

REVIEW OF APPLICATIONS NO. A/NE-KTS/461 and 462
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House – Small House)
in “Residential (Group D)” and “Village Type Development” Zones
Lots 409 S.AI (A/NE-KTS/461) and 409 S.AJ (A/NE-KTS/462) in D.D. 94,
Hang Tau Tai Po, Kwu Tung South, New Territories**

1. Background

- 1.1 On 24.10.2018, the applicants, Mr. LI Yik Fung (A/NE-KTS/461) and Mr. LI Wong Sun (A/NE-KTS/462) represented by Lawson David & Sung Surveyors Limited, submitted the subject two applications under the s.16 of the Town Planning Ordinance (the Ordinance) to seek permission to build a house (New Territories Exempted House (NTEH) – Small House) each on the two application sites (the Sites) in Hang Tau Village, Sheung Shui (**Plans R-1 and R-2a**). Both Sites fall mainly within “Residential (Group D)” (“R(D)”) zone with a small part within “Village Type Development” (“V”) zone (9% and 4% respectively) on the approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/16 (**Plan R-1**). The Sites are currently occupied by open storage use (**Plan R-4**). The Sites and the proposed houses are 100% within village ‘environs’ (‘VE’) of Hang Tau.
- 1.2 On 4.1.2019, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to defer a decision on the applications pending a comprehensive picture on the areas of “R(D)” zone which overlapped with ‘VE’ of the recognised villages in rural areas so that the implication on other applications of similar nature could be better assessed.
- 1.3 On 17.5.2019, after considering the further information prepared by Planning Department (PlanD), the RNTPC decided to reject the applications and the reasons were:
 - (a) land is still available within the “V” zone of Hang Tau Village which is primarily intended for Small House development. 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 infrastructures and services; and
 - (b) approval of the applications would set an undesirable precedent for similar applications within the “R(D)” zone. The approval of similar applications would result in adverse cumulative traffic impacts on the surrounding areas.
- 1.4 For Members’ reference, the following documents are attached:
 - (a) RNTPC Paper No. A/NE-KTS/461A and 462A (with RNTPC Paper A/NE-KTS/461 and 462 for RNTPC Meeting held on 4.1.2019 and Extract of RNTPC minutes of **(Attachment A)**

4.1.2019 at Annexes F-I and Annex F-II)

- (b) Extract of minutes of the RNTPC Meeting held on 17.5.2019 (**Attachment B**)
- (c) Secretary of the Board's letters dated 31.5.2019 (**Attachments C1 and C2**)

2. Application for Review

On 3.6.2019, the applicants' representative applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the applications (**Attachments D1 and D2**). The applicants have not submitted any written representation in support of the review.

3. The Section 16 Applications

The Sites and Their Surrounding Areas (**Plan R-2a**, aerial photo on **Plans R-3** and site photos on **Plan R-4**)

- 3.1 The situations of the Sites and their surrounding areas at the time of the consideration of the s.16 applications by the RNTPC were described in paragraph 8 of **Annex F-I in Attachment A**. There has been no material change of the situations since then (**Plan R-2a**).
- 3.2 The Sites are:
 - (a) generally flat, currently used as open storage for metal frames;
 - (b) located to the immediate northwest of the village cluster of Hang Tau Village and falls entirely within the 'VE' of Hang Tau; and
 - (c) accessible via an existing local track at its eastern side.
- 3.3 The surrounding area is predominantly rural in nature with village houses and open storage uses, with the following characteristics:
 - (a) to the south are mainly village houses in the "V" zone of Hang Tau village;
 - (b) to the east is Serenity Garden – a residential development with a number of Small Houses; and
 - (c) to the north and northwest is open storages and domestic structures.

Planning Intention

- 3.4 There has been no change of planning intention of the "R(D)" and "V" zone, which is mentioned in paragraph 9 of **Annex F-I in Attachment A**.
- 3.5 The planning intention of the "R(D)" zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the

Board.

- 3.6 The planning intention of the “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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

Assessment Criteria

- 3.7 The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) (latest revision promulgated on 7.9.2007) relevant to the consideration of the s.16 application is still effective. The Interim Criteria are set out at Appendix II of **Annex F-I in Attachment A**.

