

REVIEW OF APPLICATIONS NO. A/NE-TKL/591 to 594
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House (NTEH) - Small House)
in “Agriculture” Zone**

- (i) Lot 658 S.A (Application No. A/NE-TKL/591)
 - (ii) Lot 658 S.B (Application No. A/NE-TKL/592)
 - (iii) Lot 658 S.C (Application No. A/NE-TKL/593)
 - (iv) Lot 658 S.D (Application No. A/NE-TKL/594)
- all in D.D. 82, Lei Uk Tsuen, Ta Kwu Ling, New Territories**

1. Background

- 1.1 On 8.5.2018, the applicants, Mr. TSANG Kwok Yin, Mr. TSANG Chorp Yin, Mr. LAU Woon Shiu and Mr. LAM Kowk Kwong all represented by Honest Land Surveys Company sought planning permissions to build a house (New Territories Exempted House (NTEH) – Small House) on each of the application sites (the Sites) under s.16 of the Town Planning Ordinance (the Ordinance). The Sites fall within an area zoned “Agriculture” (“AGR”) on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14 (**Plan R-1**).
- 1.2 On 6.7.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the applications 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 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 current submission for a departure from the planning intention; and
 - (b) land is still available within the “Village Type Development” (“V”) zone of Lei Uk Tsuen where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services.”
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TKL/591 to 594 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 6.7.2018 (Annex B)
 - (c) Secretary of Town Planning Board’s letters dated 20.7.2018 (Annex C)

2. Applications for Review

On 3.8.2018, the applicants applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the applications (**Annex D**). The applicants have not submitted any written representation in support of the review.

3. The Section 16 Applications

The Sites and their Surrounding Area (**Plans R-1, R-2a and R-2b**, aerial photo on **Plan R-3** and site photos on **Plan R-4**)

3.1 The situations of the Sites and their surrounding areas at the time of the consideration of the s.16 applications by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has not been any major change in planning circumstances of the area since then.

3.2 The Sites are:

- (a) currently vacant, flat and overgrown with grass;
- (b) located to the east of the “V” zone of Lei Uk Tsuen (**Plan R-2a**); and
- (c) not served by any vehicular access.

3.3 The surrounding area has the following characteristics:

- (a) rural landscape character dominated by village houses, vacant land, fallow agricultural land and scattered tree groups;
- (b) surrounded by vacant / fallow farmland and tree groups;
- (c) to the north is the vacant site of a Small House development approved by RNTPC in December 2014 (i.e. application No. A/NE-TKL/493) and the Small House grant application is being processed by DLO/N, LandsD;
- (d) to the further north is Ping Yuen River; and
- (e) to the west are Small House developments approved by RNTPC in May 2011 (i.e. applications No. A/NE-TKL/359 to 361) and to the further west is the village cluster within the “V” zone of Lei Uk Tsuen (**Plan R-2a**).

Planning Intention

3.4 The planning intention of the “AGR” zone in Ping Che and Ta Kwu Ling area is to primarily 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 New Territories Exempted House (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, which was promulgated on 7.9.2007, is at Appendix II of **Annex A**.

Previous Application

- 3.6 There is no previous application for the Sites.

