

REVIEW OF APPLICATION NO. A/SK-HC/354
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Temporary Private Garden for a Period of Three Years in “Agriculture” Zone
Lot 429 S.B (Part) in D.D. 244 and Adjoining Government Land,
Ho Chung New Village, Sai Kung, New Territories

1. Background

1.1 On 30.4.2024, the applicant, Ms. LAM Yeuk Yin represented by Mr. YEUNG Siu Fung, sought planning permission for a temporary private garden for a period of three years at the application site (the Site) under section 16 (s.16) of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Ho Chung Outline Zoning Plan (OZP) No. S/SK-HC/13¹ (**Plan R-1**).

1.2 On 6.12.2024, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:

the temporary private garden was not in line with the planning intention of “AGR” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. There was no strong justification given in the submission for a departure from the planning intention, even on a temporary basis.

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

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|-----|---|--------------------|
| (a) | RNTPC Paper No. A/SK-HC/354B | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 6.12.2024 | (Annex B) |
| (c) | Secretary of the Board’s letter dated 20.12.2024 | (Annex C) |

2. Application for Review

2.1 On 3.1.2025, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application with support of written representation (**Annex D**). Subsequently, the applicant has submitted Further Informations (FIs) received on 3.3.2025[#], 30.6.2025*, 25.7.2025*, 24.9.2025*, 21.10.2025*, 24.10.2025* and 3.11.2025* (**Annexes E to J**).

[#] *accepted but not exempted from publication and recounting requirements*

^{*} *accepted and exempted from publication and recounting requirements*

¹ The Site fell within an area zoned “AGR” on the approved Ho Chung OZP No. S/SK-HC/11 at the time of submission of s.16 planning application.

- 2.2 On 30.5.2025 and 12.9.2025, the Board agreed to the applicant's requests to defer making a decision on the review application for two months each.
- 2.3 Under the s.16 application, the private garden was proposed to be only occupied by lawn and paved area. In the s.17 review application, the applicant revises the proposal that the lawn in front of the house will be partly used as a cultivation plot of organic vegetables for own consumption and partly remains as paved area (**Drawing R-1**). The greenhouse and trellis currently erected on the Site and all other unauthorised structures will also be removed (**Plans R-4a and R-4b**). With the setting up of a sand trap and septic tank to treat wastewater (**Drawing R-2**), the updated Risk Assessment Report demonstrates that the private garden with cultivation plot will not cause adverse impact to the water quality and contamination to the water gathering ground (WGG).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the written representation and the FIs at **Annexes D to J** and are summarised below:

- (a) the private garden for growing organic vegetables, without using chemicals and fertilizers, for own consumption should be considered as agricultural use in nature. No chemicals such as pesticide, herbicides, toxicants or chemical solvents, etc. will be stored in the Site;
- (b) the applicant bought the Site in 2015 without knowing the existence of Ho Chung Site of Archaeological Interest (SAI). No digging was carried out by the applicant for the erection of trellis and greenhouse on the cement surface and hence, the subsoil was not disturbed. The applicant has undertaken that there will be no further disturbance to the Ho Chung SAI arising from construction and any other works without prior approval from the Antiquities and Monuments Office (AMO);
- (c) the applicant commits to seek assistance from qualified professionals to provide a monitoring programme proposal to monitor the water quality; and
- (d) the applicant has undertaken to remove illegal structures and to comply with relevant guidelines and regulations.

4. **The Section 16 Application**

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

- 4.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change in the situation of the Site and the surrounding area since then.
- 4.2 The Site is:

- (a) completely enclosed by fence wall and partly paved;
 - (b) currently used as a private garden, with a greenhouse and a trellis erected, serving the adjoining New Territories Exempted House (NTEH) (No. 450, Ho Chung New Village) covered by planning permission approved by the RNTPC on 7.11.2008 (No. A/SK-HC/167);
 - (c) located entirely within the village 'environs' ('VE') of Ho Chung and Ho Chung SAI and partly within WGG and waterworks reserve (**Plan R-2**); and
 - (d) accessible by an access road leading to Nam Pin Wai Road.
- 4.3 The surrounding areas are of settled valleys landscape predominated by tree groups, scrubland, Small Houses and low-rise residential developments. To the further east is the village cluster of Ho Chung New Village which is zoned "Village Type Development" ("V"). To the further west is dense woodland intermixed with active cultivation (**Plans R-3 and R-4c**).