Previous Application

- 3.8 There were three previous applications at the time of the consideration of the s.16 applications, and they are mentioned in paragraph 6 at **Annex F-I in Attachment A**. There has been no new previous application on the Site since then. Details of the applications are summarised at Appendix III of **Annex F-I in Attachment A** and their locations are shown on **Plan R-1**.
- 3.9 The three previous applications (No. A/NE-KTS/31, A/NE-KTS/81 and A/NE-KTS/208) cover the Sites and their adjoining larger areas. The applications were considered by the RNTPC when the area was zoned “Recreation” (“REC”)¹.
- 3.10 Application No. A/NE-KTS/31 for proposed hotel with recreation facilities was rejected by the RNTPC on 15.12.1995 mainly for reasons of being not in line with the planning intention of the then “REC” zone; excessive scale and development intensity in a rural setting; adverse traffic impacts; interface problems between the existing industrial activities and the proposed hotel development; and inappropriate sewage treatment standards for the proposed development.
- 3.11 Application No. A/NE-KTS/81 for proposed holiday camp with sports training facilities was approved on review by the Board on 19.3.1999 mainly on the grounds of being in line with the planning intention of the then “REC” zone; no adverse traffic impact; compatible with the surrounding areas; meeting the demand for various recreational uses; and bringing about environment improvement to the site and the surrounding areas. The approved development had not been implemented and the planning permission lapsed on 20.3.2008.
- 3.12 Application No. A/NE-KTS/208 for proposed elderly home was rejected by the RNTPC on 27.5.2005 mainly for reasons of being not in line with the planning intention of the then “REC” zone; excessive height and development intensity; possible

¹ The area was zoned “REC” on the previous Kwu Tung South OZPs, and was rezoned to “R(D)” on 24.3.2017

traffic and water quality impacts; and setting an undesirable precedent.

Similar Applications

- 3.13 There is no similar application for house (NTEH – Small House) in the “R(D)” zone of the OZP.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 applications made by relevant Government departments are stated in paragraph 10 and Appendix IV of **Annex F-I in Attachment A**.
- 4.2 For the review applications, the following Government departments have been further consulted and their comments are summarised as follows:

Land Administration

- 4.2.1 The District Lands Officer/North, Lands Department (DLO/N, LandsD) has no further comment on the review application except updating number of outstanding Small House applications for Hang Tau Village and maintains his previous views on the s.16 application. His comments are as follows:
- (a) the Sites fall entirely within the ‘VE’ of Hang Tau Village;
 - (b) the applicants claimed themselves as indigenous villagers of Hang Tau Village. Their eligibility for Small House concessionary grants has yet to be ascertained;
 - (c) the Sites are not covered by any Modification of Tenancy or Building Licence;
 - (d) the lots are Old Schedule agricultural lots;
 - (e) the number of outstanding Small House applications in Hang Tau Village is 52. As provided by the Indigenous Inhabitant Representative (IIR) of Hang Tau on 31.5.2017, the number of 10-year Small House demand for the whole Hang Tau Village is between 2,900 and 3,200; and
 - (f) the Small House applications to LandsD were received on 12.1.2018.

District Officer’s Comments

- 4.2.2 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):
- he has consulted the locals from 21.6.2019 to 5.7.2019. All consultees, including the Chairman of Sheung Shui District Rural Committee, the North District Council member of the subject Constituency, and the Indigenous Inhabitant Representatives and Resident Representative of Hang Tau, had no comment on the proposal. They also had no comment at s.16 application

stage.

- 4.3 The following Government departments have no further comments on the review applications and maintain their previous views on the s.16 applications as below:

Traffic

- 4.3.1 The Commissioner for Transport (C for T)'s comments on the application as states in paragraph 7 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

- (a) he has reservation on the applications and advises that the Small House developments should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed developments are not expected to be significant, such type of developments outside the "V" zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, the applications only involve construction of 2 Small Houses. He considers that the applications can be tolerated unless they are rejected on other grounds.

Environment

- 4.3.2 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)'s comments on the application as states in paragraph 3 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

the Sites are in an area where no public sewerage connection is available.

- 4.3.3 The Director of Environmental Protection (DEP)'s comments on the applications as states in paragraph 3 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

- (a) in view of the small-scale nature of the proposed developments, the applications are unlikely to cause major pollution; and
- (b) septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" and are duly certified by an Authorized Person.

