

**REVIEW OF APPLICATION NO. A/YL-KTS/693**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Flat and House Development**  
**Lots 547 RP (Part), 550 RP and 551 in D.D.106 and Adjoining Government Land,**  
**Kam Tin, Yuen Long**

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**1. Background**

- 1.1 On 13.1.2016, the applicant, Noble Phoenix Investments Limited represented by Albert So Surveyors Limited, sought planning permission to use the application site (the Site) for proposed flat and house development under section 16 (s.16) of the Town Planning Ordinance (the Ordinance). The Site fell within an area zoned “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) on the approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/13 at the time of consideration of the s.16 application (**Plan R-1a**). Subsequently, the draft Kam Tin South OZP No. S/YL-KTS/14 (the Plan) was gazetted on 3.11.2017 and the Site has been rezoned to “Residential (Group A)” (“R(A)”) (**Plan R-1b**). The Site is mainly occupied by an existing plastic factory compound, with cultivated land on the southeastern portion of the Site (**Plans R-4a and R-4b**).

- 1.2 On 27.10.2017, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:

the Site is located within an area of a comprehensive planned public housing development. Approval of the application would jeopardise the implementation of the public housing development and affect the supply of public housing flats.

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

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|-----|--|-----------|
| (a) | RNTPC Paper No. A/YL-KTS/693D                              | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 27.10.2017 | (Annex B) |
| (c) | Secretary of the Board’s letter dated 10.11.2017           | (Annex C) |

- 1.4 On 13.10.2017, the proposed amendments to the approved Kam Tin South OZP No. S/YL-KTS/13 to rezone, among others, three sites to the south of Kam Sheung Road Station (namely Sites 1, 4a and 6) from “OU(RU)” and “Agriculture” (“AGR”) to “R(A)” to take forward the planned public housing developments were considered and agreed by the RNTPC. The Site under the

current application falls within one of the public housing sites, i.e. Site 4a (**Plan R-5**). The draft Kam Tin South OZP No. S/YL-KTS/14 incorporating the above amendments was gazetted on 3.11.2017. A total of 320 representations and 133 comments on representations were received by the Board. The applicant of the current application has also submitted a representation objecting to the rezoning of the Site to “R(A)” for public housing purpose. The hearing of representations and comments by the Board is tentatively scheduled for July 2018.

## 2. **Application for Review**

On 23.11.2017, the applicant’s representative applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application. In support of the review, the applicant submitted the following:

- (a) Written representation dated on 23.11.2017 (Annex D)
- (b) Further information (FI) with a supplementary statement (Annex E)  
received on 12.2.2018  
*(accepted but not exempted from publication and  
recounting requirements)*

## 3. **Justifications from the Applicant**

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

### Rejection reason

- (a) The RNTPC has agreed to rezone the Site and its adjoining land from “OU (RU)” to “R(A)” to facilitate public housing development just one meeting (i.e. 13.10.2017) before the RNTPC meeting to consider the s.16 application (i.e. 27.10.2017). It seems that the Government intended to catch up the time to seek agreement from RNTPC for the public housing development before consideration of the s.16 application. Also, the rejection reason is based on information not stated in the approved OZP No. S/YL-KTS/13 at the time of consideration of the s.16 application as the planning intention for public housing development was only stated in the draft OZP No. S/YL-KTS/14 which was published after the s.16 application. As such, the rejection reason is unfair, unreasonable and probably ultra vires to the applicant.

### Private housing supply

- (b) The demand for private housing is also tremendous and the Government should not just concentrate on the supply of public housing and neglect the intention of the applicant to develop the Site for private housing.

### Proposal for public-private developments

- (c) If private housing development is allowed at the Site, land exchange application and development works could start quick which can facilitate housing development and avoid long land resumption procedure. The Government has made public statement about private participation in public housing development which is an effective way to increase both public and private housing supply. The applicant is willing to participate in public-private joint development scheme and allocate a certain percentage of the complete domestic units for public housing use. The details of the joint venture agreement will be subject to further discussion with Government.

