

REVIEW OF APPLICATION NO. A/NE-KLH/544
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House - Small House)
in "Agriculture" zone
Lot 521 S.A in D.D. 9, Yuen Leng Village, Tai Po, New Territories**

1. Background

- 1.1 . On 30.1.2018, the applicant, Mr. LEE Wai Yip 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 justification in the current submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed Small House located within the water gathering ground is not able to be connected to the existing/planned sewerage system in the area as there is no fixed programme for implementation of such system at this juncture;
 - (c) the applicant fails to demonstrate that the proposed development located within the water gathering ground would not cause adverse impact on the water quality in the area;
 - (d) the proposed development would be subject to adverse noise impact generated by the East Rail nearby, and there is no information in the submission to demonstrate that the proposed development will be in compliance with the Noise Control Ordinance (Cap. 400); and
 - (e) land is still available within the "Village Type Development" ("V") zone of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai 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:

- (a) RNTPC Paper No. A/NE-KLH/544 (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**

On 26.4.2018, the applicant applied under section 17(1) of the Ordinance for review of the RNTPC’s decision to reject the application (**Annex D**). Subsequently, at the request of the applicant, the Board agreed on 13.7.2018 to defer the consideration of the application for two months to allow time for the applicant to prepare written representation to support the review application. However, upon the expiry of the two-month period, the applicant has not submitted any written representation. The review application is therefore scheduled for consideration by the Board at its meeting on 12.10.2018.

3. **The Section 16 Application**

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

- 3.1 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**.
- 3.2 The Site is:
 - (a) located at the western fringe of Yuen Leng Village;
 - (b) partly within the village ‘environs’ (‘VE’) of Yuen Leng, Kau Lung Hang Lo Wai and Kau Lung Hang San Wai;
 - (c) a piece of paved land currently used for parking of vehicles without valid planning permission; and
 - (d) accessible by a local track and footpath.
- 3.3 The surrounding areas are predominantly rural in character with village houses, fallow agricultural fields and some temporary structures. Village houses are mainly found to the east and the south of the Site in Yuen Leng Village. The MTR East Rail Line (EAL) and Fanling Highway are located about 70m and 120m on the west respectively, separated by a road, temporary structure, some trees and village houses (**Plans R-1 and R-2a**).

Planning Intention

- 3.4 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

- 3.5 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 promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Background

- 3.6 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site formed part of two previous planning enforcement cases (No. E/NE-KLH/066 and 105) against unauthorised parking of vehicles. It was recently noticed that unauthorised parking of vehicles occurred again at the Site and subsequent Enforcement Notice for the current enforcement case No. A/NE-KLH/118 was issued on 2.3.2018. Upon expiry of the EN on 2.5.2018, site inspection revealed that the unauthorised parking has not been discontinued and prosecution action will be considered.

Previous Application

- 3.7 The Site is the subject of a previous application (No. A/NE-KLH/410) submitted by a different applicant for a Small House development. The previous application was approved with conditions by the RNTPC on 30.7.2010 mainly on the grounds that it generally complied with the Interim Criteria in that more than 50% of the Site fell within the ‘VE’ of Yuen Leng Village; there was general shortage of land in meeting the demand for Small House development within “V” zone; and the proposed Small House would be able to be connected to the planned public sewerage scheme at the time of consideration. The planned public sewerage scheme for Yuen Leng was subsequently degazetted on 29.10.2010. The planning permission eventually lapsed on 31.7.2014.
- 3.8 Details of the previous application are summarized at Appendix III of **Annex A**.

Similar Applications

- 3.9 When the s.16 application was considered by the RNTPC on 16.3.2018, there were 50 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/543 and 548) (**Plan R-1**). Among those applications located in close vicinity of the Site as shown on **Plan R-2a**, 7 were approved with conditions and 5 were rejected by the RNTPC/the Board on review.

Approved Cases

- 3.10 Application No. A/NE-KLH/245 was approved with conditions by the RNTPC before criterion (i) of the Interim Criteria came into effect on 23.8.2002. Before the proposed sewerage scheme for Yuen Leung Village was degazetted on 29.10.2010, there were five similar applications (No. A/NE-KLH/304, 339, 378, 379 and 403) covering four sites, approved between 2003 and 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 development was able to be connected to the planned sewerage system. For Application No. A/NE-KLH/459, it was approved by the RNTPC on 17.1.2014 on sympathetic and special consideration as there was previous planning permission granted to the same applicant; the proposed septic tank and soakaway system would be constructed within the application site and the original "V" zone.

