

TOWN PLANNING BOARD

TPB Paper No. 11067

For Consideration by
the Town Planning Board on 3.7.2026

REVIEW OF APPLICATION NO. A/NE-TKP/2
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed Temporary Private Garden for a Period of Three Years
in “Village Type Development” Zone

Government Land in D.D. 255, Pak Tam Au, Sai Kung North

REVIEW OF APPLICATION NO. A/NE-TKP/2
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Temporary Private Garden for a Period of Three Years
in “Village Type Development” (“V”) Zone**

Government Land (GL) in D.D. 255, Pak Tam Au, Sai Kung North

1. Background

- 1.1 On 14.1.2026, the applicant, Mr. James Herbert STEWART, sought planning permission for a temporary private garden for a period of three years at the application site (the Site) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “V” on the approved To Kwa Peng and Pak Tam Au Outline Zoning Plan (OZP) No. S/NE-TKP/2 (**Plan R-1**).
- 1.2 On 13.3.2026, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the proposed use was not in line with the planning intention of the “V” zone, which was to provide land primarily intended for development of Small Houses by indigenous villagers. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the proposed use at the Site was excessive in size and scale, and was out of proportion to the adjoining house. There was no strong justification in the submission for utilising a large piece of land in the “V” zone for the proposed use.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-TKP/2 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 13.3.2026 (Annex B)
 - (c) Secretary of the Board’s letter dated 27.3.2026 (Annex C)

2. Application for Review

On 14.4.2026, 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**).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the written representation at **Annex D**, as summarised below:

- (a) the decision appears to rely solely on the Planning Department (PlanD)'s position of not supporting the application 'having taken into account the public comments', while giving insignificant regard to the input from relevant government departments. This constitutes a failure to carefully consider material planning evidence, including authoritative departmental views;
- (b) the Site is not suitable for New Territories Exempted House (NTEH)/Small House development due to the strictly enforced septic and sewerage constraints. The suitability of the Site for Small House development should not solely be assessed by referencing to its shape without consideration to infrastructure constraints, environmental limitations, access and topography;
- (c) planning applications for NTEH/Small House development in Pak Tam Au are extremely limited and not recent, with only identified cases in 2011 and 2012. In the absence of any recent NTEH applications in the area, PlanD's argument that the current application is not in line with the planning intention of the "V" zone, which is to provide land primarily intended for development of Small Houses by indigenous villagers, is misplaced and irrelevant;
- (d) the Board's recent decisions demonstrate that private garden use is accepted in principle on a temporary basis, such as approved applications No. A/SK-HC/348, A/SK-TLS/63 and A/NE-TK/849ⁱ;
- (e) the issues raised in the public comments from the owner of the contiguous property during the section 16 application stage (i.e. drainage concerns, nuisance during the renovation process, construction activities in late 2024, and alleged impacts on the adjacent property) are not material considerations in assessing the proposed use; and

ⁱ Applications No. A/SK-HC/348, A/SK-TLS/63 and A/NE-TK/849 for temporary private garden were approved with conditions by the RNTPC on temporary basis for a period of three years between 2024 and 2026. These application sites are all the subject of previously approved applications for the same use. Application No. A/SK-HC/348, with a site area of about 119.73m² falling within "V" zone and 'Road' area, was the subject of five previous applications which were approved between 2006 and 2020, mainly on the considerations that the application site was paved, largely designated as 'Road' (about 83.81m² or 70%) and reserved for road access serving local residents, while there was no implementation programme for the proposed road access at the time of consideration. Application No. A/SK-TLS/63, with a site area of about 180m² falling within "V" zone and 'Road' area, was the subject of three previous applications which were approved between 2015 and 2021, mainly on the considerations that major portion of the application site (about 155m² or 86%) had been covered by short term tenancy (STT) for private garden first granted in 1985, before the gazettal of the relevant first statutory plan in 1990, and could be considered as an existing use under the Ordinance; only part of the application site (about 25m² or 14%) falling within an area designated as 'Road' required planning permission, and there was no implementation programme for the proposed road at the time of consideration. Application No. A/NE-TK/849, with a site area of about 98m² (being smaller than the site area of the current application (-79m² or -45%)) falling within "V" and "Agriculture" ("AGR") zones, was the subject of five previous applications which were approved between 2010 and 2022, mainly on the considerations of not jeopardising the long-term planning intention of the "AGR" zone and not being incompatible with the surrounding areas.