### Applicant's right for development at the Site

- (d) About 53.7% of the Site is Government land, which was previously owned by the applicant since 14.10.1970 but was resumed by the Government on 25.8.2001 under Roads (Works, Use and Compensation) Ordinance (Cap. 370). The applicant always expects the Government to re-grant the land back to him under the Roads (Works, Use and Compensation) Ordinance. In fact, an application for re-grant has been submitted to the Yuen Long District Lands Office on 9.9.2004.

### Precedents on planning cases

- (e) With reference to the Town Planning Appeal No. 15 of 2011 (Hin Tak Gee Ltd. v. Town Planning Board (2011)) and according to the Town Planning Ordinance (TPO), the Board could only consider the planning permission within the parameters of the relevant approved plan. In the s.16 application, the approved plan should be the approved OZP No. S/YL-KTS/13, which did not mention the Site is planned for public housing development. Therefore, the rejection reason of the s.16 application cannot be established.
- (f) With reference to a case of Court of Appeal International Trader Ltd. v. the Town Planning Appeal Board (2007)), as the rejection reason of the s.16 application was based on considerations which fall outside the ambit of an approved plan, the RNTPC probably acted ultra vires.

## **4. The Section 16 Application**

The Sites and its Surrounding Area (**Plan R-2**, aerial photo on **Plan R-3** and photos on **Plans R-4a** and **R-4b**)

### 3.1 The Site:

- (a) comprises private land (i.e. Lots 547 RP (Part), 550 RP and 551 in D.D. 106) and Government Land;
- (b) is located at south of Tung Wui Road with direct access from the road; and

- (c) is occupied by an existing plastic factory compound, with cultivated land on the southeastern portion.
- 3.2 The surrounding areas are mixed with residential dwellings/structures, open storage yards, a warehouse, agricultural land, a plant nursery, and vacant/unused land. The open storage yards and warehouse are suspected unauthorized development subject to enforcement action by the Planning Authority:
- (a) to its immediate north across Tung Wui Road is an area zoned “Comprehensive Development Area” (“CDA”) currently occupied by open storage yards and unused land. Further north are Kam Tin River and some residential dwellings/structures. The West Rail Kam Sheung Road Station is located on the further northwest across Tung Wui Road (**Plan R-1**);
  - (b) to its immediate east are residential structures/ dwellings, a plant nursery, cultivated agricultural land and vacant land. To the northeast are an open storage yard, a warehouse and vacant land; and
  - (c) to its immediate south is a temporary public vehicle park for private cars under an approved application No. A/YL-KTS/722. Further south are residential structures/dwellings and fallow agricultural land. A nullah is located to its southwest across Kam Po Road.

#### Planning Intention

- 3.3 The planning intention of the then “OU(RU)” zone under the previous approved Kam Tin South OZP No. S/YL-KTS/13 at the time of consideration of the s.16 application is for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view upgrading or improving the area or providing support to the local communities.
- 3.4 The planning intention of the “R(A)” zone under the draft Kam Tin South OZP No. A/YL-KTS/14 currently in force is primarily for medium-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. According to the Explanatory Statement of the Plan, this zone is intended for public housing developments.

#### Town Planning Board Guidelines

- 3.5 The Town Planning Board Guidelines No. 38 for Designation of “OU(RU)” zone and Application for Development within “OU(RU)” zone under s.16 of the Ordinance (TPB PG-No. 38) is relevant to the application at the time of

consideration of the s.16 application. The relevant extract of the Guideline is mentioned in paragraph 4 of **Annex A**.

### Previous Application

- 3.6 There is no previous application at the Site.

