

REVIEW OF APPLICATION NO. A/NE-LYT/641
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House (New Territories Exempted House - Small House)
Lot 586 S.B ss.3 in D.D. 85, Lau Shui Heung, Fanling, New Territories

1. Background

- 1.1 On 30.10.2017, the applicant, Mr. LEE Lok Hang represented by Heng Fai Consulting Limited, sought planning permission to build a 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 entirely within an area zoned “Agriculture” (“AGR”) on the approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17 (**Plan R-1**).
- 1.2 On 22.12.2017, 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 of the “Agriculture” zone in the Lung Yeuk Tau and Kwan Tei South area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area.”
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-LYT/641 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 22.12.2017 (Annex B)
- (c) Secretary of Town Planning Board’s letter dated 12.1.2018 (Annex C)

2. Application for Review

On 2.2.2018, the applicant applied under section 17(1) of the Ordinance, for review of the RNTPC’s decision to reject the application (**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, R-2a and R-2b, R-3 and 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 7.1 and 7.2 of **Annex A** respectively. There has not been any major change in planning circumstances of the area since then.
- 3.2 The Site is:
- (a) located at the west of the “V” zone of Lau Shui Heung Village and entirely falls within the village ‘environs’ (‘VE’) of Lau Shui Heung Village;
 - (b) currently overgrown with grasses and some scattered trees and shrubs; and
 - (c) accessible on foot only.
- 3.3 The surrounding areas have the following characteristics:
- (a) a rural landscape character dominated by active/fallow farmland, village houses and vacant land;
 - (b) surrounded by fallow agricultural land, and to the further east are village houses within the “V” zone;
 - (c) wooded knolls zoned “GB” could be founded to the south of the Site;
 - (d) to the west is Kwan Tei River running from the south to north of which is about 25m away from the Site; and
 - (e) to the west and southwest across Kwan Tei River are fallow/active agricultural land, orchard and some vacant land, and to the further northwest are open storage yards.

Planning Intention

- 3.4 The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area 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.

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. The latest set of Interim Criteria was promulgated on 7.9.2007 which is at Appendix II of **Annex A**.

Previous Application

- 3.6 The Site is not involved in any previous planning application.

Similar Application

- 3.7 When the s.16 application was considered by the RNTPC on 22.12.2017, there were two similar applications for Small House development within the “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan R-1**). There is no additional similar application since then.
- 3.8 Both of the applications (No. A/NE-LYT/569 and 571) were rejected by the RNTPC of the Board on 19.6.2015 mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone and there was no strong planning justification on the submissions for a departure from the planning intention; and land was still available in the “V” zone of Lau Shui Heung Village for Small House development. It was considered more appropriate to concentrate the proposed Small House developments close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services.
- 3.9 Details of the above similar applications are summarized in Appendix III of **Annex A** and its location is shown on **Plan R-1**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 9 and Appendix IV 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 District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that among 26 outstanding Small House applications in Lau Shui Heung Village, 22 of them are indigenous villagers of Lau Shui Heung Village. He maintains his other views on the s.16 application as stated in paragraph 1 of the Appendix IV in **Annex A** and recapitulated below:
- (a) the Site falls entirely within the ‘VE’ of Lau Shui Heung Village;
 - (b) the applicant claimed himself as an indigenous villager of Lau Shui Heung of Fanling Heung but his eligibility for Small House concessionary grant has yet to be ascertained;
 - (c) the Site is not covered by any Modification of Tenancy/Building License;
 - (d) the number of outstanding Small House application and the number of

10-year Small House demand forecast for Lau Shui Heung (2017 to 2026) are 26 and 180 respectively. The figure of the 10-year Small House demand forecast was provided by the relevant Indigenous Inhabitant Representative without any supporting evidence and his office is not in a position to verify the forecast; and

- (e) the Small House grant application in respect of the Site was received by his office on 22.8.2013.

Traffic

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

- (a) she 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 the “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; and
- (b) notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.