Planning Intention

- 4.4 There is no change in planning intention of the "AGR" zone as mentioned in paragraph 8 of **Annex A**, which is 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.

Previous Applications

- 4.5 Part of the Site is the subject of two previous applications (No. A/SK-HC/13 and A/SK-HC/167) for house developments, which were submitted by different applicants (**Plan R-2**). Application No. A/SK-HC/13 for 12 3-storey village-type houses was rejected by the RNTPC in 1994.
- 4.6 Application No. A/SK-HC/167 for one house (NTEH – Small House) (where the private garden of the current review application serving for) was approved by the RNTPC in 2008 mainly on the consideration that land available within "V" zone of Ho Chung Village (including Nam Pin Wai) could not fully meet the future Small House demand at the time of consideration and the site and its surrounding area were not under active cultivation. The house has been completed, i.e. No. 450, Ho Chung New Village.
- 4.7 Details of the previous applications are at **Appendix II** of **Annex A** and their locations are shown on **Plans R-1** and **R-2**. The two previous applications for different uses are not relevant to the current application.

Similar Applications

- 4.8 There are two similar applications (No. A/SK-HC/300 and A/SK-HC/365) with the same application site which were both for temporary private swimming pool and garden use for a period of three years. The site of these two similar applications is

to the far northeast of the Site and slightly encroaches into the same “AGR” zone while the remaining part is within “V” zone. The two applications were approved by the RNTPC on 4.1.2019 and 15.8.2025 respectively mainly on the grounds that only a small portion of the proposed use (i.e. about 10m² or 8%) fell within the “AGR” zone; adverse traffic, environmental, landscape, drainage and water supply impacts were not anticipated; and all approval conditions were complied with.

- 4.9 Details of the similar applications are at **Annex K** and their location is shown on **Plan R-1**.

5. Comments from Relevant Government Bureau/Departments

- 5.1 Comments on the s.16 application made by relevant government bureau/departments (B/Ds) are stated in paragraph 9 and **Appendix IV** of **Annex A**. Their advisory comments, if any, are at **Appendix V** of **Annex A** and recapped at **Annex L**.
- 5.2 For the review application, relevant government B/Ds have been further consulted and maintain their previous views on the s.16 application. Major comments from the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) and the updated comments from the Director of Agriculture, Fisheries and Conservation (DAFC), the Executive Secretary (Antiquities and Monuments)², AMO, Development Bureau (ES(AM)², AMO, DEVB), the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD), the Director of Environmental Protection (DEP) and the Director of Fire Services (D of FS) are summarised and recapitulated in paragraphs 5.2.1 to 5.2.6 below. Their advisory comments are at **Annex L**.

Land Administration

5.2.1 Comments from DLO/SK, LandsD:

- (a) no objection to the application;
- (b) unauthorized structures and unlawful occupation of government land (GL) have been detected by her office. The lot owner/applicant shall either remove the unauthorised structures and cease the illegal occupation of the GL not covered by the current application immediately; or include the unauthorised structures and the adjoining GL being illegally occupied in the current application for the further consideration by the relevant departments;
- (c) subject to the approval of the Board to the current application which shall have reflected the rectification or amendment as foresaid required, the applicant shall apply to her office for a short term waiver (STW) and short term tenancy (STT) to permit the structure(s) erected and the occupation of the GL. The applications for STW and STT will be considered by the Government in its capacity as a landlord and there is no guarantee that they will be approved. The STW and STT,

if approved, will be subject to such terms and conditions including the payment of waiver fee/rent and administrative fee as considered appropriate to be imposed by LandsD. Besides, given the applied use is temporary in nature, only erection of temporary structure(s) will be considered. In addition, LandsD reserves the right to take enforcement action against the lot owner/applicant for any breach of the lease conditions, including the breach(es) already in existence or to be detected at any point of time in future and land control action for any unlawful occupation of GL; and

