

TOWN PLANNING BOARD

TPB Paper No. 10553

**For Consideration by
the Town Planning Board on 28.6.2019**

**REVIEW OF APPLICATIONS NO. A/NE-TK/643 to 646
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House - Small House)
in “Agriculture” and “Village Type Development” Zones
Various lots in D.D. 23, Po Sam Pai, Tai Po, New Territories**

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1. Background

- 1.1 On 4.6.2018, the following applicants, all represented by Mr. YIP Fook Wah, Raymond, sought planning permission 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).

Application No.	Applicant	Site Area	Zonings of Application Site	
			“V”	“AGR”
A/NE-TK/643	Mr. WONG Wing Him	116.6m ²	47%	53%
A/NE-TK/644	Mr. WONG Pui Yip	112.6m ²	66%	34%
A/NE-TK/645	Mr WONG Yuen Keung	97.9m ²	60%	40%
A/NE-TK/646	Mr LI Jurvin	115.9m ²	51%	49%

- 1.2 On 16.11.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the applications and the reasons for each application were:

- “(a) the proposed development is not in line with the planning intention of the “Agriculture” (“AGR”) zone for the area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from this planning intention; and
- (b) land is still available within the “Village Type Development (“V”) zone of Po Sam Pai and San Tau Kok 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 a more orderly development pattern, efficient use of land and provision of infrastructure and service.”

- 1.3 For Members’ reference, the following documents are attached:

- | | | |
|-----|--|-----------|
| (a) | RNTPC Paper No. A/NE-TK/643 to 646A | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 16.11.2018 | (Annex B) |
| (c) | Secretary of Town Planning Board’s letter dated 7.12.2018 | (Annex C) |

2. Application for Review

The application submitted by the applicants' representative under s.17(1) of the Ordinance for review of the RNTPC's decision to reject the applications was received by the Board on 14.12.2018 (**Annex D1**). Subsequently, at the request of the applicants' representative, the Board agreed on 1.3.2019 to defer the consideration of the application for two months to allow time for the applicants to prepare written representation to support the review application. A written representation submitted by the applicants' representative in support of the review application was received by the Board on 4.4.2019 (**Annex D2**).

3. Justifications from the Applicants

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

Background history and related justifications

- (a) a block submission of the four s.16 applications is to provide the Board with an overview and better understanding on the overall developments straddling along the common boundary between the "V" zone and the "AGR" zone. It is intended to draw the Board's attention to the fact that the four applications have unique characteristics in straddling along the common boundary of "V" and "AGR" zones but not within the village 'environs' ('VE') of San Tau Kok and Po Sam Pai. The Sites would be the last and final batch of applications such that if approval granted to the applications would not set a bad precedent case to bring in more Small House developments encroaching onto the "AGR" zone;
- (b) the applications were rejected even item (b) (i.e. more than 50% of the NTEH/Small House footprint falls within "V" zone) can be fulfilled. According to their understanding, the Board under the more cautious approach will not consider the forecast of demand and supply of "V" zone land provided by Lands Department (LandsD) if the land is still regarded available within the "V" zone of the villages. The applicants should be informed on when the more cautious approach was adopted by the Board and whether this approach has been made known to LandsD and Home Affairs Department (HAD) for proper consultation/notification to Heung Yee Kuk of tightening the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria);
- (c) referring to Plan A-2a of **Annex A**, Application No. A/NE-TK/645 is just next to an existing Small House (Application No. A/NE-TK/342 approved on 28.1.2011) and there were approved Small Houses (applications No. A/NE-TK/503 and 642 approved on 4.4.2014 and 15.6.2018 respectively) encroaching onto the "AGR" zone to the southwest of Application No. A/NE-TK/644. The plan indicates an overview that the Sites are bearing the same merits of the approved cases and would be the final batch of applications for Small Houses encroaching onto the "AGR" zone. The applicants' representative states that he had not presented the salient points clearly in his last submission of s.16 applications to draw the Board's attention to the unique characteristics of the four applications resulting in rejection of the applications by the RNTPC;

- (d) for Application No. A/NE-TK/645, its previous application (No. A/NE-TK/617) was submitted by the applicant himself and was rejected by the RNTPC on 28.7.2017. The applicant subsequently revised the footprint and orientation of the house by shifting into the “V” zone as much as possible to minimize the encroachment onto the “AGR” zone, as well as joined with the adjoining landowners/applicants for making a block submission to provide an overview of the possible planning applications in the precinct of the application site;