### Similar Applications

- 3.7 The similar applications at the time of consideration of the s.16 application are mentioned in paragraph 7 of **Annex A**. Details of applications are summarized in Appendix II of **Annex A** and the locations of the sites are shown on **Plan R-1a**. Since the Site is rezoned to “R(A)” on 3.11.2017, no additional similar application has been involved.
- 3.8 At the time of consideration of the s.16 application, there were four similar applications (Nos. A/YL-KTS/438, 455, 499 and 639) on a site to the east of the Site for proposed house with/without minor relaxation of plot ratio (PR)/ building height restriction within the “OU(RU)” zone on the OZP.
- 3.9 Applications No. A/YL-KTS/438 and 455 were rejected by the RNTPC on 5.9.2008 and 19.3.2010 respectively mainly on the grounds that the proposed development did not comply with the TPB PG-No. 38 in that there was insufficient information in the submission to address the concerns on the environment, drainage, visual and/or landscape aspects; the proposed minor relaxation of PR was not considered minor and no design merit or strong justification had been given in the submission to merit a relaxation of the PR restriction; and the approval of the application would set an undesirable precedent and the accumulative effect of approving such applications would generate adverse impact on the environment.
- 3.10 Applications No. A/YL-KTS/499 and 639 for proposed house development of 8-10 blocks at a PR of 0.4 were approved with conditions by the RNTPC on 17.6.2011 and 12.12.2014 respectively on the considerations that the proposed development was in line with the planning intention of the “OU(RU)” zone and was compatible with the surrounding areas; the approval of the proposed development would serve as a catalyst to phase out the non-conforming and undesirable rural industrial-related uses in the vicinity of the site and help achieve an early implementation of the planning intention of the “OU(RU)” zone so as to upgrade the environmental quality of the area; the proposed development would not generate adverse traffic, environmental, sewerage and drainage impacts; and concerned departments had no objection/adverse comment on the application.

## 5. **Comments from Relevant Government Departments**

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraphs 10.1 and 10.2 of **Annex A**.
- 5.2 For the review application, the relevant Government departments have been further consulted and their comments are summarized as follows:

### **Public Housing Development**

#### 5.2.1 Comments of the Secretary for Development (SDEV):

- (a) The Site encroaches onto the planned public housing site of Site 4a which is planned for about 3,750 flats. The planning of Site 4a is already at an advanced stage, with its rezoning process initiated and its flat yield is vital to meet the public housing production target. The approval of the subject application would jeopardise the implementation of the public housing development at Site 4a and hence undermine the public housing flat supply to address the severe public housing demand.
- (b) Since the feasibility and details of the public-private participation (PPP) Scheme have yet to be established, it would be premature to evaluate the s.17 review application from the perspective of the PPP Scheme.

#### 5.2.2 Comments of the Director of Housing (D of Housing):

- (a) He strongly objects to the application. He also objects to the applicant's proposal of public-private developments at the Site.
- (b) The Site takes up a significant portion (about 18%) of Site 4a at Kam Tin South which is identified for public housing under the Land Use Review for Kam Tin South and Pat Heung (LUR) (**Plan R-5** and **Plan A-6** in **Annex A**). The Government has completed the required technical studies and ascertained the feasibility of the public housing development at Site 4a and the proposed amendments to the OZP to facilitate the public housing development were gazetted on 3.11.2017. Public consultation with Kam Tin Rural Committee, Pat Heung Rural Committee and Yuen Long District Council have been made on 26.7.2017, 2.8.2017 and 5.9.2017 respectively.
- (c) No encroachment of the private development upon the land area of Site 4a should be allowed as it will reduce the site area and flat production of the public housing development. The LUR has not taken the proposed private development at the Site into account. If the application is approved, it will affect the housing design

and delay the overall development programme of public housing development at Kam Tin South.