- (f) the section 16 application paper states that the Site is excessive in size and scale, and is out of proportion to the adjoining house. This statement is not consistent with numerous examples of GL being used for private gardens in the area and across Hong Kong. The current scale of the Site is modest and proportionate, providing protection from wild and feral animals and privacy from intrusions by the public, particularly when compared with the former STT No. 751 (380m²)ⁱⁱ and by reference to other comparable STTs in the Sai Kung and Tai Po districts.

4. The Section 16 Application

The Site and its Surrounding Areas (Plans R-1 to R-4b)

- 4.1 The situation of the Site and the surrounding areas at the time of consideration of the section 16 application by the RNTPC are set out in paragraph 6 of **Annex A**. There has been no material change in the situation of the Site and the surrounding areas since then.
- 4.2 The Site is:
- (a) currently vacant, partly covered with grass and partly hard-paved; and
 - (b) accessible via a local track leading to Pak Tam Road.
- 4.3 The surrounding areas are predominantly rural in character comprising village houses, densely vegetated slopes, fallow agricultural land and unused land. To its southeast is a stream course and a small cluster of village houses at Pak Tam Au. To its west and further northeast are Sai Kung West Country Park and Sai Kung East Country Park respectively. To its north and south are densely vegetated slopes, fallow agricultural land and unused land.

Planning Intention

- 4.4 There has been no change in the planning intention of the “V” zone as mentioned in paragraph 7 of **Annex A**, which is to designate both existing recognised villages and areas of land considered suitable for village expansion. 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.

Previous Application

- 4.5 The Site is the subject of a previous application No. A/NE-TKP/1 for the same use submitted by the same applicant as the current application (**Plans R-1 and R-2**), which was rejected by the RNTPC on 10.1.2025 for the reasons of not being in line with the planning intention of the “V” zone and having no strong justification in the submission for a departure from the planning intention; and being excessive in size and scale and out of proportion to the adjoining house

ⁱⁱ According to the applicant, STT No. 751 with a tenancy area of 380m² for private garden use was granted in 1990 and voluntarily terminated in 2014 by the previous owner of the adjoining House No. 16.

and having no strong justification for utilising a large piece of land in the “V” zone for private garden use. Compared with the previous application, the current application involves a smaller site area (i.e. reduced from about 326m² to 177m² / about -45.7%) and a smaller total floor area (i.e. reduced from about 79m² to 15m² / about -81%), without the previously proposed shading canopies (about 67m²), two private car parking spaces, and land filling.

- 4.6 Details of the previous application are summarised at Appendix II of **Annex A** and its location is shown on **Plans R-1** and **R-2**.

Similar Application

- 4.7 There is no similar application for the same use within the same “V” zone in the vicinity of the Site in the past five years.

5. Comments from Relevant Government Departments

- 5.1 Comments on the section 16 application made by relevant government departments are set out in paragraph 8 and Appendix III of **Annex A**. Their advisory comments, if any, are at Appendix IV of **Annex A** and recapped at **Annex E**.
- 5.2 For the review application, relevant government departments have been further consulted and they maintain their previous comments on the application. Updated comments from the District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) and the Chief Engineer/Construction of Water Supplies Department (CE/C, WSD) on the review application are summarised below.

Land Administration

5.2.1 Comments of DLO/TP, LandsD:

- (a) no objection to the application;
- (b) the Site is on unleased and unallocated GL in D.D. 255;
- (c) the unauthorised structures which include a wall with concrete structures encompassing liquefied petroleum gas cylinder and the fence wall projecting from the house, as well as the unauthorised structures on adjoining NTEH erected on private lot, i.e. Lot 369 in D.D. 255, were demolished and a no further action letter was issued to the applicant/lot owner. As any occupation of GL without government’s prior approval is an offence under Cap. 28, his office reserves the rights to take necessary land control action against the illegal occupation of GL if detected;
- (d) there is no Small House application on the Site received so far;
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto; and

- (f) his advisory comments are at **Annex E**.