Responses to adverse public comments

- (e) rejection reasons (a) and (b) are similar to those comments raised by the public commenters under the s.16 applications and the applicants had provided responses and justifications to address their concerns as detailed in Annex 1 of **Annex D2**. The responses are summarised below:

- (i) due to site constraint and irregular shape of the lots, it is inevitable to have a minor portion of the footprint of the proposed Small Houses encroaching onto the “AGR” zone. The Small House footprints have been shifted within the “V” zone as much as possible and approval of the applications would not set an undesirable precedent as each case should be considered by the Board on individual merit;

Application No.	Small House Footprint Within “V” zone
A/NE-TK/643	60%
A/NE-TK/644	72%
A/NE-TK/645	71%
A/NE-TK/646	68%

- (ii) there is no alternative land available for Small House development in their own villages as it has been either resumed by the Government or fully developed, and the cross-village Small House applications are well supported by the village representatives and local villagers;
- (iii) the Sites had been cleared long time ago before they acquired the concerned lots; and
- (iv) the proposed Small Houses would be connected to the public sewerage system when available;

Impact on “AGR” zone

- (f) the total area of the proposed Small Houses footprint encroaching onto the “AGR” zone is 83.89m² whereas the total area of land zoned “AGR” on the OZP is 59.95ha as stated in the Explanatory Statement of the OZP. The impact on “AGR” zone is therefore negligible (i.e. $83.89\text{m}^2/599,500\text{m}^2 \times 100\% = 0.000139\%$);

Responses to planning considerations and assessments in the RNTPC paper

- (g) regarding the rejection reason of being not in line with the planning intention of “AGR” zone, the total encroachment area onto the “AGR” zone is only 83.89m² and the impact on “AGR” zone is negligible. Cultivation at the Sites had been abandoned for years and most of the land there had been hard paved for vehicular access or open storage before the applicants acquired the land. A new cluster of village houses has

already been formed in close proximity to the Sites where agricultural rehabilitation would be impossible;

- (h) the applicants are not the villagers of Po Sam Pai and did not own any land in the village concerned until they purchased the Sites. Their applications are cross-village applications because the land of their villages were either resumed by the Government for the Plover Cove project or the "V" zone concerned was fully developed. They had no alternatives and needed to purchase the Sites for building their houses. When they purchased the land, the Sites were already cleared same as the present situation. The applicants had not carried out any clearance works at the Sites and the existing trees on site could be a proof. In fact, they were not aware of the exact site boundary of the "V" zone when they purchased the land until they were notified by the District Lands Officer/Tai Po (DLO/TP) that part of the Sites encroached onto the "AGR" zone and planning permission from the Board would be required. The applicants state that DLO/TP has no objection to their applications;
- (i) the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) had no objection to the applications from the landscape planning perspective;
- (j) with the Board's adoption of a more cautious approach in approving applications for Small House development in recent years, the percentage of over 50% footprint would be disregarded if there is still vacant land available in the "V" zone. Besides, land ownership and possibility of acquiring the land, such as missing landowners and non-assignment of some Tso and Tong's land, is not a material consideration for exemption of this criterion. Under such circumstances, the land will be forever vacant and never be developed;
- (k) while applying a more cautious approach on assessment of Small House applications, a fair approach should also be considered. These four applicants are not the villagers of San Tau Kok or Po Sam Pai. They acquired the land for building their own houses on the understanding that the adjacent houses were permitted by applications to the Board under s.16 of the Ordinance but they did not realize the Board would introduce a more cautious approach disregarding the percentage of the house footprint if vacant land is still available in "V" zone. It seems to be unfair for applying a more cautious approach to these four applications due to the unique characteristics and the impact on "AGR" zone is negligible;
- (l) the development parameters of the proposed Small House under Application No. A/NE-TK/645 are the same as its previous application (No. A/NE-TK/617), except that the footprint and orientation of the house had been revised so that more area of the house was within the "V" zone (i.e. increased from 57% to 71% under A/NE-TK/645);
- (m) the other similar applications were approved by the Board because they were made before adoption of a more cautious approach while these four applications were submitted after the date of adoption of a more cautious approach and therefore were rejected. The timing of submission is critical for getting approval even though the applications have the same merits or even better merits;

Departmental comments

- (n) no adverse comments on or no objection to the applications from all relevant government departments consulted except the Director of Agriculture, Fisheries and Conservation (DAFC). DAFC did not support the applications from agricultural development point of view and commented that the Sites were paved but there were agricultural activities in the vicinity of the Sites where agricultural infrastructure such as road access and water source was available; and