- (d) the greenhouse under s.16 application is not considered compatible with private garden use and will not be permissible in STT and STW, if eventually granted by the Board, for the purpose of private garden.

Agriculture

5.2.2 Comments of DAFC:

- (a) the Site is occupied by some structures which seem to be used for domestic purpose, i.e. non-farming purpose, the applied use is therefore not supported from agricultural perspective as the Site possesses potential for agricultural rehabilitation; and
- (b) the Site can be used for agricultural activities such as open-field cultivation, greenhouse, plant nurseries, etc. and agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. Nonetheless, he considers that the applied use is a non-farming development.

Archaeological and Heritage Preservation

5.2.3 Comments of ES(AM)2, AMO, DEVB:

- (a) the Site falls entirely within Ho Chung SAI. AMO's prior comment and agreement should be sought before implementation of any works including but not limited to excavation, digging, site formation, construction works etc. Regrettably, the applicant had failed to consult AMO and seek their agreement before the construction of the trellis and greenhouse on the GL within the Ho Chung SAI in 2015. These unauthorized works had already caused irreversible damage to the SAI. No remedial action could be done to reverse the damages already imposed to Ho Chung SAI where the Site is situated;
- (b) she reiterates that pursuant to the Antiquities and Monuments Ordinance (Cap.53), any person who discovers, or knows of the discovery of an antiquity or supposed antiquity shall forthwith report the discovery to the Antiquities and Monuments Authority or to a designated person. A person who discovers an antiquity or supposed antiquity shall take all reasonable measures to protect it. Besides,

works falling within SAI(s) should be submitted to AMO for consideration and agreement before commencement;

- (c) at present, the construction works had already been conducted in the Site. It is unknown whether or not there was discovery stipulated in the Antiquities and Monuments Ordinance during the course of works and the impact on the archaeological resources. In this connection, the applicant is requested to provide further supplementary information to address AMO's comment with clear photos, shop drawing(s) or any other equivalent materials illustrating the details (e.g. locations, sizes and construction materials) before, during and after the construction of the trellis and greenhouse for AMO's assessment on the impact of the works on Ho Chung SAI;
- (d) in addition, despite the applicant's advice that there will not be any digging at the Site in future and there is no development proposal in the area at the moment, it is obligatory for the applicant to seek AMO's comment if the scope of works will require excavation and site formation at the Site;
- (e) the applicant failed to provide the construction information such as photos, drawings, locations etc. to her satisfaction; and
- (f) her advisory comments are at **Annex L**.

Water Supply

5.2.4 Comments from CE/C, WSD:

- (a) he has reservation on the application even the applicant has proposed the use of new sand trap and septic tank and has submitted Risk Assessment. There is still insufficient information to demonstrate that there is no material increase in pollution effect within the WGG arising from the applied use;
- (b) the applicant employs greywater recycling system in the applied garden. However, details on the operation and management of the system have not been mentioned in the submission;
- (c) the applicant undertakes to conduct water quality examination half-yearly before and after the operation of greywater recycling system. In this regard, with a view to demonstrating the long-term commitment on no material increase in pollution effect within the WGG arising from the applied garden upon approval if so granted, the applicant should propose, review and elaborate a water quality monitoring programme with test parameters, sampling points, sampling frequency and sampling period for baseline water quality monitoring which is sufficient to account for seasonal variations through dry and wet seasons; and

- (d) his advisory comments are at **Annex L**.