Water Supply

5.2.2 Comments of CE/C, WSD:

- (a) no objection to the application subject to the implementation of preventive, control and mitigation measures on pollution or contamination to the upper indirect water gathering ground (WGG) as identified in the accepted risk assessment report. Additional mitigation measures may be required when the actual situation renders the initial submission or undertaking invariable;
- (b) regarding the suitability of the Site for Small House development due to the septic and sewerage constraints in relation to the “V” zone of Pak Tam Au area falling entirely within the upper indirect WGG, WSD would review each application on a case-by-case basis; and
- (c) his advisory comments are at **Annex E**.

6. Public Comments Received During Statutory Publication Period

- 6.1 On 24.4.2026, the review application was published for public inspection. During the statutory public inspection period, nine public comments from individuals were received (**Annex F**). Among them, five comments support the application mainly on the grounds that the proposed use and its scale are compatible with the surrounding environment and village setting; the application reflects the historical use of the land; it enhances safety by preventing feral cattle from encroaching too close; it provides greater privacy for the residents; and it supports better management and an improved environment for the local community.
- 6.2 The remaining four comments object to the application mainly on the considerations that the proposed use may adversely affect the village environment and natural habitat and may cause drainage problem; historical usage does not confer a right to perpetual occupation; a private garden acting as a buffer against wildlife attacks is technically flawed and environmentally damaging; the concerned GL has not been properly reinstated following the previous rejection, and that the genuine intention of the proposed use may be for car parking rather than for garden use; and the function of undeveloped GL, which can serve as air ventilation and visual relief, has been disregarded.
- 6.3 At the section 16 application stage, five comments were received and set out in paragraph 9 of **Annex A**.

7. Planning Considerations and Assessments

7.1 The application is for a review of the RNTPC's decision on 13.3.2026 to reject the section 16 application for temporary private garden for a period of three years at the Site zoned "V" on the OZP (**Plan R-1**) with the reasons stated in paragraph 1.2 above. To support the review application, the applicant has submitted written representation as set out in paragraph 3 above. Since the consideration of the section 16 application by the RNTPC, there has been no material change in planning circumstances. Having considered the written representation, the planning assessments on the review application are detailed below.

Planning Intention of the "V" Zone

7.2 The Site falls within an area zoned "V" on the OZP where NTEH/Small House development is always permitted (**Plan R-1**). Although DLO/TP, LandsD has no objection to the application and advises that there is no Small House application on the Site received so far, the proposed use is not in line with the planning intention of the "V" zone, which is primarily for development of Small Houses by indigenous villagers and to provide land considered suitable for village expansion.

Suitability of the Site for Small House Development

7.3 The applicant argues that the suitability of the Site for Small House development should not be only assessed based on its shape, and the Site is not suitable for Small House development due to the strictly enforced septic and sewerage constraints. Noting that the "V" zone of Pak Tam Au area falls entirely within the upper indirect WGG, CE/C, WSD advises that each application for Small House development in the area will be reviewed on a case-by-case basis. In view of the above, the suitability of the Site for Small House development cannot be ruled out.

7.4 In response to the applicant's claim that the number of planning applications for NTEH/Small House development in Pak Tam Au is extremely limited, with only identified cases in 2011 and 2012, the first statutory plan for the area, namely the draft To Kwa Peng and Pak Tam Au Development Permission Area (DPA) Plan No. DPA/NE-TKP/1, was gazetted in 2011, and areas within the DPA plan (including the Site) were designated as "Unspecified Use", such that any use or development, except specified otherwise, required planning permission from the Board. Following the gazettal of the draft To Kwa Peng and Pak Tam Au OZP No. S/NE-TKP/1 in 2014, the extent of the "V" zone was drawn up having regard to the boundary of village 'environs' of Pak Tam Au. According to the Notes of the OZP, NTEH development is always permitted within the "V" zone. DLO/TP, LandsD also advises that there are five outstanding Small House applications in Pak Tam Au currently under processing.