Conclusion

- (o) there were only two adverse comments from the public (frequent commenters) and the 'Statements of Response to the Public Comments from the Objectors' in Annex 1 of **Annex D2** had clarified their queries and addressed their concerns. As regards DAFC's comments, it was not the wish of the applicants to abandon the cultivation and agricultural activities. The Sites were already hard paved when they purchased the land. In view of the unique characteristics of the four applications that would be the last and final batch of applications, the Board is requested to review the merits of the applications and approve these four applications on sympathetic grounds.

4. The Section 16 Applications

The Sites and their Surrounding Areas (Plans R-1, R-2a, R-3 and R-4)

- 4.1 The situation of the Sites and the 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**.
- 4.2 The Sites are:
- (a) vacant and hard paved;
 - (b) outside the 'VE' of Po Sam Pai and San Tau Kok; and
 - (c) accessible by footpath and local track leading to Ting Kok Road in the south.
- 4.3 The surrounding areas are predominantly rural in character comprising of scattered tree groups, abandoned farmland and village houses. Clusters of village houses within the "V" zone are located on the southeast of the Sites. A stream is about 30m - 50m to the west of the Sites.

Planning Intentions

- 4.4 The planning intention of the "V" zone is to reflect existing recognized 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.

- 4.5 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agriculture land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

Assessment Criteria

- 4.6 The set of 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 promulgated on 7.9.2007 is at Appendix II of **Annex A**.

Previous Application

- 4.7 There is no previous application involving the sites of Applications No. A/NE-TK/643, 644 and 646.
- 4.8 The site of Application No. A/NE-TK/645 is the subject of a previous application (No. A/NE-TK/617) submitted by the same applicant for the same use which was rejected by the RNTPC on 28.7.2017 mainly on the considerations of being not in line with the planning intention of the “AGR” zone; and land was still available within the concerned “V” zone. Compared with the previous application, while major development parameters of the proposed Small House under Application No. A/NE-TK/645 are the same, the footprint and orientation of the proposed Small House had been revised by further shifting into the “V” zone (i.e. increased from 57% to 71% under A/NE-TK/645).
- 4.9 Details of the previous application are summarized at Appendix III of **Annex A** and the location is shown on **Plan R-1**.

Similar Applications

- 4.10 When the s.16 applications were considered by the RNTPC on 16.11.2018, there were 16 similar applications for Small House development within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000. Among which, 12 of them were approved and four were rejected (**Plan R-1**). There has been no change in the number of similar applications since then.
- 4.11 Of the 12 approved applications, 10 of them (No. A/NE-TK/156, 282, 302, 342, 377, 378, 381, 460, 461 and 503) were approved with conditions by the RNTPC between 2003 and 2014 before the Board’s adoption of a more cautious approach in approving Small House applications in August 2015, mainly on the considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprints fell within the ‘V’ zone and there was a general shortage of land to meet the demand for Small House development in the “V” zone of the concerned villages at the time of consideration. The other two applications (No. A/NE-TK/633 and 642) were approved in 2018 mainly on sympathetic consideration as previous planning permissions had been granted.
- 4.12 For the four rejected applications (No. A/NE-TK/150, 364, 371 and 590), they were rejected by the RNTPC between 2003 and 2016 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; it did not comply with the Interim Criteria in that more than 50% of the Small House

footprint was outside the “V” zone and the ‘VE’ of any recognized villages; and/or approval of the application would set an undesirable precedent for other similar applications in the area. Application No. A/NE-TK/590 was also rejected as land was still available within the “V” zone of Po Sam Pai and San Tau Kok which is primarily intended for Small House development.

- 4.13 Details of the above similar applications are summarized in Appendix IV of **Annex A** and their locations are shown on **Plans R-1** and **R-2a**.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 applications made by relevant government departments are stated in paragraph 9 and Appendix V of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted and their views on the review application are summarized as follows:

Land Administration

5.2.1 The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the number of outstanding Small House applications for Po Sam Pai is 43 instead of 46, whilst the number of outstanding Small House applications for San Tau Kok remains unchanged at 11 and the 10-year Small House demand forecast for Po Sam Pai and San Tau Kok remain unchanged as 170 and 54 respectively. He has no further comments on the review application and 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) has no objection to the applications;
- (b) the three applicants, Mr. WONG Wing Him, Mr. WONG Pui Yip and Mr. WONG Yuen Keung, claimed themselves as indigenous villagers of Luk Heung Kam Chuk Pai while the remaining applicant Mr. LI Jurvin, claimed himself as an indigenous villager of Shuen Wan Sha Lan. However, their eligibilities of Small House grants have yet to be ascertained;
- (c) the applicants have submitted applications for Small Houses to LandsD. The Sites are Old Schedule Lots held under Block Government Lease (demised for agricultural use) and the applicants are the registered owners of the subject lots;
- (d) the Sites under applications are not covered by Modification of Tenancy or Building Licence;
- (e) should the applications be approved by the Board, LandsD will process the Small House applications. However, there is no guarantee at this stage that the Small House applications would be approved. If the Small House applications are approved by LandsD acting in the capacity as landlord at its sole discretion, such approvals 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 each of the proposed Small Houses or approval of the emergency vehicular access thereto;

- (f) the Sites fall outside the 'VE' of Po Sam Pai but partly within the "V" zone; and
- (g) with respect to the proposed septic tanks of the applications, they will be considered when the cases are due for processing.

Environment

5.2.2 The Director of Environmental Protection (DEP) has no further comments on the review application and maintains his previous views on the s.16 applications as stated in paragraph 2 of the Appendix V in **Annex A** and recapitulated below:

- (a) has no in-principle objection to the applications; and
- (b) septic tank and soakaway system is an acceptable means for collection, treatment and disposal of sewage provided that its design and construction follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 'Drainage Plans subject to Comment by the Environmental Protection Department' and are duly certified by an Authorized Persons.

Landscape

5.2.3 The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advises that since the footprints of the proposed Small Houses cover most of the Sites, there are inadequate spaces for landscaping within the Sites. The standard condition for submission and implementation of landscaping proposal is not recommended should the applications be approved by the Board. He also advises that the existing trees within the site boundary of Applications No. A/NE-TK/643 are 644 were severely damaged by typhoon Mangkhut. Since adverse impact on landscape resources arising from the proposed developments is not anticipated, he has no objection to both applications from the landscape planning perspective. On the other hand, his previous comments on the s.16 applications No. A/NE-TK/645 and 646 as stated in paragraph 3 of the Appendix V in **Annex A** are still relevant as recapitulated below:

- as no existing trees are recorded within the Sites, adverse impact to significant landscape resources arising from the proposed developments is not anticipated.

Drainage and Sewerage

5.2.4 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) confirms that public sewers have been laid around 30m away from the Sites. Connection to public sewers is technically feasible and prior consent should be obtained from the lot owners possessing the land between the Sites and the public sewers. Should the applicants choose to dispose the sewage of

the proposed developments through septic tanks or other means, views and comments from DEP should be sought. He also maintains his other views on the s.16 applications as stated in paragraph 4.1 of the Appendix V in **Annex A** and recapitulated below:

- (a) has no in-principle objection to the applications from public drainage viewpoint;
- (b) if the applications are approved, a condition should be included to request each of the applicants 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) there is no existing DSD maintained public stormwater drain available for connection in this area. The proposed developments should have their own stormwater collection and discharge systems to cater for the runoff generated within the Sites and overland flow from surrounding of the Sites. Any existing flow path affected should be re-provided. The proposed developments should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicants/ owners should maintain the drainage systems properly and rectify the systems if found to be inadequate or ineffective during operation. The applicants/ owners should also be liable for and indemnify claims and demands arising out of damage or nuisance caused by failure of the system. Furthermore, the systems will not be managed nor maintained by DSD;
- (d) while noting the proposed septic tanks of the applications, there are DSD's public sewers in the vicinity of the Sites (over 20m away from the proposed developments). DEP should be consulted regarding the sewage treatment/disposal aspects; and
- (e) the applicants should take all precautionary measures to prevent any disturbance, damage and pollution from the proposed developments to any parts of the existing drainage facilities in the vicinity of the Sites. In the event of any damage to the existing drainage facilities, the applicants should be responsible for the cost of all necessary repair works, compensation and any other consequences arising therefrom. For works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought.

5.2.5 The Chief Engineer/ Consultants Management, Drainage Services Department (CE/CM, DSD) has no further comments on the review application and maintains his previous views on the s.16 applications as stated in paragraph 4.2 of the Appendix V in **Annex A** and recapitulated below:

- (a) has no comment on the applications; and
- (b) the sewerage works in Po Sam Pai have been completed and there is no on-going project in the concerned village.

