August 2015. Under the more cautious approach, in considering if there was a general shortage of land in meeting the SH demand, more weighting would be put on the number of outstanding SH applications being processed by LandsD, amongst others. While the more cautious approach was not stipulated in the Interim Criteria, it had been recorded in relevant papers/minutes of planning applications for SH development since then; and
- (b) regarding Members’ concern on whether the Site should be regarded as “an infill site”, according to assessment criterion (d) of the Interim Criteria, application for NTEH/SH with previous planning permission lapsed would be considered on its own merits. In general, proposed development which was not in line with the criteria would normally not be allowed. However, sympathetic consideration might be given if there were specific circumstances to justify the cases, such as the site was an infill site among

existing NTEHs/SHs, the processing of the SH grant was already at an advance stage. An infill site among existing NTEHs/SHs and/or the processing of the SH grant at an advance stage were quoted as examples whereby sympathetic consideration might be exercised by the Board under assessment criterion (d). The Board had the discretion to approve or reject the application, taking into account the assessment criteria set out in the Interim Criteria.

30. A Member expressed that the application might be favourably considered as the Site was situated among a cluster of village houses, the Site had been hard-paved and could not be reverted back to a green belt-like environment, and the Government had rezoned some “GB” sites for housing development to meet the acute housing demand.

31. The Vice-chairperson and majority of Members, however, considered that the application should not be approved and had the following views/suggestions:

- (a) the applicant had not provided any substantive new information to support the review application and there had been no material changes in the planning circumstances since the consideration of the subject application by RNTPC;
- (b) the overriding principle was to concentrate SH development within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. The proliferation of SHs outside the “V” zone without very strong justifications should not be encouraged;
- (c) the proposed development was not in line with the planning intention of the “GB” zone. There was a general presumption against development within the “GB” zone. The Government’s policy of rezoning some “GB” sites for housing development was supported by feasibility studies with technical assessments, which was not comparable to the current application for SH development in the “GB” zone;
- (d) the Board should be consistent in adopting the principles and assessment criteria laid down in the Interim Criteria promulgated in 2007 and the more

cautious approach agreed by the Board in 2015;

- (e) if the application was approved merely based on its individual circumstances without meeting the Interim Criteria, the implication of setting an undesirable precedent for similar applications should be duly considered;
- (f) regarding assessment criterion (a) of the Interim Criteria, prior to August 2015, in considering whether there was a general shortage of land in meeting the demand for SH development in the “V” zone of a village, both the number of outstanding SH applications provided by LandsD and the 10-year SH demand forecast provided by the village representatives had been taken into account. However, it was observed that the 10-year SH demand forecast provided by the village representatives could not be verified by relevant government departments and its accuracy and basis were in doubt. The Board at its meeting in August 2015 considered that it was more pragmatic to adopt a more cautious approach, under which more weighting would be put on the actual number of outstanding SH applications being processed by LandsD. The Board should continue to adopt the more cautious approach; and
- (g) according to assessment criterion (d) of the Interim Criteria, sympathetic consideration might be given if the concerned site was “an infill site among existing NTEHs/SHs” and the processing of the SH grant was already at an advance stage. The Board should duly adhere to its previous discussion that “existing NTEHs/SHs” referred to the NTEHs/SHs which were physically in existence. For the current application, the Site could not be regarded as “an infill site among existing NTEHs/SHs” as there were still vacant areas and sites with approved SH applications with works in progress in the surroundings. Besides, the Site was also not the subject of SH grant being processed at an advance stage. In view of the above, the application did not warrant sympathetic consideration. Should the proposed SH development to the immediate northwest of the Site (application No. A/NE-TK/664) be realised in future, the Board could then take into account the prevailing planning circumstances in considering SH application at the Site.

