

REVIEW OF APPLICATION NO. A/YL-KTN/627
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House (NTEH) - Small House)
in “Village Type Development” and “Agriculture” zones,
Lots 597A S.I (Part) and 597A S.V (Part) in D.D. 109, Shui Tau Tsuen,
Chi Ho Road, Kam Tin, Yuen Long**

1. Background

- 1.1 On 23.8.2018, the applicant, Mr. TANG Lok-San, sought planning permission to use the application site (the Site) for proposed house (NTEH - Small House). The Site falls partly within “Village Type Development” (“V”) zone (71%) and partly within “Agriculture” (“AGR”) zone (29%) on the approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9 (**Plan R-1**). The Site is currently vacant and covered with vegetation (**Plans R-2a and R-4**).
- 1.2 On 19.10.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is 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 the planning intention; and
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that there is no shortage of land in meeting the demand for Small House development in the “V” zone in general, and there is no exceptional circumstances that merit approval of the application. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-KTN/627 (**Annex A**)
 - (b) Extract of minutes of the RNTPC meeting held on 19.10.2018 (**Annex B**)
 - (c) Secretary of the Board’s letter dated 2.11.2018 (**Annex C**)
- 1.4 The Site is not subject to any planning enforcement action.

2. **Application for Review**

On 21.11.2018, the applicant applied, under section 17(1) of the Town Planning Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). On 11.12.2018, the applicant submitted a letter providing justifications for the review of the decision of the RNTPC (**Annex E**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the applicant's written representation at **Annex E**. They can be summarized as follows:

- (a) The Site is not far from the village cluster of Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai. The village cluster has been expanded from the center of the "V" zone to the southeast. There are also Small House applications near the Site which are under processing.
- (b) The figures of Small House demand provided by District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) in the RNTPC paper, i.e. the outstanding Small House application for Kam Hing Wai is 21 but the 10-year Small House demand forecast is 18 which do not accurately reflect the actual situation. It was also stated that the Small House figure for Shui Tau Tsuen could not be predicted, but the 10-year Small House demand forecast of 135 included Shui Tau Tsuen¹. Also, since the outstanding Small House application for Shui Tau Tsuen is 18, there should not be no Small House demand for the village. Besides, some land within the "V" zone is occupied by ponds, recreational facilities, Tsz Tong, historical building and area reserved for festival uses, while some are owned by Tso Tong or privately owned with Small House applications being processed. Land available for Small House development is limited.
- (c) The application is similar to the approved application No. A/YL-KTN/380 near Shui Mei Tsuen (**Plan R-1**), i.e. more than 50% of the Site falls within the "V" zone; outside the village environs ('VE'); and no adverse departmental comments except Agriculture, Fisheries and Conservation Department (AFCD). There is more land zoned "V" in Shui Mei Tsuen for Small House development, and the RNTPC considered there was insufficient land for Small House development in Application No. A/YL-KTN/380. When compared with Shui Mei Tsuen, there is even less land available for Small House development at Kam Hing Wai. As such, same sympathetic consideration and approval as Application No. A/YL-KTN/380 should be given in this application.
- (d) There is no agricultural activities at the Site and to its north as indicated in the aerial photos from 2000 to 2018. The Site is abandoned and the area of farmland at the south of the Site has decreased recently. DAFC's comment that the Site has agricultural rehabilitation potential and there are active agricultural

¹ The 10-year Small House demand forecast of 135 provided by DLO/YL, LandsD includes Shui Mei Tsuen and Kam Hing Wai, and excludes Shui Tau Tsuen.

activities nearby is doubtful. Also, no valuable tree is found within the Site and the proposed use is not incompatible with the nearby landscape.

4. **The Section 16 Application**

The Site and its Surrounding Areas (**Plans R-1, R-2a**, aerial photo on **Plan R-3** and photos on **Plan R-4**)

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no material change of the situations since then (**Plan R-2a** and **R-4** refer).
- 4.2 The Site is:
 - (a) currently vacant and covered with vegetation; and
 - (b) accessible from Chi Ho Road via a local track.
- 4.3 The surrounding areas are predominantly rural in character and surrounded by residential dwellings/structures, cultivated/fallow agricultural land, open storage yards and vacant/unused land (**Plans R-2a and R-3**):
 - (a) to its north within “AGR” zone are a stream course, residential dwellings/structures, open storages yards and vacant/unused land; and
 - (b) to its south, east and west within “V” zone are cultivated/fallow agricultural land and unused/vacant land with a residential dwelling/structure located to the further west. To its further south is Chi Ho Road.