Water Supply

5.2.6 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 applications as stated in paragraph 5 of the Appendix V in **Annex A** and recapitulated below:

- (a) has no objection to the applications; and
- (b) for provision of water supply to the proposed developments, 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

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

- (a) the Sites are paved. Nevertheless, there are active agricultural activities in the vicinity of the Sites and agricultural infrastructure such as road access and water source is available; and
- (b) as the Sites possess potential for agricultural rehabilitation, she does not support the applications from agricultural development point of view.

Fire Safety

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

- (a) 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.

Electricity Supply and Safety

5.2.9 The Director of Electrical and Mechanical Services (DEMS) has the following comment on the review application:

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

- (b) in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

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

- (a) Chief Highway Engineer/ New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (d) Commissioner for Transport (C for T); and
- (e) District Officer/Tai Po, Home Affairs Department (DO/TP, HAD).

6. **Public Comments on the Review Application Received During Statutory Publication Periods (Annex E)**

On 28.12.2018 and 26.4.2019, the review application and written representation were published for public inspection. During the first three weeks of the statutory public inspection periods, two public comments were received from Designing Hong Kong Limited and an individual raising objection to the review application mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is still available within the “V” zone; setting undesirable precedent; and no justification to reward destroy to build and further encroachment outside village cluster.

7. **Planning Considerations and Assessments**

- 7.1 The subject applications for Small House development were rejected by the RNTPC on 16.11.2018 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Po Sam Pai and San Tau Kok for Small House development.
- 7.2 To support the review application, the applicants have put forward justifications that the impact on “AGR” zone is negligible; cross-village applications are submitted as land is not available within their villages; there are similar approved applications in the vicinity of the Sites; it is unfair to the applicants because of the Board’s adoption of a more cautious approach; and the Sites would be the last and final batch of applications straddling the “V” and “AGR” zones in the area concerned and approval of the applications would not set bad precedent.

- 7.3 The Sites are partly zoned "AGR" and partly zoned "V" on the OZP. The proposed developments are not in line with the planning intention of "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from this planning intention. In the review application, the applicants argue that the impact of the applications on "AGR" zone is negligible as the total area of the land zoned "AGR" on the OZP is 59.95 ha, whereas the total area of the Small Houses footprint encroaching onto the "AGR" zone is only 83.89m² (i.e. 0.000139% of all the land zoned "AGR"). The applicants also point out that it was not their wish to abandon cultivation and agricultural activities at the Sites, and the Sites had already been hard paved when they purchased the land. In this regard, DAFC maintains his previous view of not supporting the applications from agricultural development point of view as there are active agricultural activities in the vicinity of the Sites and agricultural infrastructure such as road access and water source is available; and the Sites possess potential for agricultural rehabilitation.
- 7.4 The applicants point out that there is no alternative land available for Small House development in their own villages as it has been either resumed by the Government or fully developed. Therefore, they purchased the Sites in Po Sam Pai Village for cross-village Small House applications. The applicants also point out that the Board should take into account the land ownership and the difficulty in acquisition of land (such as missing landowners and non-assignment of some Tso and Tong's lands). In this regard, it should be noted that the applications are not rejected because they are cross-village applications. Also, land ownership and the possibility in acquisition of land within "V" zone are not material considerations as it could be subject to change and land parcel could be sub-divided to suit development needs. Based on the latest estimate by the PlanD, about 3.55 ha of land (equivalent to about 141 Small House sites) are available within the "V" zone of Po Sam Pai and San Tau Kok (**Plan R-2b**). Although land available within "V" zone cannot fully meet the future demand of 278 Small Houses (equivalent to about 6.95 ha of land), it is capable to meet the 54 outstanding Small House applications. As such, it is considered more appropriate to concentrate the proposed Small Houses within the "V" zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. Besides, there is no significant change in planning circumstances since the applications were rejected by the RNTPC, and there is no strong reason to depart from the RNTPC's previous decision.
- 7.5 The applicants point out that the footprint of the proposed Small Houses are largely within the "V" zone (ranging from 60% to 72% as detailed in paragraph 3(d)(i) above). The applicant of Application No. A/NE-TK/645 also states that the footprint of his proposed Small House, as compared with his previous application (No. A/NE-TK/617), has been shifted further into the "V" zone so that the percentage has been increased from 57% to 71%. The applicants claim that before the more cautious approach is adopted, favourable consideration would be given to those applications having not less than 50% of the Small House footprint falls within the "V" zone and there is a general shortage of land in meeting the demand for Small House development in the "V" zone, and there are similar applications in the vicinity of the Sites which were approved on such grounds.