Rejected Cases

- 3.11 Two similar applications No. A/NE-KLH/300 and 312 were rejected by the Committee between 2002 and 2003 as the proposed house was not able to be connected to the existing or planned sewerage system in the area. Another similar application No. A/NE-KLH/404 was rejected on 11.6.2010 mainly on the reasons that the applicant failed to demonstrate that the proposed development would not cause adverse tree and water impacts to the area; and the proposed development would be subject to adverse noise impact generated by the East Rail nearby. After the degazetting of the proposed sewerage scheme for Yuen Leung Village, two applications No. A/NE-KLH/430 and 443 were rejected by the RNTPC between 2011 and 2012 mainly on the grounds of not complying with the Interim Criteria in that more than 50% of the Small House footprint fell outside both the "V" zone and 'VE'; and being not able to be connected to the planned sewerage system in the area which has no fixed programme for implementation.
- 3.12 Details of the above similar applications are summarized in **Annex E** and their locations are shown on **Plans R-1** and **R-2a**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 and Appendix V of **Annex A**.
- 4.2 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

- 4.2.1 The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the number of outstanding Small House applications for Kau Lung Hang is 46 instead of 44, whilst the 10-year Small House demand forecast for Yuen Leng and Kau Lung Hang remain unchanged at 257 and 100

respectively. He 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 applicant is an indigenous villager of Yuen Leng Lei Uk Village of Tai Po as confirmed by the Indigenous Inhabitant Representative (IIR) of the concerned village. However, his eligibility of Small House grant has yet to be ascertained;
- (c) 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 LandsD;
- (d) the Site is not covered by any Modification of Tenancy or Building Licence;
- (e) 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 Small Houses concerned or approval of the Emergency Vehicular Access thereto;
- (f) the Site falls partly within the village 'environs' ('VE') of Yuen Leng and Kau Lung Hang Villages; and
- (g) Drainage Services Department (DSD) and Environmental Protection Department (EPD) should be consulted on the proposed septic tank under the application.

Traffic

4.2.2 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 cumulative adverse traffic impact could be substantial;
- (b) notwithstanding the above, the application only involves development of a Small House and he considers that the application 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. It is suggested that 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

4.2.3 The Director of Environment Protection (DEP) has no further comment 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) does not support the application as:
 - (i) the Site falls completely outside the "V" zone and within the WGG, and no public sewerage will be available to serve the proposed Small House in the short term. The proposed use of septic tank and soakaway system to handle wastewater is not acceptable; and
 - (ii) the proposed development would be subject to significant railway noise impact, and the application does not contain any information to confirm full compliance with the Noise Control Ordinance (Cap. 400) (NCO) and the Hong Kong Planning Standards and Guidelines (HKPSG) requirements from noise perspective;
- (b) the Site falls within "AGR" zone, and is within the WGG. The planned public sewer to serve the subject lot is part of the Yuen Leng village sewerage, 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;
- (c) the applicant provided in Appendix 2 of the application form (Appendix I of **Annex A**) a plan indicating the use of a septic tank and soakaway system, presumably as interim measure before availability of planned public sewer. The use of septic tank and soakaway system for treating wastewater is unacceptable inside WGG according to Chapter 9 of the HKPSG;
- (d) the proposed house is located at about 70 m and 120 m from the EAL and Fanling Highway respectively. Despite the low trackside noise barriers installed at the concerned section of EAL, his crude assessment indicated that the exposed facades of the proposed Small House facing the EAL would still be subject to significant railway noise impact. While railway noise is controlled under the NCO, the application however does not contain any information, e.g. self-protecting building design and/or noise impact assessment, to demonstrate compliance with the NCO; and

- (e) regarding road traffic noise, it is understood that roadside noise barriers at the concerned section of the highway are being constructed under the Widening Project of Tolo Highway/Fanling Highway between Island Interchange and Fanling to protect those village type developments closer to the road. Given this as well as the buffer distance from the highway and the design/measures required to address the railway noise, no insurmountable traffic noise impact would be anticipated.

Landscape

4.2.4 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 application 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) village houses are in close distance from different directions and the Site is connected with Tai Wo Service Road East from the west;
- (c) based on the aerial photos, the Site is situated in an area of rural landscape character comprising of 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 the site photos, the Site is cleared, hard paved and in operation as car park. 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, the standard condition on landscape proposal is not recommended.