32. Mr Andrew C.W. Lai, Director of Lands, said that planning applications for SH development and applications for SH grant were dealt with separately under the planning and land administration regimes. The considerations under the two regimes were not entirely the same. When an applicant obtained planning permission for SH development from the Board, a SH grant would still be required from LandsD and such grant would only be given to indigenous villagers. Besides, land in the New Territories had its market value and the value varied considerably having regard to the locations of the land and their development potentials. In this case, the applicant acquired the Site in 2023 and he should have reasonable knowledge of the Board's major considerations and principles in considering planning applications for SH development within the "GB" zone and the land value should reflect the development constraint.

33. As Members had no further points to make, the Chairperson concluded that the majority of Members did not support the review application and their major views were set out in paragraph 31 above. As the applicant had not provided any substantive new information to support the review application and there had been no material changes in the planning circumstances since the rejection of the subject application by RNTPC, the review application should not be approved.

34. After deliberation, the Board decided to reject the application for the following reasons:

- “(a) the proposed development is not in line with the planning intention of the “Green Belt” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from this planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development

pattern, efficient use of land and provision of infrastructures and services.”

[Mrs Vivian K.F. Cheung and Mr Andrew C.W. Lai left the meeting during deliberation.]

[The meeting adjourned for a 5-minute break.]

#### **Agenda Item 4**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-TK/792

Proposed House (New Territories Exempted House – Small House) in “Green Belt” Zone,  
Government Land near Lot 840 in D.D. 28, Lung Mei, Tai Po

(TPB Paper No. 10975)

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[The item was conducted in Cantonese.]

#### **Presentation and Question Sessions**

35. The following representatives of the Planning Department (PlanD) were invited to the meeting at this point:

Ms Margaret H.Y. Chan - District Planning Officer/Shan Tin, Tai Po  
and North (DPO/STN)

Mr Jeffrey P.K. Wong - Senior Town Planner/Shan Tin, Tai Po and  
North (STP/STN)

36. The Chairperson extended a welcome and informed Members that the applicant and his representative had indicated that they would not attend the meeting. She then invited PlanD’s representatives to brief Members on the review application.

37. With the aid of a PowerPoint presentation, Mr Jeffrey P.K. Wong, STP/STN, PlanD briefed Members on the background of the review application including the application site and the surrounding area, the applicant’s proposal and justifications, the decision of the Rural and

New Town Planning Committee (RNTPC) of the Town Planning Board (the Board), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10975. As there had been no major change in planning circumstances since the consideration of the section 16 application, PlanD maintained its previous view of not supporting the application.

38. As the presentation of PlanD's representative had been completed, the Chairperson invited questions from Members.

39. Members had no question to raise. The Chairperson thanked PlanD's representatives for attending the meeting. They left the meeting at this point.

#### Deliberation Session

40. The Chairperson invited views from the Members. Members generally agreed with RNTPC's decision to reject the application. A Member said that the applicant had not provided any substantive new information to support the review application. Another Member noted that the Site was located on government land and enquired whether land status was relevant in considering planning applications for Small House (SH) development. In response, the Chairperson said that planning applications for SH development and applications for SH grant were being dealt with under two separate regimes. The Board should consider whether the Site falling within the "Green Belt" zone was suitable for SH development under the planning regime while the land status of the Site was a relevant consideration by the Lands Department in processing SH grant application under the land administration regime.

41. After deliberation, the Board decided to reject the application for the following reasons:

- “(a) the proposed development is not in line with the planning intention of the “Green Belt” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from this planning

intention; and

- (b) land is still available within the “Village Type Development” (“V”) zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.”

### **Agenda Item 5**

[Open Meeting (Presentation and Question Sessions only)]

Review of Application No. A/NE-LT/765

Proposed House (New Territories Exempted House – Small House) in “Agriculture” Zone, Lots 567 S.D and 573 S.G in D.D. 8, Sha Pa, Lam Tsuen, Tai Po

(TPB Paper No. 10976)

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[The item was conducted in Cantonese.]

