

**APPLICATION FOR EXTENSION OF TIME
FOR COMMENCEMENT OF APPROVED DEVELOPMENT
UNDER SECTION 16A OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/TM-LTYT/337-1

<u>Applicant</u>	: Take Harvest Limited represented by John Hui & Associates
<u>Site</u>	: Lots 464 S.A ss.1, 464 S.B, 465, 472 S.A RP and 472 S.B RP in D.D. 130, San Hing Road, Lam Tei, Tuen Mun, New Territories
<u>Site Area</u>	: About 3,832.4 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYT/10 (LTYT OZP)
<u>Zoning</u>	: “Residential (Group E)” (“R(E)”) <i>[Restricted to a maximum plot ratio of 1.0, a maximum site coverage of 40% and a maximum building height of 4 storeys over single-storey car park (15m)]</i>
<u>Application</u>	: Proposed Class B Amendment – Category 18 (under TPB PG-No. 36B)

Proposed Extension of Time for commencement of the approved flat development and minor relaxation of building height restriction for a period of 2 years until 23.6.2023 (i.e. additional 2 years from the original approval)

1. The Proposal

- 1.1 The applicant seeks planning permission for Class B amendments to the approved scheme under application No. A/TM-LTYT/337 for the extension of time (EOT) for commencement of the approved development for an additional period of 2 years until 23.6.2023.
- 1.2 The application (No. A/TM-LTYT/337) for proposed flat development and minor relaxation of building height restriction at the application site (the Site) (**Plan AA-1**) was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 23.6.2017. The planning permission shall be valid until 23.6.2021 unless before the said date either the development permitted is commenced or the permission is renewed. The approval letter of application No. A/TM-LTYT/337 issued by the Secretary of the Board dated 14.7.2017 is at **Appendix II**.

- 1.3 In support of the current application, the applicant has submitted an Application Form with attachments, which was received on 16.3.2021 (**Appendix I**).
- 1.4 The approved development parameters and the master layout plan under application No. A/TM-LTTY/337 are at **Appendix III** and **Drawing AA-1**.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendix I**. They can be summarised as follows:

- (a) the commencement of the development was delayed because the land exchange process has been put on hold pending the result of the “Agreement No. CE 68/2017 (CE) – Site Formation and Infrastructural Works for the Development at San Hing Road and Hong Po Road, Tuen Mun – Feasibility Study” (the Study) for a comprehensive public housing development, which is beyond the control of the applicant;
- (b) the land exchange process has been inevitably affected by the special “work-from-home” arrangement of government departments due to the COVID-19 outbreak;
- (c) proactive actions to implement the proposal have been demonstrated by applying land exchange and constantly urging relevant authorities to process the land exchange application (LEA);
- (d) advices from building services consultants had been sought for preparation of building plans submission to the Building Authority;
- (e) the applicant attempted to proceed with the development by securing development fund and employing development consultants. The applicant had also explored the possibilities to acquire the adjacent lots to extend the development for ancillary and amenity purposes; and
- (f) there is no change in the land use zoning for the subject area since the permission was granted. No adverse planning implication is anticipated.

3. Town Planning Board Guidelines

- 3.1 The Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B) is applicable to this application. The applied EOT for commencement of the development is a Class B amendment under Category 18. According to the Guidelines, the Board has delegated its authority to the Director of Planning to consider applications for Class B amendments. However, application for Class B amendments which is unacceptable by the concerned government departments will need to be submitted to the Board for consideration. In this regard, the Director of Housing (D of Housing) does not support the application as stated in paragraph 8.1.3 below. As such, the application is submitted to the Committee of the Board for consideration.
- 3.2 TPB PG-No. 35C is also applicable to this application. Any EOT for commencement of development shall not result in an aggregated extension period longer than the original duration for commencement of the approved development proposal. The

criteria for assessing applications for EOT for commencement of development are as follows:

