

REVIEW OF APPLICATION NO. A/NE-KLH/543
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House (New Territories Exempted House - Small House)
in “Agriculture” Zone
Lot 857 RP in D.D. 9, Tai Wo Village, Tai Po, New Territories

1. Background

- 1.1 On 30.1.2018, the applicant, Mr. Chan Wah Kwong represented by Rocky Fung Surveying Company, sought planning permission to build a house (New Territories Exempted House (NTEH) - Small House) at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 16.3.2018, 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 primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zone of Yuen Leng, Kau Lung Hang and Tai Wo which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.”
- 1.3 For Members’ reference, the following documents are attached:
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| (a) RNTPC Paper No. A/NE-KLH/543 | (Annex A) |
| (b) Extract of minutes of the RNTPC meeting held on 16.3.2018 | (Annex B) |
| (c) Secretary of Town Planning Board’s letter dated 6.4.2018 | (Annex C) |

2. Application for Review

The application submitted by the applicant under section 17(1) of the Ordinance for review of the RNTPC’s decision to reject the application was received by the Board on 26.4.2018

(**Annex D1**). A written representation submitted by the applicant in support of the review application was received by the Board on 18.9.2018 (**Annex D2**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in his letter at **Annex D2**. They can be summarized as follows:

- (a) the buildable land within “V” zone is very insufficient. The 10-year Small House demand provided by the three Indigenous Inhabitant Representatives (IIRs) of Yuen Leng (Lei Uk and Yip Uk) in 2017 is 257. However, the IIRs considered that land available within the “V” zone of Yuen Leng (i.e. blue cloud areas shown on Plan A-2b prepared by Planning Department) can only provide 50 Small House sites as most of the blue cloud areas are owned by Tso Tong or used as main roads and private gardens. The opportunity of using such land for building Small Houses is slim. In addition, most of the blue cloud areas are private land and the amount of Government land is very limited;
- (b) there are Small Houses to the north and west of the Site. To the east and south of the Site are pedestrian walkway and track respectively. The surrounding area has been developed or being developed. The Site is small and there is no water supply for agricultural use., The potential of agricultural rehabilitation and its economic value is therefore low; and
- (c) the Site falls within the village ‘environs’ (‘VE’). Similar applications in the same area were approved by the Board a few years ago. The previous application (No. A/NE-KLH/445) was rejected in 2013 because Drainage Services Department (DSD) objected to it as there was no sewerage connection. The proposed Small House under current application can be connected to the public sewerage system and the applicant has obtained consent from the relevant lot owners. DSD and other Government departments have no objection to the application.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1 to R-4)

- 4.1 The situation of the Site and the 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**.
- 4.2 The Site is:
 - (a) hard paved and partly fenced off;
 - (b) a piece of residual land bounded by footpaths and local tracks; and
 - (c) accessible by a local track.
- 4.3 The surrounding areas are predominantly rural in character occupied by village houses, temporary domestic structures and abandoned agricultural fields.

Planning Intention

- 4.4 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agriculture 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

- 4.5 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. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

Background

- 4.6 The Site is at present not involved in any active enforcement action/cases.

Previous Applications

- 4.7 The Site is the subject of two previous planning applications (No. A/NE-KLH/275 and 445). The former application (No. A/NE-KLH/275) submitted by a different applicant before criterion (i) of the Interim Criteria came into effect on 23.8.2002 was approved with conditions by the RNTPC on 21.9.2001 mainly on the grounds that the site fell within the ‘VE’ and there was a general shortage of land in meeting the Small House demand at the time of consideration.
- 4.8 The latter application (No. A/NE-KLH/445) submitted by the same applicant was rejected by the Board on review on 22.2.2013 for the reason that the proposed development did not comply with the Interim Criteria in that the proposed Small House located within the WGG would not be able to be connected to the planned sewerage system in the area as there was no fixed programme for implementation of such system at that juncture.
- 4.9 Details of the previous applications are summarized at Appendix III of **Annex A** and the location is shown on **Plan R-1**.