Drainage

4.2.5 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 proposed Small House 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 the Director of Drainage Services to ensure that it will not cause adverse drainage impact to the adjacent area;

- (c) there is no existing DSD maintained public drains available for connection in this area. The proposed development should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. A condition should be included to ensure the proposed development would neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicant/lot owner is required to maintain the drainage systems properly and rectify the system if it is found to be inadequate or ineffective during operation. The applicant/lot owner shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the drainage system;
- (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;
- (e) there is no public sewerage in the vicinity of the Site. DEP should be consulted regarding the sewage treatment/disposal aspects of the application and the provision of septic tank; and
- (f) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

4.2.6 The Chief Engineer/Consultants Management, Drainage Services Department (CE/CM, DSD) has no further comment 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:

- (a) 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 (**Plan R-2a**). However, 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; and
- (b) notwithstanding the above, the proposed sewerage scheme might be fine-tuned in the course of finalizing the design. The applicant is 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. It is understood that, subject to actual construction of the public sewerage being in sufficient proximity to the boundary of a land lot, DEP may require the lot owners at his/her own cost to make proper sewer connection from his/her premises to the public sewerage and to decommission the private sewer, septic tank and soakaway pit.

Agriculture

4.2.7 The Director of Agriculture, Fisheries & Conservation (DAFC) has no further comment on the review application and maintains his 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 paved and has low potential for agricultural rehabilitation. He has no strong view on the application.

Fire Safety

4.2.8 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

4.2.9 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) objects to the application; and
- (b) the Site is located within the upper indirect WGG. There is no programme for the construction of planned public sewers to serve Yuen Leng Village as advised by DEP. Sewer connectivity is thus in question and it is considered that compliance with item (i) of the Interim Criteria cannot be established.

Electricity and Town Gas Safety

4.2.10 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:

Electricity Safety

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

Town Gas Safety

- (c) there are high pressure and immediate pressure underground town gas transmission pipelines (running along Tai Wo Service Road West) in the vicinity of the Site;
- (d) the applicant/works contractor shall therefore liaise with the Hong Kong and China Gas Company Limited in respect of the exact locations of existing or planned gas pipes/gas installations in the vicinity of the Site and any required minimum set back distance away from them during the design and construction stages of the proposed development; and
- (e) the applicant/works contractor is required to observe the requirements of the Electrical and Mechanical Services Department's “Code of Practice on Avoiding Danger from Gas Pipes” for reference.

4.3 The following Government departments have been further consulted and maintain their previous views of having no objection to/ 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.

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

On 4.5.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received objecting to the application mainly for the reasons of being not in line with the planning intention of “AGR” zone; land is still available within the “V” zone of Yuen Leng, Kau Lung

Hang and Tai Wo; and setting of undesirable precedent.

6. Planning Considerations and Assessments

- 6.1 The subject application for Small House development was rejected by the RNTPC on 16.3.2018 on the grounds of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that the proposed Small House located within the WGG was not able to be connected to existing/planned sewerage system in the area as there was no fixed programme for implementation of such system at this juncture; the applicant failed to demonstrate that the proposed development located within WGG would not cause adverse impact on the water quality in the area; the proposed development would be subject to adverse noise impact generated by the East Rail nearby; and land was still available within the “V” zone of Yuen Leng and Kau Lung Hang for Small House development. The applicant has not provided any written representation in support of the review application.
- 6.2 The Site falls entirely within the “AGR” zone. The proposed NTEH (Small House) is not in line with the planning intention of the “AGR” zone which is primarily intended to retain and safeguard good quality agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. In this regard, DAFC has no strong view on the review application from agricultural development viewpoint as the Site is paved and has low potential for agricultural rehabilitation.
- 6.3 According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai Villages is 130 while the 10-year Small House demand forecast is 357. Based on the latest estimate by the Planning Department, about 6.67 ha (equivalent to about 266 Small House sites) of land are available within the “V” zones of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai. As more than 50% of the proposed Small House footprint falls within the ‘VE’ of the concerned villages, DLO/TP of LandsD has no objection to the application.
- 6.4 The Site, located at the western fringe of Yuen Leng Village, is paved and currently used for parking of vehicles without valid planning permission (**Plans R-1 and R-4**). The proposed development is not incompatible with the surrounding areas which are predominantly rural in character comprising village houses, fallow agricultural fields and some temporary structures (**Plans R-2a and R-4**). CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view as no adverse impact on landscape resources from the proposed development is anticipated.
- 6.5 The Site is within the upper indirect WGG. The planned sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010 and there is no fixed implementation programme at this juncture for the concerned public sewerage works (**Plan R-2a**). DEP does not support the review application as the Site falls completely outside the “V” zone and within the WGG; no public sewerage will be available to serve the proposed Small House in the short term; and the proposed use of septic tank and soakaway system by the applicant to handle wastewater is not acceptable. CE/C, WSD also objects to the review application as the Site is located within the WGG and there is no programme for the construction of planned public sewers to serve Yuen Leng Village; and compliance with criterion (i) of the Interim Criteria on connection

to sewerage system in the area cannot be established.