### **Land Administration**

#### **5.2.3 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):**

- (a) The Site comprises Lot Nos. 547 RP (Part), 550 RP and 551 which, by the terms of the lease under which they are held, are demised as agricultural ground and adjoining Government land, particularly Short Term Tenancy (STT) No. 2261, all in D.D. 106. STT No. 2261 is restricted to be used for manufacture and storage of plastic products with ancillary office. Besides, Lot No. 550RP (portion) in D.D. 106 is subject to a Short Term Waiver No. 2859 for manufacture and storage of plastic products purposes. Lot Nos. 551 and 550 RP in D.D. 106 are subject to permissions for erection and maintenance of temporary structures. The area and status of the lots under application have to be verified at the land exchange stage if any land exchange is applied for by the applicant to LandsD.
- (b) The Site is subject to Shek Kong Airfield Height Restriction.
- (c) Under the Roads (Works, Use and Compensation) Ordinance, the Government will give proper consideration but is not obliged to offering the land back to the person from whom it was resumed. The applicant had applied to the Government for re-granting the land formerly resumed for the Eastern Access Road project. However, the applicant's re-grant application was unsuccessful.
- (d) Should the application be approved, the applicant has to apply to LandsD for a land exchange to effect the proposed development. Such application will be considered by LandsD acting in its capacity as a landlord at its sole discretion and there is no guarantee that the land exchange for the proposed development, including the grant of any additional Government land, will be approved. In the event that the land exchange application is approved, it would be subject to such terms and conditions, including, among other things, the payment of premium and administrative fee, as may be imposed by LandsD at its sole discretion.
- (e) From land administrative point of view, in general, application for a land exchange which involves additional Government land would not be considered if the land concerned has foreseeable public use. It is noted that the Site includes Government land and

the proposed access of the Site also falls within Government land.

**District Officer's Comments**

5.2.4 The District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has no particular comment on the application and he received one public comment objecting to the application on the grounds that private development right should not be applied on Government land and village houses should not be built outside the boundary of village environ.

5.3 The following Government departments have no further comments 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 objection in principle to the application from traffic engineering perspective. The following approval conditions are suggested to be incorporated:

- (i) The submission of a revised Traffic Impact Assessment to his satisfaction or of the Board.
- (ii) The design and provision of vehicular access and car parking and loading/ unloading facilities for the proposed development to his satisfaction or of the Board.

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

He has the following comments from highways point of view:

- (i) A 2m unrestricted access shall be provided at the rear side of the existing noise barrier NB85 (**Plan R-2**). The access shall be hard paved and should not be obstructed by vegetation.
- (ii) The project proponent shall demonstrate to his office that the proposed works has no adverse effect on the structure integrity of the existing noise barrier NB85.
- (iii) If the proposed access is agreed by the Transport Department (TD), the applicant should construct the run in/out in accordance



with the latest version of Highways Standard Drawings No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement and cycle track at the applicant's own cost.

- (iv) 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):

##### Environmental Assessment and Sewerage Treatment Review Report

- (a) He has no in-principle objection to the application from environmental planning perspective, subject to the following approval conditions being imposed to address his technical comments:
  - (i) Submission of an environmental assessment and the implementation of mitigation measures identified therein to his satisfaction or of the Board.
  - (ii) Submission of a sewage treatment review report and the provision of sewage treatment facilities to his satisfaction or of the Board.
- (b) With respect to the potential land contamination, the applicant committed to conduct a land contamination assessment and, if necessary, remediation works before the commencement of construction works. It is suggested to impose an approval condition on the submission of a Land Contamination Assessment and implementation of the land contamination remediation measures proposed therein prior to the commencement of construction works.
- (c) His detailed technical comments on the Environmental Assessment (EA) and Sewerage Treatment Review Report (STR) are at Appendix III of **Annex A**.

### **Urban Design and Landscape**

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

### Urban design

- (a) The Site is located in close proximity to West Rail Line bounded by Kam Tin River in the south and Tung Wui Road to the west. The proposed development comprises 10 building blocks with a PR of 0.4 and a maximum building height of 3 storeys (9m), which are within the respective statutory restrictions under the OZP. The proposal is considered not incompatible with the surroundings and unlikely to have significant adverse visual impact to the area.

### Landscape

- (b) He has no objection to the application from landscape planning perspective.
- (c) The surrounding area is of rural landscape character, occupied by temporary structures, open storages, village houses and scattered tree groups. A low-rise residential development (Application No. A/YL-KTS/639) is found to the east of the Site. In general, the proposed development is not incompatible with the existing landscape character.
- (d) Based on the aerial photo taken in 2015 and site photos taken in January and February 2016, the majority of the Site is occupied by temporary structures for storage use. An active agricultural land is found at the south east corner of the Site. Existing trees are also found within the Site.
- (e) The submitted landscape proposal is in general acceptable from landscape planning perspective. Should the application be approved, approval condition requiring the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Board should be included in the planning permission.