Similar Applications

- 4.10 When the s.16 application was considered by the RNTPC on 16.3.2018, there were 49 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000. Since then, there were two additional similar applications (No. A/NE-KLH/544 and 548). Among those applications located in close vicinity of the Site, 16 were approved with conditions and 14 were rejected by the RNTPC/the Board on review (**Plan R-2a**).

- 4.11 Among the 16 approved applications, six of them (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved with conditions by the RNTPC before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Another eight applications (No. A/NE-KLH/328, 341, 345, 346, 391, 392, 402, 409) were approved with conditions by the RNTPC between 2004 and 2010, before the planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010, mainly on the considerations of being generally in line with the Interim Criteria in that more than 50% of the Small House footprint was located within the ‘VE’; there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and the proposed developments were able to be connected to the planned sewerage system. The remaining two applications (No. A/NE-KLH/438 and 491), straddling between “AGR” and “V” zones, were approved with conditions by the RNTPC in 2012 and 2015 respectively mainly on consideration that there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; adverse traffic, landscape, sewerage and drainage impacts on the surrounding area was not expected; and the application sites involved previously approvals (No. A/NE-KLH/345 and 346) submitted by the same applicants. Moreover, although the planned sewerage scheme was degazetted in 2010, EPD and WSD indicated that stakeholders would continue to be consulted with a view to gazetting the scheme again and they had no objection to the applications provided that the construction of the Small House would not commence before the completion of the planned sewerage system and the proposed houses should be connected to future public sewers when available.
- 4.12 For the 14 rejected applications (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479, 484, 526 and 548), they were rejected by the RNTPC or the Board on review between 2003 and 2018 mainly on the grounds of being not in compliance with the Interim Criteria in that the proposed developments located within WGG were not able to be connected to the planned sewerage system in the area either because the application sites were not covered by any planned public sewers or there was no fixed programme for implementation of the planned sewerage system serving Yuen Leng Village. Applications No. A/NE-KLH/526 and 548 were also rejected i after the Board’s adoption of the more cautious approach in August 2015 as land was still available within the “V” zone for Small House development.
- 4.13 Details of the above similar applications are summarized in **Annex E** and their locations are shown on **Plans R-1** and **R-2a**.

5. Comments from Relevant Government Departments

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

Land Administration

- 5.2.1 The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the number of outstanding Small House applications for Tai Wo is 61 instead of 69, Yuen Leng is 83 instead of 84, and Kau Lung Hang is 46

instead of 44, whilst the 10-year Small House demand forecast for Tai Wo, Yuen Leng and Kau Lung Hang remain unchanged at 189, 257 and 100 respectively. He has no further comments on the review application and maintains his other views on the s.16 application as stated in paragraph 1 of the Appendix V in **Annex A** and recapitulated below:

- (a) no objection to the application;
- (b) the Site falls within the ‘VE’ of Tai Wo Village;
- (c) the applicant is an indigenous villager of Tai Wo Village of Tai Po as confirmed by the respective IIR. However, his eligibility of Small House grant has yet to be ascertained;
- (d) the subject lot is held under Block Government Lease demised for agricultural use. The applicant is the registered owner of the subject lot and his Small House application has been received by his office;
- (e) the Site is not covered by any Modification of Tenancy or Building Licence; and
- (f) if and after planning approval has been given by the Board, LandsD will process the Small House application. However, there is no guarantee at this stage that the Small House application would be approved. If the Small House application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD. There is no guarantee to the grant of a right of way to the proposed Small House or approval of the emergency vehicular access thereto.