Planning Intentions

- 4.4 There has been no change of planning intention of the “AGR” and “V” zones, which is mentioned in paragraph 9 of **Annex A**.
- 4.5 The planning intention of the “V” zone is to reflect existing recognized 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. 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 ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.
- 4.6 The planning intention of the “AGR” zone is 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.

Assessment Criteria

- 4.7 The set of interim criteria for consideration of application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Previous Application

- 4.8 The Site is not the subject of any previous application.

Similar Applications

- 4.9 There are 11 similar applications (Nos. A/YL-KTN/153, 177, 265, 284 to 286, 380, 469, 470, 472 and 545) for Small House developments within the same “AGR” zone/ straddling over the same “V” and “AGR” zones in the vicinity of the Site on the Kam Tin North OZP since the first promulgation of the Interim Criteria in November 2000 at the time of the consideration of the s.16 application. Details of these applications are summarized in Appendix III of **Annex A** and their locations are shown on **Plan R-1**. There is no new similar application since then.

Rejected Applications – ten applications

- 4.10 Ten applications (Nos. A/YL-KTN/153, 177, 265, 284 to 286, 469, 470, 472 and 545) were rejected by the RNTPC or the Board on review on 14.2.2003, 15.8.2003, 23.3.2007 and 1.2.2008 (for Applications No. A/YL-KTN/284 to 286), 7.8.2015 (for Applications No. A/YL-KTN/469, 470 and 472) and 23.12.2016 respectively. The applications were rejected mainly on the grounds that the developments did not comply with the planning intention of “AGR” zone and the Interim Criteria in that majority of the sites fell outside the “V” zone and/or ‘VE’, there was no shortage of land in meeting the demand for Small House developments in “V” zone in general and/or insufficient information to demonstrate why land within “V” zone could not be made available for Small House developments; the proposed Small Houses were incompatible with the surrounding environment; and there was insufficient information in the submission to demonstrate that the proposed use would not generate adverse impacts on the surrounding areas.

Approved Application – one application

- 4.11 Application No. A/YL-KTN/380 was approved with conditions by the Committee on 15.5.2012 mainly for the reasons that the proposed development complied with the Interim Criteria in that more than 50% of the footprint of the proposed development fell within “V” zone and there was a shortage of land within “V” zone to meet the demand of Small House development; relevant development, except DAFC, had no adverse comment on the application; and though DAFC did not support the application, there was no active agricultural activities carried out on the site.

5. **Comments from Relevant Government Departments**

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.
- 5.2 For the review application, the relevant Government departments have been further consulted and the comments are summarized as follows:

Land Administration

5.2.1 Comments of the DLO/YL, LandsD:

- (a) The Site comprises New Grant agricultural lots.
- (b) The Site does not fall within any Village Environs Boundary (VEB) of recognized village.
- (c) According to his records, a Small House application on Lot Nos. 597A S.I and 597A S.V both in D.D. 109 was received by his office on 28.4.2014 from a person who had the same name as the applicant of the current s.16 application. In the Small House application form, the said person claimed himself as an indigenous villager of Shui Tau Tsuen, Kam Tin. The indigenous villager's status and eligibility of the SH applicant have not yet been verified. When the Small House application is due for processing, DLO/YL of LandsD will consider the application acting in the capacity as the landlord at its sole discretion in accordance with the New Territories Small House Policy, including verification of the Small House applicant's status. There is no guarantee that such application would be approved.
- (d) According to his records, the proposed Small House site is not covered by any Modification of Tenancy/Building License.
- (e) The number of outstanding and approved Small House applications of Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai (as at December 2018)² are tabulated as follows:

	No. of outstanding SH applications
Shui Tau Tsuen	18
Shui Mei Tsuen	78
Kam Hing Wai	20*

*Including SH application within the Site.

- (f) The 10-year (2017-2026) forecasts of Small House demand for Shui Mei Tsuen and Kam Hing Wai are 117 and 18 respectively

² According to figures as at September 2018 provided by DLO/YL, LandsD in Appendix IV of the RNTPC paper at **Annex A**, the outstanding Small House applications for Shui Mei Tsuen and Kam Hing Wai is 76 and 21 respectively.

(figure for Shui Tau Tsuen is unpredictable). The figures of the 10-year forecast are provided by the Indigenous Inhabitant Representatives of the said villages and DLO/YL is unable to verify such information.