Environment

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

- (a) in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution;
- (b) septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department” and are duly certified by an Authorized Person; and
- (c) it is noted that there is no existing sewerage in the vicinity. The applicant should also be reminded to take appropriate measures as listed in the EPD guideline “Recommended Pollution Control Clauses for Construction Contracts” to prevent contaminated surface runoff and other wastewater from being discharged into the river during construction stage. A web link to the said guideline is shown below: http://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc.html.

Landscape

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

- (a) she has no objection to the application from the landscape planning point of view;
- (b) based on the aerial photo of 2017, the Site is situated in an area of rural landscape character predominantly comprising natural landscape with scrubland and wooded areas, a few scattered small village clusters and some active/fallow farmland. Thus, the proposed development is not entirely incompatible with the surrounding landscape setting. According to her site record in November 2017, the Site is covered with wild grasses and some young tree saplings and bamboos were found in the western portion of the Site. Significant adverse impact on the landscape resource arising from the proposed Small House is not anticipated;
- (c) having said that, the approval of the application would set an undesirable precedent to encourage application of similar use spreading into the “AGR” zone, causing potential adverse impact on the landscape resource and character. It may create a ripple effect which will lead to gradual irreversible modification of the landscape character in the area; and
- (d) should approval be given by the Board, an approval condition on the submission and implementation of landscape proposal is recommended.

Drainage

4.2.5 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 of the Appendix IV in **Annex A** and recapitulated below:

- (a) he has no in-principle objection to the application from public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Nature Conservation and Agriculture

4.2.6 The Director of Agriculture, Fisheries and Conservation (DAFC) advises that that section of Kwan Tei River is a natural stream and is about 25m from the Site. General speaking, natural streams of good habitats supporting a variety of wildlife and with important ecological functions should be preserved and conserved as far as possible. The buffer area for a stream depends on a number of factors (e.g. whether the stream has been modified, existing riparian vegetation, species of conservation importance that inhabit the stream etc.) and should be determined on a case-by-case basis. She considers that Small Houses should preferably be located 15m away from this section of Kwan Tei River from nature conservation point of view. She also maintains her other views on the s.16 application as stated in paragraph 6 of the Appendix IV in **Annex A** and recapitulated below:

- (a) the Site is an abandoned land overgrown with vegetation. Active agricultural activities can be found in the vicinity of the Site. As such, the application is not supported from agriculture point of view as the Site possesses potential for agricultural rehabilitation; and
- (b) there is a natural stream to the southeast of the Site. Should the subject application be approved, appropriate measures should be undertaken, especially during the construction stage, to prevent the development from polluting the nearby stream.

Fire Safety

4.2.7 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 IV in **Annex A** and recapitulated below:

- (a) he has 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

4.2.8 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 IV in **Annex A** and recapitulated below:

- (a) he has no objection to the application; and
- (b) for provision of water supply to the 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.

District Officer's Comment

4.2.9 District Officer (North), Home Affairs Department (DO(N), HAD) has the following comments on the review application:

District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of Fanling District Rural Committee (FDRC) and the Resident Representative of Lau Shui Heung have no comment on the application whereas the Indigenous Inhabitant Representative of Lau Shui Heung (attached with a number of signatures) supports the application that it is right of the indigenous villager to build a Small House on his own land which falls within the 'VE' of the village and there is no land in the "V" zone for Small House development.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department; and
- (b) Chief Highway Engineer/New Territories East, Highways Department.

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

5.1 On 23.2.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection periods, a total of six public comments were received (**Annex E**). The Chairmen of FDRC and Sheung Shui District Rural Committee indicate no comment on the application. A NDC member and the Indigenous Inhabitant Representative of Lau Shui Heung support the application as the Site is not a pond and has no plan for agricultural rehabilitation; and it can provide convenience to the villagers. The remaining two public comments submitted by World Wide Fund for Nature Hong Kong and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of "AGR" zone and agriculture activities can be found in the vicinity; the proposed development may have potential ecological impact to Kwan Tei River; and approval of the application would set an undesirable precedent for similar applications in the area.