Traffic

5.2.2 The Commissioner for Transport (C for T) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 2 of the Appendix V in **Annex A** and recapitulated below:

- (a) in general, he has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial;
- (b) notwithstanding the above, he considers that the application only involving development of a Small House can be tolerated unless it is rejected on other grounds; and
- (c) the existing footpath on and near the Site is not under Transport Department’s management. The land status, management and maintenance responsibilities of the village access should be clarified

with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

Environment

5.2.3 The Director of Environmental Protection (DEP) has no further comments on the review application and maintains his previous views on the s.16 application as stated in paragraph 3 of the Appendix V in **Annex A** and recapitulated below:

- (a) the proposed Small House is located some 110 m and 140 m from East Rail Line (EAL) and Fanling Highway respectively. It is partially shielded from the EAL and the highway by other Small Houses. Trackside noise barriers has been erected along the EAL and roadside noise barriers at concerned section of the highway are being constructed under the Widening Project of Tolo Highway/Fanling Highway between Island House Interchange and Fanling to protect those village developments closer to the road. As such, no insurmountable railway and traffic noise impact is anticipated;
- (b) the Site falls within “AGR” zone and is within WGG. The planned public sewer to serve the subject lot is part of the Yuen Leng village sewerage scheme, which was degazetted in October 2010 due to conflicting views among some of the land owners over the extent of proposed land resumption. Currently there is no fixed timetable for implementing the said sewerage scheme. Instead, the applicant proposed to connect the proposed Small House to a recently completed public sewer at a considerable distance of about 200 m to the west of the Site, which also comprise four intermediate private manholes. As the public sewer has sufficient capacity to accommodate the discharge from the proposed Small House, and there is sufficient level drop in between, he has no adverse comment on the applicant’s proposed connection to the public sewer. The applicant should obtain consent from the adjacent lot owner(s) for construction and maintenance of the proposed intermediate private manholes and sewer pipes. He has no objection to the application on the conditions that:
 - (i) the proposed house will be connected to the public sewer for sewage disposal;
 - (ii) written consent(s) can be obtained from the adjacent lot owner(s) for the construction and maintenance of the sewage pipes and intermediate private manholes across adjacent lot(s);
 - (iii) adequate land space within the Site will be reserved for connection of the proposed house to the public sewer; and
 - (iv) the cost of construction of private sewerage, intermediate private manholes and sewer connection will be borne by the applicant; and

- (c) although no insurmountable technical difficulties are envisaged for the sewer connection, the following advisory clause is applicable:

the applicant is advised to pay attention to avoiding potential conflict with other underground utilities when making the sewer connection. The actual alignment and number of intermediate private manholes will depend on site conditions and the applicant is required to submit plans showing the actual connection works to DSD in association with its future technical audit under the prevailing mechanism. The applicant could check DSD and Development Bureau's Practitioners Guidelines on "Arrangement for Private Developers to employ their own Contractors to carry out Drainage Connections" regarding the procedures to be followed and the maintenance responsibility of the connection works.

Landscape

5.2.4 The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no further comment on the review application and maintains his previous views on the s.16 applications as stated in paragraph 4 of the Appendix V in **Annex A** and recapitulated below:

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is connected with Tai Wo Service Road East from the west and village houses are found within the "AGR" and "V" zones at the immediate north and east of the Site;
- (c) based on recent aerial photo, the Site is situated in an area of rural landscape character comprising scattered tree groups, village houses, car parks and vacant land. Although the proposed development is not in line with the planning intention of "AGR" zone, it is not incompatible with the surrounding environment;
- (d) referring to recent site photos, the Site is cleared and hard paved. No trees are found within the Site. Adverse impact on landscape resources due to the proposed development is not anticipated. A number of similar applications adjacent to the Site had been approved; and
- (e) since the footprint of the proposed house covers most of the Site, there is very limited space for landscaping within the Site. Should the application be approved by the Board, standard condition on submission and implementation of landscape proposal is not recommended.

Drainage and Sewerage

5.2.5 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 5.1 of the Appendix V in **Annex A** and recapitulated below:

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, a condition should be included to request the applicant to submit and implement the drainage proposal for the Site to the satisfaction of Director of Drainage Services or the Board to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drain maintained by DSD in the vicinity of the Site. The proposed house should have its own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from surrounding of the Site. The proposed development will increase the impervious area, resulting in a change of the flow pattern and an increase of the surface runoff and thus the flooding risk in the area. The applicant should take this into account when preparing the drainage proposal. The applicant/owner is also required to maintain such systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant/owner shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems; and
- (d) the applicant should design the drainage proposal based on the actual site conditions for DSD's comment/agreement. DSD would not assist the lot owner/developer on the drainage proposal. In the design, the applicant should consider the workability, the impact to the surrounding environment and seek comments from other concerned parties/departments if necessary. He should make sure no adverse impact will be caused to the area due to the proposed works. The existing natural streams, village drains, ditches and the adjacent areas should not be adversely affected. In particular, a minimum clearance of 3m should be maintained between the proposed development and the top of the embankment of existing streamcourses/ ponds/rivers.