Similar Applications

- 3.7 When the s.16 application was considered by the RNTPC on 6.7.2018, there were 28 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Sites in the Ping Che and Ta Kwu Ling 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 A total of 12 applications (No. A/NE-TKL/207, 214, 216, 218, 221, 222, 223, 359, 360, 361, 466 and 493) were approved with conditions by RNTPC between June 2002 and December 2014 (i.e. before a more cautious approach being adopted by the Board) mainly on the considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House developments were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area.
- 3.9 The other 16 applications (No. A/NE-TKL/406, 407, 414, 415, 416, 420, 421, 457, 458, 467, 468, 471, 495, 496, 541 and 551) were rejected by RNTPC or the Board on review or dismissed by the Town Planning Appeal Board Panel (TPAB) between December 2012 and June 2018. Of them, 14 were rejected by RNTPC or the Board on review or dismissed by the TPAB between December 2012 and July 2015 (i.e. before a more cautious approach being adopted by the Board) mainly on the grounds that the proposed Small House developments were not in line with the planning intention of “AGR” zone; the proposed development would involve clearance of existing vegetation and would affect the existing natural landscape on the surrounding environment; land was still available within the “V” zone of Lei Uk Tsuen for Small House development and it was considered more appropriate to concentrate Small House development within the “V” zone so as to ensure an orderly development pattern, efficient use of land and provision of infrastructure and services; and as there were no approved similar applications within that part of “AGR” zone, the approval of the applications would set undesirable precedents for similar applications in the area.
- 3.10 The remaining two applications (No. A/NE-TKL/541 and 551) were rejected by RNTPC or the Board on review in August 2016 (i.e. after a more cautious approach being adopted by the Board) mainly on the grounds that the proposed Small House developments were not in line with the planning intention of “AGR” zone; and land was still available within the “V” zone of Lei Uk Tsuen for Small House development

and it was considered more appropriate to concentrate Small House development within the “V” zone so as to ensure an orderly development pattern, efficient use of land and provision of infrastructure and services. The appeal of the application No. A/NE-TKL/541 was dismissed by TPAB on 28.6.2018 mainly on the grounds that there was no substance on the ground of appeal and the rejected reasons of RNTPC and the Board were still valid.

- 3.11 Details of the above similar applications are summarised at **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 applications made by relevant Government departments are stated in paragraph 9 and Appendix IV of **Annex A**.
- 4.2 For the review applications, the relevant Government departments have been further consulted and their views on the review applications are summarised as follows:

Land Administration

- 4.2.1 The District Lands Officer/North, Lands Department (DLO/N, LandsD) advised that the number of outstanding Small House applications and the number of 10-year Small House demand forecast (2016 to 2025) for Lei Uk Tsuen remain unchanged at 76 and 450 respectively. 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 footprints of the proposed Small Houses fall within the ‘VE’ of Chow Tin Tsuen, Fung Wong Wu and Lei Uk;
- (b) the applicants of applications No. A/NE-TKL/591 and 592 claimed themselves to be indigenous villagers of Ping Che of Ta Kwu Ling Heung. The applicant of application No. A/NE-TKL/593 claimed himself to be an indigenous villager of Wo Keng Shan of Ta Kwu Ling Heung. The applicant of application No. A/NE-TKL/594 claimed himself to be an indigenous villager of Shan Kai Wat of Ta Kwu Ling Heung. However, the applicants’ eligibility for Small House concessionary grants has yet to be ascertained;
- (c) the Sites are not covered by any Modification of Tenancy/Building Licence;
- (d) the number of outstanding Small House applications and the number of 10-year Small House demand forecast (2016 to 2025) for Lei Uk Tsuen are 76 and 450 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 applications of applications No. A/NE-TKL/591 to 593 were made to his office on 2.7.2014 whereas the Small House

application of application No. A/NE-TKL/594 was made to his office on 20.1.2015.

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 applications. Such type of developments should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed developments is not expected to be significant, such type of developments outside the “V” zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and
- (b) notwithstanding the above, the applications only involve construction of four Small Houses. She considers that the applications can be tolerated unless they are rejected on other grounds.

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

- (a) in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution; and
- (b) the 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.

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 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 applications from the landscape planning perspective;
- (b) according to the latest aerial photo of 2018 (**Plan R-3**), the Sites are situated in an area of rural landscape character comprising of village houses, active and abandoned farmlands, scattered tree groups and open storages at a further distance to the east. The proposed four adjoining

Small Houses are near the eastern fringe of Lei Uk Tsuen and they are not incompatible with the surrounding area;

- (c) her site record in May 2018 reveals that the Sites are located within a large area of abandoned farmland covered with wild grasses. No trees are found within the Sites. Significant adverse impact to the landscape resources arising from the proposed developments is not anticipated. Permissions were granted to some Small Houses (currently vacant sites) adjacent to the east and west of the Sites within the “AGR” zone in the last few years; and
- (d) should the applications be approved, the approval condition on submission and implementation of landscape proposal is considered impracticable as the footprints of the Small Houses almost occupied the entire Sites leaving inadequate space for landscape works.