### Drainage

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

#### Drainage Impact Assessment

- (a) He has no objection in principle to the proposed development from public drainage point of view.
- (b) Should the application be approved, approval conditions requiring (i) the submission of a Drainage Impact Assessment

and drainage proposal and (ii) the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

- (c) The applicant is reminded to maintain all the drainage facilities on site in good condition and ensure that the proposed development would neither obstruct overland flow nor adversely affect existing natural streams, village drain, ditches and the adjacent areas, etc.

#### STR

- (d) He has no further comment on the STR.

#### Nature Conservation

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

- (a) The Site is currently occupied by a plastic factory. It is also falls within one of the potential housing sites identified in the LUR. He has no adverse comments on the application.
- (b) Nevertheless, there are some trees within Government land along the northwest boundary of the Site. The Kam Tin River and abandoned meander 97 CD-2 (**Plan R-2**) left behind after the construction of main drainage channels of Ngau Tam Mei, Yuen Long and Kam Tin are also in the vicinity of the Site. Should the application be approved, the applicant should be reminded to preserve the existing trees along the northwest boundary, and adopt appropriate measures to avoid disturbing or polluting these two watercourses.

#### Fire Safety

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

- (a) He has no objection in principle to the application subject to water supplies for firefighting and fire service installations being provided to his satisfaction.
- (b) Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.
- (c) EVA provision in the Site shall comply with the standard as stipulated in Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 under the Building (Planning) Regulations (B(P)R) 41D which is administered by BD.

### **Project Interface**

- 5.3.8 Comments of the Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD):

#### **General Comments**

- (a) The Site falls within one of the potential housing sites identified in the LUR. The proposed development is not in line with the recommended use for public housing.

#### **STR**

- (b) He has no further comment on the STR.

### **Building Matters**

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

He has the following comments on the application under the Buildings Ordinance (BO):

- (i) It is not clear from the information provided if the Site is abutting a specified street having a width of not less than 4.5 m wide. The applicant's attention is drawn to Regulations 5 and 41D of the B(P)R.
- (ii) If the Site does not abut a specified street having a width of not less than 4.5m wide, the development intensity of the Site shall be determined by the Building Authority under Regulation 19(3) of B((P)R.
- (iii) In view of the size of the Site, internal private streets may be required under s.16(1)(p) of the BO and may have to be deducted from site area for the purpose of site coverage and PR calculations.
- (iv) The applicant's attention is drawn to Regulation 41D of B(P)R and Section 6 of Code of Practice for Fire Safety in Buildings 2011 in respect of provision of emergency vehicular access (EVA). Non-provision of/ sub-standard EVA was noted from the MLP.
- (v) Formal submission under the BO is required for any proposed new works. Detailed checking will be carried out in building plan submission stage.

### **Electricity**

#### **5.3.10 Comments of the Director of Electrical and Mechanical Service (DEMS):**

He has no particular comment on the application from the electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with the 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.

### **Others**

#### **5.3.11 Comments of the Secretary for Security (S for S):**

- (a) His office has no comment on the application.
- (b) The Site falls within the Shek Kong Airfield Height Restriction Area and are in proximity to Shek Kong Barracks. The applicant is reminded that the proposed premises will be subject to noise caused by flying activities.

#### **4.4 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 as below:**

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Estate Surveyor/Railway Development, Lands Department (CES/RD, LandsD);
- (c) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD);
- (d) Chief Architect/Advisory and Statutory Compliance, Architectural Services Department (CA/CM2, ArchSD);
- (e) Antiquities and Monuments Office of Leisure and Cultural Services (AMO of LCSD);
- (f) Director-General of Civil Aviation (DG of CA); and
- (g) Commissioner of Police (C of P).