5.2.6 The Chief Engineer/ Consultants Management, Drainage Services Department (CE/CM, DSD) has no further comments on the review application and maintains his previous views on the s.16 application as stated in paragraph 5.2 of the Appendix V in **Annex A** and recapitulated below:

- according to the proposed sewerage scheme under North District Sewerage, Stage 2 Phase 1 for Yuen Leng Village, public sewerage connection point will be provided adjacent to the Site. Nevertheless, since this sewerage scheme was degazetted on 29.10.2010, there is no fixed programme at this juncture for the implementation of the concerned sewerage works. Notwithstanding the above, the proposed sewerage scheme might be fine-tuned in the course of finalizing the design. The applicant is therefore suggested to pay continuing attention to the latest development of the proposed sewerage scheme. DSD will keep all relevant village representatives posted in this regard.

Agriculture

5.2.7 The Director of Agriculture, Fisheries & Conservation (DAFC) has no further comment on the review application and maintains her previous views on the s.16 application as stated in paragraph 6 of the Appendix V in **Annex A** and recapitulated below:

- the Site is surrounded by domestic structures. As the potential for agricultural rehabilitation is considered low, he has no strong view on the application.

Fire Safety

5.2.8 The Director of Fire Services (D of FS) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 7 of the Appendix V in **Annex A** and recapitulated below:

- (a) no in-principle objection to the application; and
- (b) the applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by the LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

Water Supply

5.2.9 The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 8 of the Appendix V in **Annex A** and recapitulated below:

- (a) no objection to the application;
- (b) the Site is located within upper indirect WGG and is more than 30m away from the nearest water course. It is able to be connected to the public sewerage system in the area. Thus, compliance of the application with the Interim Criteria (i) can be reasonably established;
- (c) it is noted that EPD has no objection to the application provided that the applicant shall connect the house with public sewer for sewage disposal. He supports EPD's views by imposing the following conditions:
 - (i) the foul water drainage system of the proposed Small House can be connected to the public sewerage system in the area and the applicant shall connect the whole of the foul water drainage system to the public sewerage system;
 - (ii) adequate protective measures shall be taken to ensure that no pollution or siltation occurs to the WGG; and
 - (iii) the applicant shall submit an executed Deed of Grant of Easement

for each private lot through which the sewer connection pipes are proposed to pass to demonstrate that it is both technically and legally feasible to install sewerage pipes from the proposed Small House to the planned sewerage system via relevant private lot.

Electricity Supply and Safety

5.2.10 The Director of Electrical and Mechanical Services (DEMS) has no further comment on the review application and maintains his previous views on the s.16 application as stated in paragraph 9 of the Appendix V in **Annex A** and recapitulated below:

- (a) no comment on the application from electricity supply and safety aspect; and
- (b) 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.

5.3 The following Government departments have been further consulted and maintain their previous views of having no comment on the review application:

- (a) Chief Highway Engineer/ New Territories East, Highways Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager/North, Civil Engineering and Development Department; and
- (d) District Officer/Tai Po, Home Affairs Department.

6. Public Comments on the Review Application Received During Statutory Publication Period (Annex F)

On 4.5.2018 and 28.9.2018, the review application and further information were published for public inspection. During the first three weeks of the statutory public inspection periods, three public comments were received from Designing Hong Kong Limited and an individual raising objection to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is still available within the “V” zone of the concerned villages; setting of undesirable precedent; and no justification has been provided by the applicant for departure from the RNTPC’s decision.