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

- (a) he has no objection to the applications from public drainage viewpoint;
- (b) should the applications be approved, a condition should be included to request the applicants to submit and implement a drainage proposal for the Sites to ensure that they will not cause adverse drainage impact to the adjacent area;
- (c) the Sites are in an area where no public sewerage connection is available; and
- (d) the general requirements in the drainage proposal are appended in paragraph 5 of the Appendix IV of **Annex A**.

Fire Safety

4.2.6 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 6 of the Appendix IV in **Annex A** and recapitulated below:

- (a) he has no in-principle objection to the applications; and
- (b) the applicants are 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

4.2.7 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 7 of the Appendix IV in **Annex A** and recapitulated below:

- (a) he has no objection to the applications; and
- (b) for provision of water supply to the development, the applicants may need to extend the inside services to the nearest suitable Government water mains for connection. The applicants 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.

Agriculture

4.2.8 The Director of Agriculture, Fisheries & Conservation (DAFC) has no further comment on the review application and maintains her previous views on the s.16 application as stated in paragraph 8 of the Appendix IV in **Annex A** and recapitulated below:

- (a) she does not support the applications from agriculture point of view; and
- (b) the Sites are abandoned land overgrown with grasses. Active agricultural activities can be found in the vicinity. Agricultural infrastructure such as road access, water supply and vegetable marketing cooperative society are available. The Sites possess potential for agricultural rehabilitation.

District Officer's Comments

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

he has further consulted the locals. The incumbent North District Council member of the subject constituency, the Indigenous Inhabitant Representative and the Resident Representative of Lei Uk have no comment on the applications.

4.3 The following Government departments have no further comment on the review applications and maintain their previous views of having no comment on the s.16 applications as below:

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

5. **Public Comments on the Review Applications Received During Statutory Publication Periods**

- 5.1 On 10.8.2018, the review applications were published for public inspection. During the statutory public inspection periods, a total of four public comments on each application were received (**Annex F**). The Chairman of the Sheung Shui District Rural Committee indicates no comment on the applications. Designing Hong Kong, the Hong Kong Bird Watching Society and an individual object to the applications mainly on the grounds that the applications are not in line with the planning intention of “AGR” zone; land is still available within the “V” zone of Lei Uk Tsuen for Small House development; and the approval of the applications would set an undesirable precedents to similar applications.
- 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 applicants sought planning permissions from the Board for development of a Small House on each of the Sites. The applications were rejected by the RNTPC on 6.7.2018 on the grounds that the developments were not in line with the planning intention of “AGR” zone; and land was still available within the “V” zone of Lei Uk Tsuen for Small House development. The applicants have not provided any written representation in support of the review applications.
- 6.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Lei Uk Tsuen is 76 while the 10-year Small House demand forecast for the same village is 450. According to the latest estimate by PlanD, about 2.28 ha (equivalent to 91 Small House sites) of land are available in the “V” zone of Lei Uk Tsuen for Small House development (**Plan R-2b**). The footprints of the proposed Small Houses fall entirely within the ‘VE’ of Chow Tin Tsuen, Fung Wong Wu and Lei Uk.
- 6.3 The Sites fall entirely within an area zoned “AGR” on the Ping Che and Ta Kwu Ling OZP. The proposed Small House developments are 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 applications from agriculture point of view since the Sites possess potential for agricultural rehabilitation. The applicants failed to demonstrate that there is a strong planning justification in the submission to merit a departure from the planning intention of the “AGR” zone.
- 6.4 The Sites are situated in an area of rural village character in proximity to the existing village (**Plans R-2a and R-3**). The proposed Small Houses are not entirely incompatible with the existing rural village environment and no significant landscape resource will be affected arising from the developments. In this regard, CTP/UD&L, PlanD maintains her view of no objection to the applications from the landscape planning point of view. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed

developments only involve the construction of four Small Houses, the applications could be tolerated. Other Government departments consulted, including D of FS, CE/C of WSD and CE/MN of DSD, have no adverse comment on or no objection to the applications.