- (g) Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai are pre-1898 recognized villages.
- (h) His office has no objection on the approval condition in respect of the provision of septic tank.
- (i) If a proposed Small House site is outside or more than 50% of it is outside the VEB of a recognized village and the “V” zone which encircles the recognized village, the concerned Small House application will be rejected under the New Territories Small House Policy even though the applicant is an indigenous villager who has successfully sought planning permission. On the other hand, consideration will be given to application for proposed house site within or at least 50% of it is within a “V” zone which encircles a recognized village and is larger than 300 feet village environs.
- (j) Should planning approval be given to the planning application, the registered lot owner should inform DLO/YL of LandsD, and DLO/YL of LandsD will consider the Small House application acting in the capacity as the landlord and there is no guarantee that such application would be approved. Any applications, if approved, would be subject to such terms and conditions including, among others, the payment of premium and/or administrative fee as may be imposed by the LandsD.

Agriculture

5.2.2 Comments of the Director of Agricultural, Fisheries and Conservation (DAFC):

- (a) Agricultural activities in the vicinity of the Sites are active. Agricultural infrastructure such as road and water source are available. As the Site possesses a potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) There is a retained abandoned meander to the north of the Site (**Plan R-2a**). Should the application be approved, the applicant shall be advised to avoid disturbance and pollution to the abandoned meander.

District Officer's Comments

5.2.3 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comment from the locals on the application and he has no comment on the application.

- 5.3 The following Government departments have no further comment on the review application and maintain their previous views on the s.16 application as below:

Traffic

- 5.3.1 Comments of the Commissioner for Transport (C for T):

He has no comment on the application considering there is no parking provision and the induced traffic is minimal.

- 5.3.2 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) It is noted from the application that no run-in/out and direct vehicular access to the Site are proposed.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

- 5.3.3 Comments of the Director of Environmental Protection (DEP):

In view of the small population and nature of the proposed development, septic tank and soakaway system is considered a suitable treatment system provided that its design and operation follows the requirements in EPD's Practice Note for Professional Person (ProPECC) PN 5/93 'Drainage Plans subject to Comment by the Environmental Protection Department', including percolation test and certification by Authorised Person.

Landscape

- 5.3.4 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 landscape planning perspective.
- (b) The surrounding area is predominately in rural character with a river at north side of the site boundary, some village houses at the opposite side of the river, a large piece of agricultural land in the vicinity, some tree groups and a few temporary structures. The proposed use is considered not incompatible with the existing landscape context.
- (c) Based on the site inspection on 7.9.2018, there is no significant tree observed within the site boundary. Abandoned vegetation is

found in the agriculture land. It is anticipated that no adverse landscape impact would be imposed by the proposed use. Moreover, about 71% of the site area falls within "V" zone on the OZP.

- (d) Given that no area is available for landscaping around the proposed Small House, should the application be approved by the Board, landscape condition for the application is not recommended.
- (e) There is no information on existing/proposed vehicular access for the Site to facilitate construction works. The applicant is reminded that all existing trees along the construction access should not be unnecessarily felled or pruned.

Drainage

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

- (a) He has no in-principle objection to the application from the public drainage point of view.
- (b) Should the application be approved, approval conditions on submission and implementation of drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

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

- (a) He has no specific comment on the application.
- (b) The applicant is advised to observe “New Territories Exempted Houses – A Guide to Fire Safety Requirements” published by LandsD.

Electricity

5.3.7 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within

and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

Building Matters

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

- (a) Noting that the building to be erected on the Site will be NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121), DLO/YL should be in a better position to comment on the application.
- (b) In case DLO/YL decides not to issue the certificates of exemption for the site formation works and/or drainage works associated for the NTEH development, such works will require prior approval and consent under the Buildings Ordinance. In the circumstance, an Authorised Person (AP) should be appointed as the coordinator for the proposed works. The applicant may approach DLO/YL or seek AP’s advice for details.

5.4 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application below:

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

6. Public Comments Received During Statutory Publication Period

- 6.1 On 7.12.2018 and 21.12.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection periods, which ended on 28.12.2018 and 11.1.2019 respectively, no public comment was received.
- 6.2 During the s.16 application stage, seven public comments from individuals objecting to the application were received. The grounds of objection are stated in paragraph 11.2 of the RNTPC paper in **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of RNTPC’s decision on 19.10.2018 to reject the application for proposed house (NTEH - Small House) at the Site. The rejection reasons were that the proposed development is not in line with the planning intention of the “AGR” zone; and the proposed development does not comply with the Interim Criteria in that there is no shortage of land in meeting the

demand for Small House development in the “V” zone in general and there is no exceptional circumstances that merit approval of the application. In support of the review application, the applicant submitted justifications mainly on the grounds that the Site is not far from the village cluster; the figures of Small House demand as provided by DLO/YL, LandsD is not accurate and land within “V” zone available for Small House development is limited; the same sympathetic consideration and approval as a previous approved application for Small House (No. A/YL-KTN/380) should be given to the current application which is subject to similar situation (outside the ‘VE’ but more than 50% of the site within “V” zone); and there is no agricultural activities at the Site and to its north and the potential of the Site for agricultural rehabilitation is in doubt. The updated planning considerations and assessments are appended below.