- 6.6 The proposed Small House is located at about 70m from the EAL. DEP does not support the review application as the proposed development would be subject to significant railway noise impact, but the application does not contain any information e.g. self-protecting building design and/or noise impact assessment, to confirm full compliance with the NCO and the HKPSG requirements from noise perspective. According to his crude assessment, despite that low trackside noise barriers had been installed at the concerned section of EAL, the exposed facades of the proposed Small House facing the EAL would still be subject to significant railway noise impact. C for T has reservation on the review application as such development should be confined within “V” zone as far as possible, but considers that the proposed development involving one Small House only can be tolerated. Other Government departments consulted including CE/CM and CE/MN of DSD, CHE/NTE of HyD and D of FS have no objection to/adverse comment on the review application.
- 6.7 Regarding the Interim Criteria (Appendix II of **Annex A**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai Villages (**Plan R-1**). While land available (about 6.67 ha or equivalent to about 266 Small House sites) within the “V” zones is insufficient to fully meet the future Small House demand, it is capable to meet the 130¹ outstanding Small House applications (**Plan R-2b**). It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. Amongst others, 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 LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.
- 6.8 The Site is the subject of a previous application (No. A/NE-KLH/410) submitted by a different applicant for the same use. It was approved with conditions by the RNTPC on 30.7.2010 mainly on the considerations of generally complying with the Interim Criteria in that more than 50% of the Site fell within ‘VE’ of Yuen Leng Village; there was general shortage of land in meeting the demand for Small House development within “V” zone; and the proposed Small House would be able to be connected to the planned public sewerage scheme at the time of consideration. The planned public sewerage scheme for Yuen Leng Village was degazetted on 29.10.2010. The planning permission subsequently lapsed on 31.7.2014. As advised by DEP & CE/C, WSD, there is still no fixed programme for its implementation and they therefore object to the subject application.
- 6.9 There are 12 similar applications in close vicinity of the Site within the same “AGR” zone (**Plan R-2a**). Of the seven approved cases, one (No. A/NE-KLH/245) was approved before criterion (i) of the Interim Criteria came into effect on 23.8.2002, and the other five (No. A/NE-KLH/304, 339, 378, 379 and 403) were approved before the degazettal of the planned public sewerage scheme at Yuen Leng Village on

¹ Among the 130 outstanding Small House applications, 79 of them fall within the “V” zone and 51 straddle or outside the “V” zone. For those 51 applications straddling or being outside the “V” zone, 12 of them have obtained valid planning approval from the Board.

29.10.2010. For Application No. A/NE-KLH/459, it was approved on 17.1.2014 mainly on sympathetic and special consideration as there was previous planning permission (Application No. A/NE-KLH/339) granted to the same applicant; the proposed septic tank and soakaway system would be constructed within the application site and the original “V” zone.

- 6.10 For the five rejected cases, two applications (No. A/NE-KLH/300 and 312), being not able to be connected to the existing or planning sewerage system, were rejected between 2002 and 2003. Another application (No. A/NE-KLH/404) was rejected on 11.6.2010 as the proposed development might cause adverse tree and water impacts to the area; and it would be subject to adverse noise impact generated by the East Rail nearby. The remaining two applications (No. A/NE-KLH/430 and 443) were rejected between 2011 and 2012 mainly on the grounds of not complying with the Interim Criteria in that more than 50% of the Small House footprint fell outside both the “V” zone and ‘VE’; and the proposed houses were not able to be connected to the planned sewerage system. The planning circumstances of the current application are similar to these rejected cases which were not able to be connected to the planned sewerage system; and application No. A/NE-KLH/404 in that it is subject to adverse noise impact generated by the East Rail nearby.
- 6.11 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 “V” zone; and setting of undesirable precedent, Government departments’ comments and the planning assessments and considerations above are relevant.

7. Planning Department’s Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 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 justification in the current submission for a departure from the planning intention;
 - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed Small House located within the water gathering ground is not able to be connected to the existing/planned sewerage system in the area as there is no fixed programme for implementation of such system at this juncture;
 - (c) the applicant fails to demonstrate that the proposed development located within the water gathering ground would not cause adverse impact on the water quality in the area;

- (d) the proposed development would be subject to adverse noise impact generated by the East Rail nearby, and there is no information in the submission to demonstrate that the proposed development will be in compliance with the Noise Control Ordinance (Cap. 400); and
- (e) land is still available within the “Village Type Development” (“V”) zone of Yuen Leng, Kau Lung Hang San Wai and Kau Lung Hang Lo Wai 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.

7.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **12.10.2022**, 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 protection 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

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

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC’s decision and decide whether to accede to the application.
- 8.2 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.
- 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**

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/544
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 D	Letter received by the Town Planning Board on 26.4.2018 from the applicant applying for a review of the RNTPC’s decision
Annex E	Similar applications
Annex F	Public comments
Annex G	Recommended advisory clauses

**PLANNING DEPARTMENT
OCTOBER 2018**