7. Planning Considerations and Assessments

- 7.1 The subject application for Small House development was rejected by the RNTPC on 16.3.2018 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Yuen Leng, Kau Lung Hang and Tai Wo for Small House development.
- 7.2 To support the review application, the applicant puts forward justifications that land available within the “V” zone of Yuen Leng could not meet the Small House demand of Yuen Leng; the Site has no potential for agricultural rehabilitation; similar applications have been approved by the Board a few years ago; and the proposed Small House can be connected to the public sewerage system with consent obtained from relevant lot owners.
- 7.3 The Site falls entirely within an area zoned “AGR”. The proposed Small House development is not in line with the planning intention of “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. DAFC has no strong view on the application as the Site is surrounded by domestic structures and the potential for agricultural rehabilitation is considered low.
- 7.4 The applicant is an indigenous villager of Tai Wo and the Site falls within the ‘VE’ of Tai Wo. In the review application, the applicant argues that land available within the “V” zone of Yuen Leng as estimated by PlanD (i.e. the blue cloud areas shown on Plan A-2b of **Annex A**) could only accommodate 50 Small Houses as most of the available land are owned by Tso Tong or used as main roads or private gardens, and hence it could not meet the 10-year Small House demand of Yuen Leng Village (i.e. 257 Small Houses) as provided by the IIRs. First of all, PlanD, in estimating the land available for Small House development in the “V” zone, has adopted a consistent approach and would make use of the latest available information. In general, land occupied by road, existing and approved village houses, steep slope, major tree clusters and stream buffer will be deducted from the area available for Small House development. Land ownership is not a material consideration as it could be subject to change and land parcel could be subdivided to suit development needs. For land currently being occupied by private gardens of local villagers or other temporary uses, they will be included as a source of land supply. Secondly, since the ‘VE’ of Tai Wo overlaps with the ‘VE’ of Yuen Leng and Kau Lung Hang San Wai and Lo Wai, the land available within the “V” zone of all these villages have been taken into account in the estimation of land supply for Small House development. Based on the latest estimate by the PlanD for the “V” zones serving Kau Lung Hang, Yuen Leng and Tai Wo (**Plan R-2b**), about 9.64 ha of land (or equivalent to about 385 Small House sites) is available within the “V” zones concerned. While land available cannot fully meet the future Small House demand of 736 Small Houses (i.e. 190 outstanding Small House applications plus 546 Small Houses under 10-year Small House demand forecast), it is still capable to meet the 190 outstanding Small House applications¹ for the concerned villages (**Plan R-2b**). Under the more cautious approach adopted by the Board in August 2015, if land is still available within the “V” zones concerned to

¹ Among the 190 outstanding Small House application, 120 of them fall within the “V” zone and 70 straddle or outside the “V” zone. For those 70 applications straddling or being outside the “V” zone, 16 of them have obtained valid planning approval from the Board.

meet the outstanding Small House applications, proliferation of Small House developments outside the “V” zones should be avoided.