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

- 5.1 On 22.12.2017, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 12.1.2018, four public comments were received from a Yuen Long District Council (YLDC) member, Kam Tin Rural Committee (RC), the village representative of Ng Ka Tsuen and a member of the public (**Annexes F-1 to F-4**). All of them object to the application mainly on the grounds that the proposed development would cause adverse traffic impact to Tung Wui Road as it is already very busy; potential accidents at the cycle track along Tung Wui Road; the proposed development and its construction works would cause adverse environment impacts including noise, air pollutions and flooding; the scale of the proposed development would affect the living environment of Ng Ka Tsuen including natural light and air ventilation; there is no justification in the submission that the development could override the urgent need to provide public housing. Also, the population in Yuen Long district is growing excessively and the traffic capacity and provision of medical, educational and recreational facilities is inadequate to support the increasing population. The traffic network of Kam Tin and Pat Heung area should be improved before residential developments are implemented in the area.
- 5.2 On 23.2.2018, the FI was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 16.3.2018, five public comments were received from two YLDC members, Kam Tin RC, the village representative of Ng Ka Tsuen and a member of the public (**Annexes F-5 to F-9**), all objecting to the application for similar reasons as mentioned in paragraph 5.1 above.

**6. Planning Considerations and Assessments**

- 6.1 The application is for a review of RNTPC's decision on 27.10.2017 to reject the application for proposed flat and house development for the reason that the Site is located within an area of a comprehensive planned public housing development and approval of the application would jeopardise the implementation of the public housing development and affect the supply of public housing flats. The applicant submitted justifications and responses to the rejection reason to support the review application mainly on the grounds that (i) the planning application should be considered within the parameters of the relevant approved OZP; the rejection of the application based on the draft OZP published after the s.16 application is unfair and probably ultra vires; and (ii) the proposed development could meet the tremendous demand for private housing development. Planning considerations and assessments are appended below.

**Planning Intention**

- 6.2 The Site fell within the then "OU(RU)" zone under the previous approved Kam Tin South OZP No. S/YL-KTS/13 which is intended to preserve the character of

the rural area. Low-rise recreational and residential development compatible with the rural landscape may be permitted on application to the Board subject to the demonstration of sustainability in ecological, environmental, traffic and infrastructural terms.

- 6.3 On 13.10.2017, the proposed amendments to the Kam Tin South OZP to take forward the public housing and GIC developments at Sites 1, 4a and 6 were agreed by the RNTPC. The Site and its adjoining area (i.e. Site 4a) (**Plan R-5**) was rezoned from “OU(RU)” to “R(A)” for medium-density public housing development. The draft Kam Tin South OZP No. S/YL-KTS/14 incorporating the above amendments was gazetted on 3.11.2017. The proposed private residential development with PR 0.4 under the current application is not in line with the planning intention of the “R(A)” zone as agreed by the RNTPC and fails to achieve an optimal use of land resource.
- 6.4 The applicant alleged that the Government seems to catch up the time to seek agreement from the RNTPC for the public housing development (i.e. RNTPC meeting on 13.10.2017) just one meeting before consideration of the s.16 application (RNTPC meeting on 27.10.2017). It should be noted that a Land Use Review for Kam Tin South and Pat Heung (LUR) covering the Kam Tin South OZP was completed by PlanD in March 2014, and a total of 14 potential housing sites have been identified for public and private housing developments. The Site under the current application falls within one of the identified public housing sites, i.e. Site 4a (**Plan R-5**). Broad technical assessments for the LUR have also been undertaken confirming that there should be no insurmountable problem for the development proposals of the 14 potential housing sites subject to the provision of adequate infrastructure. The findings and recommendations of the LUR were presented to and noted by the Board on 11.4.2014. Extensive public consultation including briefings for Kam Tin and Pat Heung Rural Committees (RCs), Yuen Long District Council (YLDC), local farmers, villagers, green groups and concerned groups were also conducted between April to December 2014. In view of the infrastructure constraints, the 14 potential housing sites identified under the LUR would be implemented by phases. To meet the pressing housing demand, amendments to rezone the two West Rail sites (i.e. Kam Sheung Road Station and Pat Heung Maintenance Centre) for private residential/ commercial development were gazetted on 29.5.2015 and the rezoning procedure was completed in August 2016.
- 6.5 Further to the two West Rail sites, Sites 1, 4a and 6 located to the immediate south of the Kam Sheung Road Station (**Plan R-5**) was also proposed to be implemented first taking into account the advantage of the close proximity to the Kam Sheung Road Station and the future residential/ commercial development thereat, as well as the infrastructural capacity in the area. To take forward these planned public housing developments, CEDD and HD have completed the relevant technical assessments and consultations with the Kam Tin and Pat Heung RCs and YLDC were conducted on 26.7.2017, 2.8.2017 and 5.9.2017 respectively. To meet the acute demand of public housing, it was aimed to submit the proposed amendments to the RNTPC for consideration as soon as practicable after consultation with the RCs and DC. As such, the RNTPC meeting for