- 7.6 It should be noted that, according to criterion (b) of the Interim Criteria (Appendix II in **Annex A**), *“favourable consideration could be given if not less than 50% of the proposed Small House footprint falls within the “V” zone, provided that there is a general shortage of land in meeting the demand for Small House development in the “V” zone and the other criteria can be satisfied.”* That means even if more than 50% of the Small House footprint fall within “V” zone, the Board would also take into account, amongst other factors, whether there is a general shortage of land within the “V” zone of the concerned village in meeting the Small House demand. The Small House demand was worked out based on the number of outstanding Small House applications being processed by LandsD as well as the number of 10-year Small House demand forecast as provided by the indigenous inhabitant representative to LandsD. In August 2015, the Board agreed to adopt a more cautious approach in approving applications for Small House development. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting will be put on the number of outstanding Small House applications provided by LandsD. Since the adoption of the more cautious approach in August 2015, the Board has been consistent in putting more weighting on the number of outstanding Small House applications provided by LandsD in assessing Small House planning applications.
- 7.7 The Sites are vacant and hard paved. The proposed developments are not incompatible with the surrounding area which is predominantly rural in character comprising of scattered tree groups, abandoned farmland and village houses (**Plans R-2a and R-3**). CTP/UD&L of PlanD has no objection to the applications from the landscape planning perspective as adverse impact on landscape resources arising from the proposed developments is not anticipated. Other relevant Government departments including DEP, CE/MN and CE/CM of DSD, CE/C of WSD, D of FS, DEMS, CHE/NTE of HyD, H(GEO) and PM/N of CEDD, C for T and DO/TP of HAD have no objection to or adverse comment on the review application.
- 7.8 The applicants argue that, referring to Plan A-2a of **Annex A**, similar applications encroaching onto the “AGR” zone in the vicinity of the Sites were approved by the Board and the plan provides an overview that the Sites are bearing the same merits of these approved cases, and that their applications would be the final batch of applications for Small Houses encroaching onto the “AGR” zone and hence approval of their applications would not set a bad precedent case. It should be noted that there are seven similar applications (No. A/NE-TK/342, 378, 381, 460, 461, 503 and 642) located in close proximity to the Sites as shown on the plan. Except No. A/NE-TK/642, the other six applications were approved by the RNTPC between 2011 and 2014 before the Board’s adoption of a more cautious approach, mainly on the considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprints fell within the ‘V’ zone; and there was a general shortage of land to meet the demand for Small House development in the “V” zone of the concerned villages at the time of consideration. For Application No. A/NE-TK/642, it was approved on 15.6.2018 mainly on sympathetic consideration as previous planning permission (No. A/NE-TK/503) had been granted to the same applicant. The circumstances of the subject applications are different from these similar approved cases. Besides, as shown on **Plan R-2b**, land is still available straddling the boundary of “V” and “AGR” zones. Hence, the applicants’ argument that the Sites would be the last and final batch of applications encroaching onto the “AGR” zone cannot be established.

- 7.9 Regarding the public comments objecting to the review application mainly on the grounds mentioned in paragraph 6 above, government departments' comments and the planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there is no change in the planning circumstances since the consideration of the subject applications 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from this planning intention; and
- (b) land is still available within the "V" zone of Po Sam Pai and San Tau Kok 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 a more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that each of the permissions shall be valid until 28.6.2023, 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; 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

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

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.

- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 9.3 Alternatively, 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 each of the permissions, and the date when the validity of the permission should expire.

10. **Attachments**

Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Estimated amount of land available for Small House development within "V" zone
Plan R-3	Aerial photo
Plan R-4	Site photo
Annex A	RNTPC Paper No. A/NE-TK/643 to 646A
Annex B	Extract of minutes of the RNTPC meeting held on 16.11.2018
Annex C	Secretary of the Town Planning Board's letters dated 7.12.2018
Annex D1	Email submitted by the applicants' representative applying for a review of the RNTPC's decision received on 14.12.2018
Annex D2	Written representation submitted by the applicants' representative received on 4.4.2019
Annex E	Public comments
Annex F	Recommended advisory clauses

**PLANNING DEPARTMENT
JUNE 2019**