- 7.2 The Site falls partly within the “V” zone (71%) and partly within the “AGR” zone (29%) (**Plan R-2a**). The proposed Small House development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Having considered the applicant’s justification, DAFC maintains his previous view of not supporting the application from the agricultural point of view as agricultural activities in the vicinity of the Site are active, agricultural infrastructure such as road and water source are available, and the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the current submission for a departure from the planning intention.
- 7.3 Based on DLO/YL of LandsD’s latest record, the total number of outstanding Small House applications for Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai (as at December 2018) is 116 (2.9ha). The 10-year Small House demand forecast (2017-2026) for Shui Mei Tsuen and Kam Hing Wai is 135 (i.e. 3.375ha), while that for Shui Tau Tsuen cannot be predicted as advised by the Indigenous Inhabitant Representative. In respect of the applicant’s allegation that the Small House demand figure is not accurate, the number of outstanding Small House applications is based DLO/YL, LandsD’s record, while the 10-year Small House demand forecast for Shui Mei Tsuen and Kam Hing Wai is provided by the Indigenous Inhabitant Representatives of the respective villages. Regarding the applicant’s claim that land within the “V” zone is limited as some are occupied by ponds, recreational facilities, Tsz Tong, historical building and area reserved for festival uses while some are owned by Tso Tong or privately owned with Small House applications being processed, it should be noted that in general, land with Small House cases approved by DLO/YL of LandsD, Fung Shui pond, Tsz Tong, heritage site, etc. has been excluded in estimating the land available for Small House development in the “V” zone. According to the latest estimation by PlanD, about 8.57 ha (i.e. equivalent to about ~~342~~ **343** Small House sites) of land is available within “V” zone of Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai (**Plan R-2b**). As such, there is no shortage of land in meeting both outstanding and 10-year Small House demand forecast (i.e. about 251 Small House sites or equivalent of about 6.275 ha of land).
- 7.4 The proposed Small House development does not comply with the Interim Criteria in that although majority of the Site and the footprint of the proposed Small House fall within “V” zone, there is no shortage of land in meeting the

Small House demand of Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai as mentioned in paragraph 7.3 above. In this regard, no sympathetic consideration would be given to the proposed Small House application according to the Interim Criteria.

- 7.5 Regarding the similar application No. A/YL-KTN/380 approved with conditions by the RNTPC in 2012 as quoted by the applicant (**Plan R-1**), it is subject to different circumstances as it was in line with the Interim Criteria in that more than 50 % of the site and footprint of the Small House fell within the “V” zone, and there was insufficient land within the “V” to meet the outstanding Small House applications and 10-year Small House demand forecast. Except for this application, all other 10 similar applications for Small House were rejected by RNTPC or the Board on review between 2003 and 2016 mainly on the grounds as stated in paragraph 4.10 above. Although part of the Site is within the “V” zone, there is no strong justification for the development of the Small House part outside the “V” zone as there is no shortage of land in meeting the Small House development as mentioned in paragraph 7.3. Such application for Small House partly within the “AGR” zone should not be encouraged as it will frustrate the planning intention of the “AGR” zone. It is considered more appropriate to concentrate the proposed Small House within the “V” zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 7.6 No public comment was received during the statutory publication period at the s.17 review stage of the application.

8. **Planning Department’s Views**

- 8.1 Based on the assessments made 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 19.10.2018, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is 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 the planning intention; and
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that there is no shortage of land in meeting the demand for Small House development in the “V” zone in general, and there is no exceptional circumstances that merit approval of the application. 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 infrastructure and services.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 1.3.2023, 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) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire

10. Attachments

Annex A	RNTPC Paper No. A/YL-KTN/627
Annex B	Extract of minutes of the RNTPC meeting held on 19.10.2018
Annex C	Secretary of the Board's letter dated 2.11.2018
Annex D	Letter dated 21.11.2018 from the applicant applying for review of the application
Annex E	Further information received on 11.12.2018 providing justifications to support the review application
Annex F	Advisory Clauses
Plan R-1	Location Plan with Similar Applications
Plan R-2a	Site Plan

Plan R-2b	Estimated Amount of Land Available for Small House Development within the “V” Zone
Plan R-3	Aerial Photo
Plan R-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**