consideration of the proposed amendments to the OZP for the public housing developments was held on 13.10.2017.

- 6.6 On the other hand, the s.16 application was first received by the Board on 13.1.2016. Upon requests of the applicant to allow more time to address departmental comments, the application was deferred four times. The applicant has also submitted twelve FIs to address departmental comments. The RNTPC meeting of the s.16 application (i.e. 27.10.2017) was scheduled within the 2 months upon the receipt of the last FI received on 29.8.2017 in accordance with the relevant Town Planning Board Guidelines. In view of the above, the applicant's claim that the Government intends to schedule the RNTPC meeting for the proposed amendments (RNTPC meeting on 13.10.2017) just before the consideration of the s.16 application (RNTPC meeting on 27.10.2017) is unjustified.
- 6.7 The applicant also stated that the rejection reason of the s.16 application is based on information not stated in the approved OZP No. S/YL-KTS/13 at the time of consideration of the s.16 application as the planning intention for public housing development at the Site was only stated in the draft OZP No. S/YL-KTS/14 published after the s.16 application. The applicant considered that the rejection reason of the s.16 application cannot be established and fall outside the ambit of an approved plan. It is also unfair, unreasonable and probably ultra vires.
- 6.8 In consideration of an application, it is essential for the RNTPC to consider all relevant factors. Other than those under the OZP, e.g. proposed use, planning intention, development restrictions, etc., other factors including the surrounding context, departmental comments, planned use and planned infrastructure/ road projects in the area are also essential factors in considering the application. In this regard, D of Housing objects to the application as approval of the application would affect the planned public housing development at the Site. In addition, it has been made known to the public that the Site has been planned for public housing development since 2014 when the LUR was completed (as mentioned in paragraph 6.4 above). Site 4a has also been included in the some 150 potential housing sites announced in the 2014 Policy Address, and the YLDC was also consulted on this aspect in 2014. The Site and two sites in the vicinity (i.e. Sites 1 and 6) are also planned for public housing developments. D of Housing's comments and the planned public housing use at the Site and in the surrounding area are relevant factors in considering the application.

#### Jeopardize the Planned Public Housing Development

- 6.9 Although the applicant stated that there is a large demand for private housing in Hong Kong, the proposed private residential development under the review application would jeopardize the implementation of the public housing developments at Site 4a (**Plan R-5**). Together with Sites 1 and 6 in the vicinity of Site 4a, the area could be developed comprehensively to meet the pressing needs of public housing in Hong Kong, and could generate synergy effect for better integration and provision of GIC facilities. The planned public housing developments seek to optimize the development potential of the area through



comprehensive development with higher development intensity. The proposed development under the review application may not represent an optimal utilization of land resources. It is noted that the proposed private flat and house development under the current application would provide a total of 28 units. On the other hand, the public housing development at Site 4a subject to a total PR of 3 could provide about 3,750 flats. The public housing developments will bring about planning gain in terms of new supply of public housing and shortening the queuing time for public housing in the long-run. Provision of public housing on the Site is in the public interest. SDEV also commented that the planning of Site 4a is already at an advanced stage with its rezoning process initiated and approval of the application would undermine the public housing flat supply to address the severe public housing demand. Approval of the application for private residential development would frustrate the proposed public housing development and is against the public interest.