- 7.5 The applicant also points out that most of the available land is private land which he has difficulty to acquire and they are owned by Tso Tong or used as main roads or private gardens. It should be noted that land available within the “V” zone for Small House development is estimated according to the established practice in PlanD. In general, land ownership is not and should not be a material consideration as it could be subject to change and land parcel could be sub-divided to suit development needs and main roads will be excluded from PlanD’s estimation. Besides, areas currently occupied by private gardens and temporary structures etc. will be included as a source of land supply in the long run.
- 7.6 The Site, surrounded by active/fallow agricultural land and existing village houses mainly to the north, is located at the southern fringe of Yuen Leng (**Plan A-2a**). It is currently vacant and hard paved (**Plans R-3 and R-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with active/fallow agricultural land and village houses. CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective as there is no trees within the Site and adverse impact on landscape resources due to the proposed development is not anticipated.
- 7.7 Regarding the Interim Criteria, more than 50% of the proposed Small House footprint falls within the ‘VE’ of Yuen Leng, Kau Lung Hang and Tai Wo (**Plan R-1**). The Site is within the upper indirect WGG. According to CE/CM of DSD, the Site would be served by the sewerage scheme planned for Yuen Leng Village, which was however degazetted on 29.10.2010 and there is no fixed programme at this juncture for the implementation of the concerned public sewerage works (**Plan R-2a**). Nevertheless, the applicant has proposed to connect the proposed Small House to a recently completed public sewer at about 200m to the west of the Site, which also comprises four intermediate private manholes. DEP advised that sewer connection is feasible and capacity is available provided that the applicant can obtain consent from the adjacent lot owner(s) for laying and maintaining sewer pipes and intermediate private manholes. Hence, both DEP and CE/C of WSD have no objection to the application. Other Government departments consulted including C for T, CE/MN of DSD, D of FS, CHE/NTE of HyD and H(GEO) of CEDD have no objection to/adverse comment on the application.
- 7.8 The Site is the subject of two previous applications (No. A/NE-KLH/275 and 445). Whilst Application No. A/NE-KLH/275 was approved before criterion (i) of the Interim Criteria regarding connection to public sewer was in place, A/NE-KLH/445 was rejected in 2013 mainly because it would not be able to be connected to the planned sewerage system in the area. Under the current application, the applicant has proposed to connect the proposed house to public sewer at about 200m to the west and obtained owners’ consent from affected lots, and relevant Government departments including DEP and CE/C of WSD have no objection to the application.
- 7.9 The applicant argues that similar applications in the same area were approved by the Board a few years ago. As shown on **Plan R-2a**, there are 30 similar applications with 16 cases approved and 14 cases rejected. Six applications (No. A/NE-KLH/271, 272, 273, 277, 279 and 281) were approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Another eight applications (No. A/NE-KLH/328, 341,

345, 346, 391, 392, 402, 409) were approved between 2004 and 2010, before the planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010, mainly on the considerations that there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; and the proposed developments were able to be connected to the planned sewerage system. The remaining two applications (No. A/NE-KLH/438 and 491), straddling between “AGR” and “V” zones, were approved after degazetting of the planned sewerage scheme in 2010 mainly on consideration that there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the application sites involved previous approvals submitted by the same applicants; and EPD and WSD had no objection to the applications provided that the construction of the Small House would not commence before the completion of the planned sewerage system and the proposed houses should be connected to future public sewers when available. For the 14 rejected applications (No. A/NE-KLH/299, 303, 321, 360, 362, 374, 380, 444, 455, 478, 479, 484, 526 and 548), they were rejected between 2003 and 2018 mainly on the grounds that the proposed developments located within WGG were not able to be connected to the planned sewerage system in the area either because the application sites were not covered by any planned public sewers or there was no fixed programme for implementation of the planned sewerage system serving Yuen Leng Village. Applications No. A/NE-KLH/526 and 548 were also rejected after the Board’s adoption of the more cautious approach in August 2015 as land was still available within the “V” zone for Small House development. The planning circumstances of the current review application are similar to these two rejected applications (No. A/NE-KLH/526 and 548) in that land was still available within the “V” zone for Small House development.

- 7.10 Regarding the public comments objecting to the review application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is still available within the “V” zone of the concerned villages; setting of undesirable precedent; and no justification has been provided by the applicant for a departure from the RNTPC’s decision, Government departments’ comments and the planning assessments and considerations above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC, 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 primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention; and
 - (b) land is still available within the “V” zone of Yuen Leng, Kau Lung Hang and Tai Wo which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House

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

- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 14.12.2022, 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 drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

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

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC’s decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 9.3 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.

10. Attachments

Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available for Small House development within “V” zone
Plan R-3	Aerial photo
Plan R-4	Site photo
Annex A	RNTPC Paper No. A/NE-KLH/543
Annex B	Extract of minutes of the RNTPC meeting held on 16.3.2018

Annex C	Secretary of the Town Planning Board's letters dated 6.4.2018
Annex D1	Letters received by the Town Planning Board on 26.4.2018 from the applicant applying for a review of the RNTPC's decision
Annex D2	Further information received on 18.9.2018
Annex E	Similar applications
Annex F	Public comments
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
DECEMBER 2018**