

REVIEW OF APPLICATION NO. A/NE-LT/618
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House - Small House)
in “Agriculture” and “Village Type Development” zone
Lot 1534 S.F in D.D. 19, Ha Tin Liu Ha, Lam Tsuen, Tai Po**

1. Background

- 1.1 On 16.8.2017, the applicant, Mr. CHUNG Chi Wo represented by Mr. LI Kin Ming, Vincent 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”) (about 74%) and “Village Type Development” (“V”) (about 26%) on the approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11 (**Plan R-1**).
- 1.2 On 13.10.2017, 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 for the “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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 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 there is no general shortage of land in meeting the demand for Small House development in the “Village Type Development” (“V”) zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom; and
 - (c) land is still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom 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-LT/618 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on (Annex B)

13.10.2017
 (c) Secretary of Town Planning Board's letter dated 27.10.2017 (Annex C)

2. **Application for Review**

The application under section 17(1) of the Ordinance, for review of the RNTPC's decision to reject the application submitted by the applicant was received by the Board on 17.11.2017 (Annex D). The applicant has not submitted any written representation in support of the review application.

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) flat, currently vacant and partly covered by groundcover; and
 - (b) located at the northern fringe of Ha Tin Liu Ha.
- 3.3 The surrounding area are predominantly rural in character with a mix of village houses, active and fallow agricultural land and tree groups. Village houses are found to the immediate south of the Site and the village cluster of Ha Tin Liu Ha is situated about 50m to the further southeast.

Planning Intentions

- 3.4 The planning intention of the "V" zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 3.5 The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agriculture lan/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

- 3.6 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

- 3.7 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the “AGR” portion of the Site is the subject of an active enforcement case against unauthorized land filling activities. Enforcement Notice (EN) was issued on 20.2.2017 requiring the notice recipients to discontinue the unauthorized development by 6.3.2017. On 20.7.2017, a Reinstatement Notice (RN) was issued requiring the notice recipients to reinstate the land by 20.10.2017. Subsequently, CTP/CEP, PlanD advised that the concerned parties had failed to comply with the RN and the progress of the compliance with RN would be monitored before considering further enforcement action including prosecution.

Previous Application

- 3.8 The Site is the subject of a previous application (No. A/NE-LT/571) submitted by the same applicant for Small House development, which was rejected by the RNTPC on 24.6.2016 mainly on the reasons of being not in line with the planning intention of “AGR” zone and not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom; and land being still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom for Small House development. Compared with the previously rejected application No. A/NE-LT/571, the site area, layout and other development parameters of the proposed Small House under the current application remain unchanged. Details of the previous application are shown at Appendix III of **Annex A**.

Similar Applications

- 3.9 When the s.16 application was considered by the RNTPC on 13.10.2017, there were seven similar applications involving six sites for Small House development in the vicinity of the Site and within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plans R-1 and R-2a**). There is an additional similar application (No. A/NE-LT/623) since then.
- 3.10 Four applications (No. A/NE-LT/344, 345, 346 and 489) were approved with conditions by the RNTPC between 2005 and 2013 mainly on the grounds that the applications were in line with the Interim Criteria in that most of the footprint of the Small Houses was within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the times of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. Application No. A/NE-LT/489 was also approved by the Committee in 2013 on the grounds of being the subject of a previously approved application No. A/NE-LT/344 and there had been no major change in planning circumstances.
- 3.11 For the four rejected cases (No. A/NE-LT/413, 570, 578 and 623), they were rejected by the Committee/the Board on review between 2011 and 2017 respectively mainly on the grounds of not complying with the planning intention of “AGR” zone and the

Interim Criteria in that there was no general shortage of land¹ in meeting the demand for Small House development in “V” zone. Applications No. A/NE-LT/570 and 578 were both also rejected for the reason of not being able to be connected to the existing or planned sewerage system and land being still available within the “V” zone of concerned villages for Small House development. In addition, application No. A/NE-LT/578 was also rejected on the ground that the proposed development would cause adverse landscape impact to the surroundings.

- 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 application for Tin Liu Ha and Ko Tin Hom is 10 instead of 9, whilst the 10-year Small House demand forecast remains unchanged at 130. He maintains his other views on the s.16 applications as stated in paragraph 1 of the Appendix V in **Annex A** and recapitulated below:

- (a) no objection to the application;
- (b) the applicant claimed himself as an indigenous villager (IV) of Tin Liu Ha. However, his eligibility of Small House grant has yet to be ascertained;
- (c) the Site is held under Block Government Lease demised for agricultural use. The applicant is the registered owner of the subject lot and the Small House application has been received by LandsD;
- (d) the Site falls within the village ‘environs’ (‘VE’) of Ha Tin Liu Ha and is not covered by any Modification of Tenancy or Building Licence;
- (e) should the application be approved by the Town Planning Board (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 items and conditions as may be imposed by LandsD. There is no guarantee to the grant of a right of