- 6.10 D of Housing maintained his objection to the application as the Site takes up a significant portion of Site 4a, it would reduce the site area and flat production of the public housing development, and approval of the application would affect the public housing design and delay the overall development programme of public housing development at Kam Tin South. The technical assessments conducted by concerned departments for the public housing developments have not taken into account the proposed private residential development under the current application. On the applicant's proposal to participate in public-private joint development scheme and allocate a certain percentage of the complete domestic units for public housing use, D of Housing also does not support such proposal. In addition, SDEV advised that since the feasibility and details of PPP Scheme have yet to be established, it would be premature to evaluate the s.17 review application from the perspective of the PPP Scheme.

#### Use of Government land

- 6.11 It should be noted that majority of the GL at the Site is fronting Tung Wui Road (including the proposed access for the proposed development) (**Plan R-2**). There is no strong justification provided in the submission to include GL in the proposed private residential development. DLO/YL, LandsD also advised that application for a land exchange which involves additional GL will not be considered if the land concerned has foreseeable public use.
- 6.12 The Applicant stated that the GL within the Site (about 53.7%) was previously owned by the applicant, which was resumed by the Government on 25.8.2001 under Roads (Works, Use and Compensation) Ordinance (Cap. 370). The applicant always expects the Government to re-grant the land back to him. According to DLO/YL, LandsD, under the Roads (Works, Use and Compensation) Ordinance, the Government will give proper consideration but is not obliged to offering the land back to the person from whom it was resumed. The applicant had applied to the Government for re-granting the land formerly resumed for the Eastern Access Road project. However, the applicant's re-grant application was unsuccessful.

### Public Comments

- 6.13 A total of 29 objecting comments were received for the s.16 application. In the s.17 review application, a total of 9 public comments objecting to the application were received as mentioned in paragraph 5 above. There was also one comment as conveyed by DO(YL) of HAD providing comment on the application (paragraph 5.2.1). In this regards, planning considerations and assessments as stated above are relevant.

## **7. Planning Department's Views**

- 7.1 Based on the assessments made in paragraph 6 and having taken into account the public comments mentioned in paragraph 5, the Planning Department maintains its previous view of not supporting the review application for the following reason:

the Site is located within an area of a comprehensive planned public housing development. Approval of the application would jeopardise the implementation of the public housing development and affect the supply of public housing flats.

- 7.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 11.5.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission of a revised Traffic Impact Assessment to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (c) the design and provision of vehicular access and car parking and loading/unloading facilities for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (d) the submission and implementation of a Drainage Impact Assessment and drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (e) the design and provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board;

- (f) the submission of an environmental assessment and the implementation of mitigation measures identified therein to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (g) the submission of a sewage treatment review report and the provision of sewage treatment facilities to the satisfaction of the Director of Environmental Protection or of the Town Planning Board; and
- (h) the submission of a Land Contamination Assessment and implementation of the land contamination remediation measures proposed therein prior to the commencement of construction works to the satisfaction of the Director of Environmental Protection or of the Town Planning Board.

#### Advisory Clauses

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

### **8. Decision Sought**

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 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.
- 8.3 Alternatively, 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. Attachments**

<b>Annex A</b>	RNTPC Paper No. A/YL-KTS/693D
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 27.10.2017
<b>Annex C</b>	Secretary of the Board's letter dated 10.11.2017
<b>Annex D</b>	Letter dated 23.11.2017 from the applicant's representative applying for review of the application
<b>Annex E</b>	FI with Supplementary statement received on 12.2.2018
<b>Annexes F-1 to F-9</b>	Public comments received during the statutory publication period
<b>Annex G</b>	Advisory clauses

<b>Plan R-1a</b>	Location Plan with Similar Applications on the approved Kam Tin South OZP No. S/YL-KTS/13
<b>Plan R-1b</b>	Location Plan on the draft Kam Tin South OZP No. S/YL-KTS/14
<b>Plan R-2</b>	Site Plan
<b>Plans R-3</b>	Aerial Photo
<b>Plans R-4a and R-4b</b>	Site Photos
<b>Plan R-5</b>	14 potential housing sites under the LUR

**PLANNING DEPARTMENT  
MAY 2018**