### **Presentation and Question Sessions**

42. The following representatives of the Planning Department (PlanD) were invited to the meeting at this point:

- |                       |  |
|-----------------------|--|
| Ms Margaret H.Y. Chan | - District Planning Officer/Shan Tin, Tai Po and North (DPO/STN) |
| Mr Kevin K.W. Lau     | - Senior Town Planner/Shan Tin, Tai Po and North (STP/STN)       |

43. The Chairperson extended a welcome and informed Members that the applicant and his representative had indicated that they would not attend the meeting. She then invited PlanD’s representatives to brief Members on the review application.

44. With the aid of a PowerPoint presentation, Mr Kevin K.W. Lau, STP/STN, PlanD

briefed Members on the background of the review application including the application site and the surrounding area, the applicant's proposal and justifications, the decision of the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board/TPB), departmental and public comments, and planning considerations and assessments as detailed in TPB Paper No. 10976. As there had been no major change in planning circumstances since the consideration of the section 16 (s.16) application, PlanD maintained its previous view of not supporting the application.

45. As the presentation of PlanD's representative had been completed, the Chairperson invited questions from Members.

#### *Previous Application*

46. A Member observed from the Paper that the Site was the subject of a previous application (No. A/NE-LT/758) submitted by the same applicant of the current application for the same proposed Small House (SH) use, which was rejected by RNTPC on 13.10.2023. The applicant submitted the current application immediately on 17.1.2024, i.e. about three months after the rejection of the previous application. In response to the Member's question, Ms Margaret H.Y. Chan, DPO/STN, PlanD confirmed that the applicant had not applied for a review of RNTPC's decision to reject the said previous application.

#### *Similar Applications*

47. Two Members raised the following questions:

- (a) noting that 20 similar applications were approved by RNTPC mainly on considerations that there was a general shortage of land in meeting the demand for SH development, whether the 20 similar applications were all approved before the formal adoption of a more cautious approach by the Board in August 2015;
- (b) the reason for the situation that the land available for SH development within the "V" zones of Shui Wo and Sha Pa generally remained unchanged in recent years despite a number of planning permissions for SH development granted



in 2022/23; and

- (c) noting that a number of planning applications for SH development with sites located in the same locality were all approved, whether favourable consideration had been given to those applications.

48. In response, Ms Margaret H.Y. Chan, DPO/STN, PlanD made the following points, with the aid of some PowerPoint slides:

- (a) not all of the 20 similar applications were approved by RNTPC before 2015. 15 of them (i.e. No. A/NE-LT/718 to 724, 740 to 745, 747 and 754) were approved by RNTPC in 2022/23 mainly on considerations that, amongst others, there was a general shortage of land (i.e. about 0.94 ha of land available within the “V” zones, equivalent to about 36 SHs sites) to meet the demand for SH development (i.e. the number of outstanding SH applications provided by the Lands Department (LandsD) for these 15 applications ranged from 39 to 41 at the time of consideration);
- (b) land availability for SH development referred to the land available within the “V” zones of Shui Wo and Sha Pa while the approved similar applications all fell outside the “V” zones; and
- (c) each application for SH development was considered based on its individual merits, taking into account the ‘Interim Criteria for Consideration of Application for New Territories Exempted House/SH in the New Territories’ (the Interim Criteria).

49. The Secretary supplemented that according to the more cautious approach adopted by the Board since August 2015, in considering whether there was a general shortage of land in meeting SH demand, more weighting had been put on the number of outstanding SH applications provided by LandsD. In processing SH grant applications, LandsD would verify whether the applicant met the eligibility criteria of being an indigenous villager.

50. Members had no further question to raise. The Chairperson thanked PlanD’s

representatives for attending the meeting. They left the meeting at this point.

### Deliberation Session

51. The Chairperson invited views from Members. Given that there had been no major change in planning circumstances since the consideration of the application by RNTPC and the applicant had not provided any substantive new information to support the review application, Members agreed to maintain RNTPC's decision to reject the review application.

52. After deliberation, the Board decided to reject the application for the following reasons:

- “(a) the proposed development is not in line with the planning intention of the “Agriculture” 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 submission for a departure from this planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zones of Shui Wo and Sha Pa which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zones for more orderly development pattern, efficient use of land and provision of infrastructures and services.”