Size and Scale of Proposed Use

7.5 The proposed use comprises two prefabricated storage sheds with a height of not more than 2m and a total floor area of about 15m² (**Drawing A-1** of **Annex**

A), and the Site will be enclosed by a fence/wall. The applicant advises that the Site is proposed for a temporary private garden serving privacy and safety purposes for the adjoining House No. 16 at Pak Tam Au. The layout, design, and scale of the proposed use remain unchanged in the review application. The applicant also claims that in both section 16 and review applications, the scale of the proposed use is modest and proportionate in relation to the former STT No. 751 (380m²) and by reference to comparable STTs in the Sai Kung and Tai Po districts, and the current application involves a smaller site area and a smaller total floor area as compared to the previously rejected application No. A/NE-TKP/1 as mentioned in paragraph 4.5 above. The proposed use at the Site, adjoining House No. 16 and being currently vacant, partly covered with grass and partly hard-paved (**Plans R-4a** and **R-4b**), is not incompatible with the surrounding areas which are predominantly rural in character with a small cluster of village houses to its southeast (**Plan R-2**). Nevertheless, the occupation of GL of about 177m² (approximately 2.7 times larger than the footprint of a standard Small House of about 65.03m²) (**Plan R-2**) for private enjoyment is considered excessive in size and scale, and is disproportionate to the adjoining house. There remains no strong justification in the submission for utilising a large piece of GL in the “V” zone for exclusive private use.

- 7.6 Regarding the former and other approved STTs at the Site and in other districts respectively, the former STT No. 751 for private garden use at the Site was granted by DLO/TP, LandsD in 1990, prior to the gazettal of the first statutory To Kwa Peng and Pak Tam Au DPA plan in 2011, but terminated in 2014. It should be noted that the granting of STTs is under the land administrative regime, which does not constitute relevant planning consideration for the current application.

Similar Applications

- 7.7 There is no similar application for the same use within the same “V” zone in the vicinity of the Site in the past five years. Though the applicant claims that there are three approved similar applications (No. A/SK-HC/348, A/SK-TLS/63 and A/NE-TK/849) for temporary private garden use as mentioned in paragraph 3(d) above, all of these applications are the subject of previously approved applications for the same use and their planning circumstances differ from those of the current application, as mentioned in footnote i above. Given that the quoted applications fall within the areas under various OZPs and have different planning circumstances, the planning considerations of these applications are not applicable to the current application. Each planning application should be considered on a case-by-case basis, having regard to local context and relevant planning considerations.

Relevant Planning Considerations

- 7.8 The applicant claims that the RNTPC’s decision on the section 16 application was based solely on PlanD’s recommendation without significant regard to the input from relevant government departments, and that the public comments raised by the owner of the contiguous property during the section 16 application were not material considerations in assessing the proposed use. It should be noted that the background of the application, the applicant’s proposal and

justifications, technical comments from relevant government departments, public comments received, and relevant planning considerations and assessments including PlanD's recommendations were all incorporated in the section 16 application paper submitted to the RNTPC for thorough consideration prior to making a decision on the application.

Public Comments

7.9 Regarding the public comments on the review application as detailed in paragraph 6 above, the 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 above, having taken into account the public comments in paragraph 6 above, and given that there has been no material change in the planning circumstances since the consideration of the section 16 application by the RNTPC, PlanD maintains its previous view of not supporting the review application for the following reasons:

- (a) the proposed use is not in line with the planning intention of the "Village Type Development" zone, which is to provide land primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) the proposed use at the application site is excessive in size and scale, and is out of proportion to the adjoining house. There is no strong justification in the submission for utilising a large piece of land in the "Village Type Development" zone for the proposed use.

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 3.7.2029. The following approval conditions and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the implementation of preventive, control and mitigation measures on pollution or contamination to the upper indirect water gathering ground as identified in the accepted risk assessment report within 9 months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 3.4.2027;
- (b) the proposed use should not cause any water pollution to the upper indirect water gathering ground at any time during the planning approval period;

- (c) if the above planning condition (a) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (d) if the above planning condition (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

The Recommended Advisory Clauses are at **Annex E**.

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/NE-TKP/2
Annex B	Extract of Minutes of the RNTPC Meeting held on 13.3.2026
Annex C	Secretary of the Board's Letter dated 27.3.2026
Annex D	Letter from the Applicant dated 14.4.2026
Annex E	Recommended Advisory Clauses
Annex F	Public Comments
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a and R-4b	Site Photos