Drainage

- 4.3.4 The CE/MN, DSD's comments on the applications as states in paragraph 2 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

- (a) he has no objection to the applications from public drainage viewpoint;

and

- (b) should the applications be approved, a condition should be included to request the applicants to submit and implement drainage proposal for the Sites to ensure that the proposed developments will not cause adverse drainage impact to the adjacent area.

Landscape

4.3.5 The Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)'s comments on the applications as states in paragraph 5 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

- (a) no significant landscape impact is envisaged within the Sites and the Sites are not within a landscape sensitive zoning and area; and
- (b) in view that there is inadequate space for landscaping around the proposed houses, landscape condition is therefore impracticable.

Fire Safety

4.3.6 The Director of Fire Services (D of FS)'s comments on the applications as states in paragraph 6 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

he has no in-principle objection to the applications. The applicants are reminded to observe 'New Territories Exempted Houses - A Guide to Fire Safety Requirements' published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

Water Supply

4.3.7 The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD)'s comments on the applications as states in paragraph 4 of Appendix IV in **Annex F-I in Attachment A** are recapitulated below:

- (a) he has no objection to the applications; and
- (b) for provision of water supply to the development, the applicants may need to extend their inside services to the nearest suitable government water mains for connection. The applicants shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to his department's standards.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (b) Project Manager/New Territories East, Civil Engineering and Development Department (PM/NTE, CEDD).

5. Public Comments on the Review Applications Received During Statutory Publication Periods

- 5.1 On 14.6.2019, the review applications were published for public inspection. During the first three weeks of the statutory public inspection period, a total of five public comments were received. Two comments (**Attachments E-1 and E-2**) submitted by the same individual each on one application indicate no comment. The remaining three comments (**Attachments E-3 to E-5**) from Designing Hong Kong Limited and two individuals raise adverse comments on both applications. One of them contains four signatures. The main grounds of objection are:
- (a) the proposed development is not in line with the planning intention of “R(D)” zone;
 - (b) land is still available within the “V” zone of Hang Tau Village and Small House developments should be confined within the existing “V” zone;
 - (c) the road in Hang Tau Village cannot afford and the area is over-crowded;
 - (d) the approval of the application would set an undesirable precedent for similar applications; and
 - (e) there is a lack of drainage system.
- 5.2 At the stage of s.16 applications, a total of five public comments on the two applications from members of the general public were received. Two comments supported both applications, two comments indicated no comment and one comment raised concerns on planning and sewerage aspects. Details of the comments are in paragraph 11 of **Annex F-I in Attachment A**.

6. Planning Considerations and Assessments

The applications are for a review of RNTPC’s decision on 17.5.2019 to reject the applications for proposed houses (NTEHs – Small Houses) at the Sites which are mainly within “R(D)” zone with a small part within “V” zone (about 9% and 4% respectively). As the applicants have not submitted any written representation in support of the review, there is no major change in the previous planning considerations and assessments in **Attachment A** except that the demand of land for Small House development is updated:

Planning Intention

- 6.1 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. The Sites are currently used as open storage. The proposed developments will help phase out the existing open storage use and are generally in line with the planning intention in this aspect.

Local Planning Context

- 6.2 The Sites are located to the immediate northwest of the village cluster of Hang Tau Village. The proposed Small Houses are compatible with surrounding environment and landscape character which is rural in nature with village houses to the east and south (**Plan R-2a**). There is no existing tree within the Sites and the Sites have been formed. The proposed Small Houses are not anticipated to cause adverse drainage, sewerage and environmental impacts on the surrounding areas. Government departments consulted, including CE/MN, DSD, DEP and CTP/UD&L, PlanD have no adverse comment on the applications. C for T has reservation on the applications due to setting of undesirable precedents resulting in cumulative adverse traffic impact, but considers that the applications only involving construction of two Small Houses can be tolerated.

Demand and Supply of land for Small House Development

- 6.3 According to the latest information from DLO/N, LandsD, the total number of outstanding Small House applications for Hang Tau Village is 52. As provided by the IIR of Hang Tau, the 10-year Small House demand forecast for the Village is between 2,900 and 3,200. Based on the latest estimate by PlanD, about 4.42 ha (or equivalent to about 176 Small House sites) of land is available within the “V” zone of Hang Tau Village (**Plan R-2c**). There is sufficient land available within the “V” zone to meet the outstanding Small House applications though it cannot fully meet the 10-year Small House demand.