53. Arising from the review applications deliberated at the meeting, Members brought up some general issues regarding the Interim Criteria and the more cautious approach adopted by the Board in considering SH applications.

### *Interim Criteria and the More Cautious Approach*

54. Some Members were concerned whether the major criteria for consideration of SH

applications had been clearly stated in the public documents, and hence the public, particularly the applicants of the SH applications (i.e. the villagers), were aware of the Board's major considerations and principles in considering SH applications. The major criteria included (i) the formal adoption of a more cautious approach in considering applications for SH development (i.e. in considering whether there was a general shortage of land in meeting SH demand, more weighting had been put on the number of outstanding SH applications provided by LandsD), and (ii) sympathetic considerations given to those applications with application site being an infill site or submitted by the same applicant as the previous application with the processing of the SH grant at an advance stage. Some Members had the following views/suggestions:

- (a) the Board's major considerations and principles in considering SH applications should be clearly disseminated to the public. For example, more explanations might be given to Heung Yee Kuk New Territories (HYK)/Rural Committees (RCs), so they could effectively convey the messages to the villagers. The Board might consider preparing a pamphlet outlining its major considerations, principles and the 'no-go' scenarios when considering SH applications. This would provide indigenous villagers with information on an overview of the application process and the likelihood of obtaining planning permissions under different scenarios with examples;
- (b) consideration might be given to reviewing the Interim Criteria if needed. For example, the word "outstanding" might be added in assessment criterion (a) to make the sentence read as '..... there is a general shortage of land in meeting the "outstanding" demand for SH development in the "V" zone of the village'; and
- (c) interested Members might participate in working out proposals for more effective ways to disseminate information to the public.

55. At the invitation of the Chairperson, the Secretary made the following main points:

- (a) while there was scope for the Board to interpret flexibly the Interim Criteria, the overriding principle was to concentrate SH developments within the "V"

zone for a more orderly development pattern. In considering SH developments outside the “V” zone, one of the major considerations was whether there was a general shortage of land in meeting the demand for SH development in the “V” zone of the village, which had been thoroughly discussed by the Board in the past. A Paper on ‘Consideration of Applications for New Territories Exempted House (Small House) Development’ was discussed under matters arising at the TPB meeting held on 14.8.2015. The said meeting agreed that in considering if there was a general shortage of land in meeting the demand for SH development, a more cautious approach should be adopted. In assessing the SH demand under the more cautious approach, more weighting should be put on the number of actual outstanding SH applications provided by LandsD as the 10-year SH demand forecast provided by the village representatives could not be verified. The discussion was recorded in the relevant minutes of meeting which were available on TPB’s website for public viewing; and

- (b) since the formal adoption of the more cautious approach in August 2015, the RNTPC/TPB papers for SH applications had clearly stated the formal adoption of that approach. As such, the stakeholders including the applicants, villagers and RCs/HYK should be fully aware of the adoption of the more cautious approach.

56. Mr Ivan M.K. Chung, Director of Planning, supplemented the following main points:

- (a) PlanD’s colleagues in the district planning offices had been maintaining close liaison with the local community, including RCs. Through those dialogues, the stakeholders and local villagers should be familiar with the Interim Criteria and the more cautious approach adopted by the Board;
- (b) a dedicated application form (i.e. Form No. S16-II) was provided for applications only involving construction of NTEH. The Interim Criteria and Guidance Notes were also provided to give information and guidance to applicants when submitting planning applications. All of the above-mentioned information was available on TPB’s website; and

- (c) in demarcating the boundary of the “V” zones in new statutory plans, PlanD used to take into account both the 10-year demand forecast and the number of outstanding SH applications. Nevertheless, in accordance with the previous court decision on judicial review, as the 10-year SH demand forecast provided by the village representatives could not be verified, more weighting should be attached to the number of outstanding SH applications as opposed to the 10-year SH demand forecast. Yet, it did not mean that the Board would simply rely on the number of outstanding applications without having regard to the planning circumstances of the application. The public should be fully aware of this.