Environment

5.2.5 Comments from DEP:

- (a) no objection to the application;
- (b) the applicant has revised the proposal in the review application and the applied use will only involve a paved area and a farming area. No fertilizer or chemicals such as pesticide, herbicides, toxicants, chemical solvents, etc. will be stored or used within the Site. Besides, any surplus water generated from the farming area will pass through a sand trap and be disposed to an existing septic tank, which is located outside the WGG;
- (c) in view of the nature and scale of the applied temporary use, no adverse environmental impact under his ambit from the applied use is anticipated; and
- (d) his advisory comments are at **Annex L**.

Fire Safety

5.2.6 Comments from D of FS:

- (a) no objection in principle to the application subject to the proposed private garden would not encroach on any existing emergency vehicular access (EVA) or planned EVA under application in accordance with LandsD's record;
- (b) detailed fire service installations (FSI) requirements will be formulated upon receipt of formal submission of general building plans; and
- (c) no objection not to impose approval condition(s) on FSI.

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 17.1.2025 and 14.3.2025, the review application was published for public inspection. During the statutory public inspection periods, one public comment was received from an individual objecting to the review application mainly on the consideration that there is no strong justification for the development encroaching into GL prior to obtaining approval (**Annex M**).
- 6.2 At the s.16 application stage, two public comments were received and are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC's decision on 6.12.2024 to reject the s.16 application for temporary private garden for a period of three years at the Site zoned "AGR" on the OZP (**Plan R-1**) with the reason stated in paragraph 1.2 above. To support the review application, the applicant has submitted written representation and FIs as set out in paragraph 3 above. In both s.16 planning application and s.17 review application, the applicant claims to remove the illegal structures currently found on-site including the greenhouse and trellis. As compared with the s.16 application, in this s.17 review, the applicant proposes the lawn of the private garden in front of the house will be partly used as a cultivation plot of organic vegetables for own consumption, and other parts within the Site will remain as paved area (**Drawing R-1**). Having considered the written representation and the FIs, the planning considerations and assessments on the review application are detailed below.

Planning Intention of the "AGR" Zone

- 7.2 The Site falls within an area zoned "AGR" where agricultural use is always permitted. The applied use of temporary private garden is not in line with the planning intention of the "AGR" zone, which is 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. The Site, comprising about 77% of GL, is now fenced off by concrete wall in three sides, without prior approval from LandsD, for a private garden with a greenhouse and a trellis erected, serving the adjoining NTEH. In the s.17 review application, the applicant proposes to remove the greenhouse and other unauthorized structures within the Site, and claims that the private garden with proposed cultivation plot is agricultural use in nature, which should be always permitted in the "AGR" zone. However, according to the applicant's latest proposal, the Site will still be fenced off for partly the proposed cultivation plot of organic vegetables for own consumption and partly a paved area in front of the NTEH, which is akin to private garden use for enjoyment by residents of the house. DAFC maintains his view of not supporting the application as he considers the Site (including greenhouse and trellis) seems to be used for domestic purpose, which are considered non-agricultural activities. The Site possesses potential for agricultural rehabilitation for open-field cultivation, greenhouse, plant nurseries, etc., agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. Active cultivation activities are observed to the immediate west of the Site (**Plan R-4c**). There is no strong planning justification given in the review submission for a departure from the planning intention of the "AGR" zone, even on a temporary basis.

Technical Aspects

- 7.3 The Site falls within Ho Chung SAI. However, the applicant did not consult AMO and seek their agreement before the construction of trellis and greenhouse currently found on site. The applicant claims that both trellis and greenhouse were erected on the cement surface and no digging was carried out for their erection, and hence the subsoil was not disturbed. The applicant also undertakes that no further

disturbance will be done to the Ho Chung SAI prior to consultation and approval of AMO. Notwithstanding that, ES(AM)2, AMO, DEVB still shows her concern on any construction works within SAI which had been carried out without prior consultation to AMO and maintains her adverse comments on the s.16 application as the applicant failed to provide supplementary information with clear photos, shop drawings, materials illustrating the construction details to address AMO's concern and assessment of the impact which have been done on the Ho Chung SAI.