¹ When applications No. A/NE-LT/344, 345 and 346 were considered, a uniform rate of 30 Small Houses was assumed per ha of land within “V” zone. Starting from 2010, the assumption was revised and a uniform rate of 40 Small Houses was assumed in considering applications No. A/NE-LT/413, 489, 570, 571 and 578.

way to the Small House concerned or approval of the emergency vehicular access thereto; and

- (f) the proposed sewerage connection will be considered when the application is due for processing. Taking into consideration that the Site falls within the Water Gathering Ground (WGG), the applicant may be advised to connect the sewerage system to the proposed Government sewer under Drainage Services Department (DSD)'s project – Lam Tsuen Valley Sewerage.

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:

has no in-principle objection to the application from traffic engineering point of view.

Environment

- 4.2.3 The Director of Environmental Protection (DEP) maintains his previous views on the s.16 application as stated in paragraph 3 of the Appendix V in **Annex A** and recapitulated below:

the Site straddles the border between “V” zone and “AGR” zone, and is within WGG. The applicant has proposed to connect the proposed Small House to the public sewer at Ha Tin Liu Ha, which is about 10m away (**Plan R-2a**). The sewer connection has to cross the adjacent lot and consent from adjacent lot owner to lay sewage pipes has been obtained. Sewer connection is feasible and capacity is available. Therefore, he has no objection to the application on the conditions that:

- (a) the proposed Small House will be connected to the public sewer for sewage disposal;
- (b) written consent can be obtained from the adjacent lot owner for laying and maintaining sewage pipes;
- (c) adequate land space within the Site will be reserved for connection of the proposed Small House to the public sewer; and
- (d) the cost of sewer connection will be borne by the applicant.

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 point of view;
- (b) the Site is located at the periphery of Ha Tin Liu Ha in Tai Po. The surrounding area is rural in landscape character occupied by active and fallow agricultural land, tree groups and village houses. Village cluster is found in close proximity of the Site, the proposed use is not incompatible with the existing landscape setting;
- (c) there is no significant change in the surrounding area and no significant vegetation found within the Site. Further adverse impact arising from the proposed use is not expected; and
- (d) in view that there is no available space for quality landscaping within the Site, a tree preservation and landscape condition does not seem to be practical and is therefore not recommended.

Drainage and Sewerage

4.2.5 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has the following comment on the review application:

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) the Site is within an area where public stormwater drains are not available. Should the application be approved by the Board, an approval condition should be included to request the applicant to submit and implement the drainage proposal for the site to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) the Site is within an area where connections to existing sewerage networks are available in the vicinity;
- (d) should the applicant choose to connect his proposed drainage systems to DSD's networks, he shall submit his connection proposal for DSD's agreement; and
- (e) should the applicant choose to dispose of sewage of the proposed development through other means, views and comments from EPD should be sought.

4.2.6 The Chief Engineer/Project Management, Drainage Services Department (CE/PM, DSD) has no comment on the review application from project interface point of view as the DSD's project 4332DS – Lam Tsuen Valley Sewerage is substantially completed.

Nature Conservation

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:

does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity and the Site has potential for rehabilitation of agricultural activities.

Fire Safety

4.2.8 The Director of Fire Services (D of FS) 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 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) the Site is located within upper indirect WGG and is more than 30m away from the nearest stream. The proposed Small House footprints is entirely within the 'VE' of Ha Tin Liu Ha. The applicant proposed to connect the proposed Small House to public sewer and sewer connection is feasible. Thus, compliance of the application with items B(a) and B(i) of the 'Interim Criteria for Consideration of Applications for NTEH/Small House in New Territories' can be reasonably established. He has no objection to the application with the following conditions:
 - (i) the foul water drainage system of the proposed NTEH/Small House can be connected to the planned public sewerage system in the area and the applicant shall connect the whole of the foul water drainage system to the planned public sewerage system upon its completion;
 - (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 NTEH/Small House to the planned sewerage system via the

relevant private lots; and

- (b) for provision of water supply to the proposed development, the applicant may need to extend the inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Electricity Supply and 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:

no particular comment on the application from electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation (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.