Interim Criteria

- 6.4 Notwithstanding the planning intention of the “R(D)” zone for improvement and upgrading of existing temporary structures, the applications are for Small House development for which the Board has prepared the Interim Criteria setting out the major criteria in considering the Small House applications. The consideration of the subject applications should therefore be focused on the Interim Criteria. According to the Interim Criteria (**Appendix II in Annex F-I in Attachment A**), sympathetic consideration may be given if not less than 50% of the proposed Small House footprint falls within the ‘VE’ of a recognized village and there is a general shortage of land in meeting the demand for Small House development in the “V” zone of the village. For the subject applications, 100% of the footprints of the proposed Small Houses fall within the ‘VE’ of Hang Tau (**Plan R-1**) and land available within the “V” zone is sufficient to meet the outstanding Small House applications but not the forecasted 10-year Small House demand. In recent years, the Board has adopted a more cautious approach in considering applications for Small House developments. In considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by the LandsD. As land is available within the “V” zone to meet the outstanding 52 Small House applications, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. As revealed in the research information in paragraph 2.2 of **Attachment A**, the Board’s consideration of 10 similar applications in “R(D)” zone on OZPs within ‘VE’ general follows the Interim Criteria. In this regard, it is considered that sympathetic consideration should not be given to the subject applications.

Setting Precedent

- 6.5 There is no previous Small House application in respect of the Sites and no similar

application in the same “R(D)” zone. It is noted that the private land in the subject area with the “R(D)” zone and ‘VE’ overlapped have been carved out into small lots (**Plan R-2b**) with size fitting about 40 Small House developments. It is very likely that approval of the subject applications would set precedents for similar applications for Small House in this area. The cumulative effect of approving such applications would lead to adverse traffic impact on the surrounding areas.

Public Comments

- 6.6 There are three public comments objecting to both review applications mainly on the grounds of being not in line with the planning intention of “R(D)” zone; land still available within “V” zone of Hang Tau Village, confining Small House development within the existing “V” zone; setting an undesirable precedent; adverse traffic and drainage impacts; excessive population density, as mentioned in paragraphs 5 above. In this regard, relevant Government departments’ comments and planning assessments as stated above are relevant.

7. Planning Department’s Views

- 7.1 Based on the assessment made in paragraph 6, and having taken into account the local views and public comments mentioned in paragraphs 4.2.2 and 5, and given that there is no change in the planning circumstances since the consideration of the subject application by RNTPC on 17.5.2019, the Planning Department maintains its previous view of not supporting the review applications for the following reasons:
- (a) land is still available within the “Village Type Development” zone of Hang Tau Village which is primarily intended for Small House development. 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 infrastructures and services; and
 - (b) approval of the application would set an undesirable precedent for similar applications within the “R(D)” zone. The approval of similar applications would result in adverse cumulative traffic impacts on the surrounding areas.
- 7.2 Alternatively, should the Board decide to approve the applications, it is suggested that the permission shall be valid until 23.8.2023, 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 proposals to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

7.3 The recommended advisory clauses are attached at **Attachment F**.

8. Decision Sought

- 8.1 The Board is invited to consider the applications for a review of the RNTPC's decision and decide whether to accede to the applications.
- 8.2 Should the Board decide to reject the review applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 8.3 Alternatively, should the Board decide to approve the review applications, 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.

9. Attachments

Attachment A	RNTPC Paper No. A/NE-KTS/461A and 462A
Attachment B	Extract of minutes of the RNTPC Meeting held on 17.5.2019
Attachments C1 and C2	Secretary of the Town Planning Board's Letters dated 31.5.2019
Attachments D1 and D2	Applicants' Letters dated 3.6.2019 Applying for Review
Attachments E-1 to E-5	Public Comments on the review application
Attachment F	Advisory Clauses
Plan R-1	Location Plan
Plans R-2a and 2b	Site Plans
Plan R-2c	Estimated Amount of Land Available for Small House Development within the "Village Type Development" Zone
Plan R-3	Aerial Photos
Plan R-4	Site Photos