- 7.4 As part of the Site will be used for the proposed cultivation plot, the applicant submitted Risk Assessment Report in response to WSD's concern on the WGG. From the report, the applicant proposes to use a sand trap and septic tank system and greywater recycling system to demonstrate no effluent or foul water will be discharged to adjoining land and provide a water quality monitoring programme for monitoring water quality in future. The applicant also claims that no chemicals including fertilizers and detergent would be used or stored at the Site. However, CE/C, WSD considers that there is still insufficient information in the Risk Assessment Report to prove and demonstrate that there is no material increase in pollution effect within the WGG arising from the applied use for growing organic vegetables and there is no operation and management details of the proposed greywater recycling system. As such, he has reservation on the application from water resources protection perspective. While DLO/SK, LandsD has no objection to the application, unauthorized structures and unlawful occupation of GL have been detected and the applicant shall apply for a STW and STT to permit the structure(s) erected and the occupation of the GL. He is also of the view that the current greenhouse mentioned is not considered compatible with private garden use and will not be permissible in STT and STW for the purpose of private garden. All other relevant government departments including DEP maintain their previous views of having no objection to/no adverse comment on the s.16 application and have no further major comments on the review application.

Previous and Similar Applications

- 7.5 The Site is the subject of two previous applications for house development, which are not relevant to the current review application as detailed in paragraphs 4.5 to 4.7 above. There are also two similar applications encroaching onto the same "AGR" zone for private swimming pool and garden use approved by the RNTPC in 2019 and 2025. The circumstances of the current review application are different from the similar applications as the majority of the application site of the two similar applications fell within "V" zone while the Site of the current application falls entirely within the "AGR" zone, and there are adverse comments on agricultural, archaeological and heritage preservation and water supply perspectives.

Public Comments

- 7.6 Regarding the opposing public comments as detailed in paragraph 6 above, the government departments' comments and the planning assessments in paragraphs 7.1 to 7.5 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 and having taken into account the public comments mentioned in paragraph 6 above, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the temporary private garden is not in line with the planning intention of “Agriculture” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. There is no strong justification given in the submission for a departure from such planning intention, even on a temporary basis; and
 - (b) the applicant fails to demonstrate that the proposed use located within the water gathering ground would not cause adverse impact on the water quality of the area.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of three years until 12.12.2028. The following conditions of approval and advisory clauses are suggested for Member's reference:

Approval Conditions

- (a) the submission of a revised risk assessment within 6 months from the date of the planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 12.6.2026;
- (b) in relation to (b) above, the implementation of the mitigation measures identified therein within 9 months from the date of the planning approval to satisfaction of the Director of Water Supplies or of the Town Planning Board by 12.9.2026;
- (c) if any of the above planning condition (a) or (b) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be on the same date be revoked without further notice; and
- (d) upon expiry of the planning permission, the reinstatement of the application site, including removal of hard paving and grassing of the application site to satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Annex L**.

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 applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

10. Attachments

Annex A	RNTPC Paper No. A/SK-HC/354B
Annex B	Extract of minutes of the RNTPC meeting held on 6.12.2024
Annex C	Secretary of the Board's letter dated 20.12.2024
Annex D	Applicant's letter received by the Board on 3.1.2025 applying for review
Annex E	FI received on 3.3.2025
Annex F	FI received on 30.6.2025
Annex G	FI received on 25.7.2025
Annex H	FI received on 24.9.2025
Annex I	FI received on 21.10.2025 and 24.10.2025
Annex J	FI received on 3.11.2025
Annex K	Similar applications
Annex L	Recommended advisory clauses
Annex M	Public comment
Drawing R-1	Layout Plan
Drawing R-2	Proposed Sand Trap and Septic Tank Plan
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to 4c	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2025**