- 6.5 Regarding the Interim Criteria (Appendix II of **Annex A**), more than 50% of the footprints of the proposed Small Houses fall within the ‘VE’ of Chow Tin Tsuen, Fung Wong Wu and Lei Uk (**Plan R-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 2.28 ha or equivalent to 91 Small House sites) is still available within the “V” zone to meet the outstanding 76¹ Small House applications. 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. As such, it is considered more appropriate to concentrate the proposed Small House developments within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.
- 6.6 There are 28 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Sites and 12 of them were approved by RNTPC between 2002 and 2014 (i.e. before a more cautious approach being adopted by the Board) (**Plan R-1**) mainly on the considerations that they complied with the Interim Criteria; the proposed Small Houses were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area. The other 16 applications were rejected by RNTPC or the Board on review or dismissed by TPAB on appeal between 2012 and 2018, 14 of them were rejected before a more cautious approach being adopted by the Board and the remaining two applications (No. A/NE-TKL/541 and 551) were rejected after a more cautious approach being adopted by the Board. They were rejected mainly on the grounds that the proposed Small House developments were not in line with the planning intention of “AGR” zone; land was still available within the “V” zone of Lei Uk Tsuen for Small House development and it was considered more appropriate to concentrate Small House development within the “V” zone so as to ensure an orderly development pattern, efficient use of land and provision of infrastructure and services. The planning circumstances of the current applications are similar to those applications (No. A/NE-TKL/541 and 551) which were rejected after a more cautious approach being adopted by the Board.
- 6.7 Regarding the adverse public comments during the review applications mainly on the considerations of being not in line with the planning intention of “AGR” zone, land available in “V” zone of Lei Uk Tsuen and the setting of undesirable precedents, Government departments’ comments and planning assessments above are relevant.

¹ Among the 76 outstanding Small House applications, 25 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, one of them has obtained valid planning approval from the Board.

7. Planning Department's Views

7.1 Based on the assessments made in paragraph 6 and having taken into account the public comments in paragraph 5 above and given that there is no major change in the planning circumstances since the consideration of the subject applications by the RNTPC on 6.7.2018, the Planning Department does not support the review applications 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 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 current submission for a departure from the planning intention; and
- (b) land is still available within the “V” zone of Lei Uk Tsuen where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services.

7.2 Alternatively, should RNTPC decide to approve the applications, it is suggested that the permissions shall be valid until 26.10.2022, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are 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; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services 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 applications for a review of the RNTPC's decision and decide whether to accede to the applications.
- 8.2 Should the Board decide to approve the review applications, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permissions, and the date when the validity of the permissions should expire.
- 8.3 Alternatively, should the Board decide to reject the review applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

9. Attachments

Plan R-1	Location Plan
Plan R-2a	Site Plan
Plan R-2b	Estimated Amount of Land Available within the “V” zone of Lei Uk Tsuen for Small House Development
Plan R-3	Aerial Photo
Plan R-4	Site Photos
Annex A	RNTPC Paper No. A/NE-TKL/591 to 594
Annex B	Extract of Minutes of the RNTPC Meeting held on 6.7.2018
Annex C	Secretary of the Town Planning Board’s Letters dated 20.7.2018
Annex D	Letter dated 3.8.2018 from the applicants’ representative applying for a review of the RNTPC’s decision
Annex E	Similar s.16 Applications for Proposed House (NTEH – Small House) within/partly within the “Agriculture” zone in the Ping Che and Ta Kwu Ling Area
Annex F	Public Comments
Annex G	Recommended Advisory Clauses

**PLANNING DEPARTMENT
OCTOBER 2018**

**TPB PAPER NO. 10485
FOR CONSIDERATION BY
THE TOWN PLANNING BOARD
ON 26.10.2018**

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**Proposed House (New Territories Exempted House (NTEH) - Small House)
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- (v) Lot 658 S.A (Application No. A/NE-TKL/591)**
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all in D.D. 82, Lei Uk Tsuen, Ta Kwu Ling, New Territories