57. With the aid of a visualiser, the Chairperson supplemented the following main points:

- (a) the basis for sympathetic consideration be given to SH applications had been set out under assessment criterion (d) of the Interim Criteria, i.e. sympathetic consideration might be given if there were specific circumstances to justify the cases, such as the site was an infill site among existing NTEHs/SHs and the processing of the SH grant was already at an advance stage;
- (b) according to assessment criterion (a) of the Interim Criteria, it was stipulated that sympathetic consideration might be given if not less than 50% of the proposed NTEH/SH footprint fell within the village ‘environs’ of a recognised village and there was a general shortage of land in meeting the demand for SH development in the “V” zone of the village. While there was room to provide a more elaborated definition for ‘demand for SH development’, any revision to the Interim Criteria would need to be carefully considered; and
- (c) while the rural community were well aware of the Interim Criteria and the more cautious approach, Members’ views/suggestions to disseminate the information to the public more clearly were appreciated and would be considered as appropriate.

### *Planning Application Mechanism*

58. Some Members were concerned that there might be an abuse of the planning application mechanism and a waste of public resources as revealed in some repeated applications. Despite the extremely slim chance of obtaining planning permission, there was no restriction prohibiting the applicant to submit a new section 16 (s.16) application within a short period after the previous application was rejected by RNTPC. In those cases, applicants did not need to provide additional information to address the RNTPC's previous concerns, nor did they need to go through the review process by providing new information. The Members asked whether there were means to prevent such planning applications from being submitted to the Board. They also considered that more publicity might help address the issue.

59. The Chairperson clarified that under the amended Town Planning Ordinance (the Ordinance) which came into operation on 1.9.2023, if the applicant wished to apply for section 17 review of the decision made by Planning Committee of the Board on the s.16 application, the applicant was required to state the grounds for lodging the review application. In some of the applications, the applicants might have fulfilled the requirement of setting out the grounds for lodging the review application despite no new information to support the review application being provided. Although there were repeated planning applications at some sites, it was the applicant's right to submit s.16 applications or to apply for a review under the Ordinance, and such a right should not be restricted without careful consideration. Members' suggestions on enhancing information dissemination to the public regarding the Board's major considerations and principles when assessing SH applications would be considered as appropriate.

### *Small House Policy*

60. Noting that SH developments should be concentrated within the "V" zone for a more orderly development pattern, a Member enquired about the rationale for allowing indigenous villagers to build SHs outside the "V" zone when there was a general shortage of land within the "V" zone for SH development. Another Member opined that a review of SH Policy might be necessary in the long run. Since land leases in Hong Kong would expire in 2047, it was an opportunity for the Government to review the SH Policy.

61. The Chairperson made the following remarks:

- (a) the SH Policy was introduced in December 1972. The rights to build SHs as part of indigenous villagers' traditional rights were constitutionally protected. According to Article 40 of the Basic Law, the lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" should be protected by the Hong Kong Special Administrative Region. To promote orderly SH development and balance the demand for housing land between indigenous villagers and the general community, it was the Government's policy to concentrate SH development within the "V" zone. However, if there was a general shortage of land within the "V" zone for SH development, the Government might allow indigenous villagers to build SH development outside the "V" zone upon application. In such cases, the applicants would need to provide sufficient and strong justifications to support their applications. The Interim Criteria promulgated in 2007 provided the assessment criteria for considering planning applications for SH development outside the "V" zone; and
- (b) the review of SH Policy would involve complex considerations cutting across a number of areas including legal, environment, housing, land use planning and land supply that required careful examination. In face of other more pressing land creation and housing construction issues, the Government had no plan to conduct any review on the SH Policy for the time being.

[Messrs Stanley T.S. Choi and Derrick S.M. Yip and Professor Roger C.K. Chan left the meeting during deliberation.]

### **Agenda Item 6**

[Open Meeting]

### **Any Other Business**

[The meeting was conducted in Cantonese.]

62. There being no other business, the meeting was closed at 11:50 a.m.