5.2 The public comments received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

6. Planning Considerations and Assessments

6.1 The applicant sought planning permission from the Board for development of one NTEH (Small House) at the Site. The subject application was rejected by the RNTPC on 22.12.2017 mainly on the grounds of being not in line with the planning intention of "AGR" zone; and setting of undesirable precedent. There was no strong planning

justification in the submission for a departure from the planning intention. The applicant has not provided any written representation in support of the review application.

- 6.2 According to the DLO/N, LandsD's records, the total number of outstanding Small House applications for Lau Shui Heung Village is 26 while the 10-year Small House demand forecast is 180. Based on the latest estimation by the Planning Department, about 0.43 ha (or equivalent to about 17 Small House sites) of land are available within the "V" zone of the village (**Plan R-2b**). The Site falls entirely within the 'VE' of Lau Shui Heung Village.
- 6.3 The Site falls entirely within an area zoned "AGR" on the OZP (**Plan R-1**). The proposed Small House 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC maintains his view of not supporting the review application from the agriculture point of view as active agricultural activities can be found in the vicinity of the Site and the Site possesses potential for agricultural rehabilitation. The applicant failed to demonstrate that there is a strong planning justification in the submission for a departure from the planning intention. Since the promulgation of the Interim Criteria in 2000, RNTPC/the Board has not approved any similar application in the "AGR" zone. The approval of this application would therefore set an undesirable precedent to encourage similar applications in the subject "AGR" zone, causing potential adverse impact on the landscape resource and character. It may create a ripple effect which will lead to gradual irreversible modification of the landscape character in the area.
- 6.4 Besides, the section of Kwan Tei River located to the west and southwest of the Site is a natural stream. When the s.16 application was considered by the RNTPC, there was concern on the setting of an undesirable precedent for similar applications in the area and the cumulative impacts would result in pollution to the river. DAFC advises that that section of Kwan Tei River is a natural stream of good habitats supporting a variety of wildlife and with important ecological functions, and should be preserved and conserved as far as possible. Both DAFC and DEP indicate that appropriate measures should be undertaken to prevent the development from polluting the stream.
- 6.5 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 Lau Shui Heung Village (**Plan R-2a**) and land available within the "V" zone (about 0.43 ha equivalent to 17 Small House sites) is insufficient to meet the outstanding 26 Small House applications and the future Small House demand forecast of 180 (in total about 5.15 ha or equivalent to 206 Small House sites).
- 6.6 The Site is situated to the west of the village proper of Lau Shui Heung Village and is not incompatible with the surrounding area which is in a rural landscape character dominated by village houses, active/fallow farmland and vacant land (**Plan R-2a**). Significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD maintains her previous view of having no objection to the application. C for T considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed development involves one Small House only, it could be tolerated. Other

Government departments consulted, including D of FS, CE/C, WSD and CE/MN of DSD, have no adverse comment on or no objection to the application.

- 6.7 Regarding the public comments received during the review application mainly on the grounds of being not in line with the planning intention of the “AGR” zone, potential ecological impacts on Kwan Tei River, and setting of an undesirable precedent for similar applications in the area, Government departments’ comments and the planning assessments 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 major change in the planning circumstances since the consideration of the subject application by the RNTPC on 22.12.2017, the Planning Department does not support the review application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “Agriculture” (“AGR”) zone in the Lung Yeuk Tau and Kwan Tei South area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and 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) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area.

- 7.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **27.4.2022**, 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 provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

- 7.3 The recommended advisory clauses are attached at **Annex F**.

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 photos
Annex A	RNTPC Paper No. A/NE-LYT/641
Annex B	Extract of minutes of the RNTPC meeting held on 22.12.2017
Annex C	Secretary of the Town Planning Board's letter dated 12.1.2018
Annex D	Letter dated 2.2.2018 from the applicant's representative applying for a review of the RNTPC's decision
Annex E	Public Comments
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
APRIL 2018**