4.3 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 the Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager, New Territories East, 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 1.12.2017, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.12.2017, two public comments were received from Designing Hong Kong Limited and The Hong Kong Bird Watching Society objecting to the application mainly on the grounds of being not in line with the planning intention of "AGR" zone; there was no general shortage of land in "V" zone of the concerned villages; land still available within the "V" zone of the concerned villages; being the subject of 'destroy first, develop later' case; 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 13.10.2017 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in the “V” zone; and land was still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom for Small House development. The applicant has not provided any written representation in support of the review application.
- 6.2 According to the DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Tin Liu Ha and Ko Tin Hom is 10 while the 10-year Small House demand forecast is 130. Based on the latest estimate by the Planning Department, about 3.6 ha (or equivalent to about 144 Small House sites) of land are available within the “V” zone of the concerned villages (**Plan R-2b**). As the footprint of the Small House falls entirely within the ‘VE’ of the concerned village, DLO/TP, LandsD has no objection to the review application.
- 6.3 The proposed Small House development is not in line with the planning intention of the “AGR” zone. DAFC maintains his view of not supporting the review application from the agricultural development point of view as there are active agricultural activities in the vicinity and the Site itself has high potential for rehabilitation of agricultural activities. The Site located at the northern fringe of Ha Tin Liu Ha (**Plan R-2a**) is currently vacant and partly covered by groundcover (**Plan R-4**). The village cluster of Ha Tin Liu Ha is located about 50m to the further southeast and village houses are found to the immediate south of the Site (**Plan R-2a**). The proposed development is not incompatible with the existing landscape setting which is rural in landscape character occupied by active and fallow agricultural land, tree groups and village houses. CTP/UD&L of PlanD maintains his previous view of having no objection to the application from landscape planning point of view as significant adverse impact on landscape resources is not anticipated.
- 6.4 The Site falls within the upper indirect WGG. CE/PM of DSD advises that the public sewerage network has been completed and available for connection (**Plan R-2a**). The applicant has submitted a revised sewerage connection proposal and a consent letter from the adjacent lot owner to support the application (Drawing A-1 and Appendix Ia of **Annex A**). Both DEP and CE/C of WSD have no objection to the application provided that the applicant shall connect the proposed Small House to the public sewer at his own cost. Besides, the Site is part of an active enforcement case against unauthorized land filling activities. CTP/CEP, PlanD advises that the concerned lot owners had failed to comply with the RN and the progress of the compliance with RN would be monitored before considering further enforcement action including prosecution. Other relevant Government departments including C for T, CE/MN of DSD, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 6.5 Notwithstanding more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Ha Tin Liu Ha and the proposed development within WGG would be able to be connected to the public sewerage system (**Plan R-2a**), the proposed development does not comply with the Interim Criteria in that there is no general shortage of land (about 3.6 ha or equivalent to about 144 Small House sites) in

meeting the demand for Small House development (about 3.5 ha or equivalent to about 140 Small Houses) in the concerned “V” zone (**Plan R-2b**). Furthermore, the Site is the subject of a previously rejected application (No. A/NE-LT/571) from the same applicant for the same use and there has been no significant change in planning circumstances since the previous application was rejected in June 2016.

- 6.6 There are eight similar applications in the vicinity of the Site (**Plan R-1**). Four of them (applications No. A/NE-LT/344, 345, 346 and 489) were approved by the Committee between 2005 and 2013 mainly on the grounds of complying with the Interim Criteria in that there was a general shortage of land to meet the demand for Small House development in the concerned “V” zone at the times of consideration; and the proposed development was able to be connected to the planned sewerage system in the area. For the four rejected applications (No. A/NE-LT/413, 570, 578 and 623), they were rejected by the Committee/the Board on review between 2011 and 2017 mainly on the grounds of being not in line with the planning intention of the “AGR” zone and the Interim Criteria in that there was no general shortage of land in meeting the demand for Small House development in “V” zone. The circumstances of these rejected applications are similar to the subject application. As there has been no major change in planning circumstances of the Site and its surrounding areas since the rejection of the application, the planning considerations and assessments as stated in paragraph 12 of **Annex A** are still valid and there is no strong planning justification to warrant a departure from RNTPC’s rejection of the application.
- 6.7 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; there was no general shortage of land in “V” zone of the concerned villages; land still available within the “V” zone of the concerned villages; being the subject of ‘destroy first, develop later’ case; 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 assessment 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 for the area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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 this 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 there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom; and

- (c) land is still available within the “V” zone of Ha Tin Liu Ha, Sheung Tin Liu Ha and Ko Tin Hom 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 2.2.2022, 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

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-LT/618
Annex B	Extract of minutes of the RNTPC meeting held on 13.10.2017
Annex C	Secretary of the Town Planning Board's letters dated 27.10.2017
Annex D	Letter received by the Town Planning Board on 17.11.2017 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
FEBRUARY 2018

TPB Paper No. 10381

**For Consideration by
the Town Planning Board on 2.2.2018**

**REVIEW OF APPLICATION NO. A/NE-LT/618
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

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in “Agriculture” and “Village Type Development” zones**

Lot 1534 S.F in D.D. 19, Ha Tin Liu Ha, Lam Tsuen, Tai Po