- (a) whether there has been any material change in planning circumstances since the original permission was granted (such as a change in planning policy/land-use zoning for the area);
- (b) whether there are any adverse planning implications arising from the extension of time;
- (c) whether the commencement of development is delayed due to some technical/practical problems which are beyond the control of the applicant, e.g. delays in land administration procedures, technical issues in respect of vehicular access and drainage works or difficulties in land assembly;
- (d) whether the applicant has demonstrated that reasonable action(s), e.g. submission of building plans for approval or application for Small House/land exchange, have been taken for the implementation of the approved development;
- (e) whether the applicant has demonstrated that reasonable action(s), e.g. submission and implementation of proposals, have been taken to the satisfaction of relevant Government departments in complying with any approval conditions;
- (f) whether the applicant has demonstrated that there is a good prospect to commence the proposed development within the extended time limit;
- (g) whether the extension period applied for is reasonable; and
- (h) any other relevant considerations.

4. Background

- 4.1 Application No. A/TM-LTTY/337 for proposed flat development and minor relaxation of building height restriction at the Site was approved with conditions by the Committee of the Board on 23.6.2017 on the considerations that the proposed development is in line with the planning intention of the “R(E)” zone; the proposed minor relaxation of building height is justifiable; and concerned government departments have no objection to or no adverse comment on the changes to the approved scheme ¹. At the time of processing the planning application No. A/TM-LTTY/337 in 2017, the Committee of the Board was made known that the Site fell within the planned public housing development at San Hing Road but the Study has not commenced yet. (**Plan AA-1**).
- 4.2 Since the approval given in 2017, the proposed comprehensive public housing development under planning has made substantial progress. The Civil Engineering and Development Department (CEDD) commenced the Study in February 2018 and it has been substantially completed in Q1 2021. The EIA report of the Study was approved with conditions by the Director of Environmental Protection (DEP) on

¹ The Site was involved in a previous application (No. A/TM-LTTY/282) for proposed flat development, which was approved by the Committee on 13.3.2015.

30.12.2020². The Site falls within the eastern portion of the proposed public housing development, as shown on the overlay of the site layout plan under the approved EIA report (**Plan AA-1a**).

- 4.3 In accordance with the established practice, the zoning amendment to facilitate the implementation of the proposed public housing development will be submitted to the Board for consideration upon completion of the Study. The Government will take further steps to proceed with public housing development through any necessary land resumption under the Land Resumption Ordinance (LRO).
- 4.4 In relation to actions taken by the applicant to take forward the approved development, the applicant has submitted an LEA to Lands Department (LandsD) on 27.7.2017 (Appendix 2.1 of **Appendix I**) which has been put on hold pending the result of the Study as stated in various responses from LandsD and Development Bureau (DEVB) between 2018 and 2020 (Appendices 2.8, 2.10 and 2.13 of **Appendix I**). On the other hand, the applicant has not submitted any building plans for approval or made any submission in complying with any approval conditions attached to the planning permission since the original approval granted in June 2017 (**Appendix II**).

5. Similar Application

- 5.1 There is a similar application (No. A/TM-LTYT/273-1) (**Plan AA-1**) within the same “R(E)” zone for proposed EOT for commencement of the approved residential development (flat) for a period of 4 years. It also falls within the planned comprehensive public housing development at San Hing Road. The application was rejected by the Committee on 15.6.2018 and the Board upon review on 28.9.2018 on the consideration that the application is not in line TPB PG-No. 35C in that there has been a material change in planning circumstances in respect of a clear intention and plan for a comprehensive public housing development which covers the application site.
- 5.2 The applicant lodged an appeal to the Appeal Board Panel (Town Planning) (TPAB) (Appeal No. 8 of 2018) and TPAB allowed the appeal on 15.3.2021 and granted EOT for commencement for a period of 4 years for the proposed residential development (flat). TPAB allowed the appeal based on the following reasons:
 - (a) there is no material change of planning circumstances that pertained to the appeal site and the proposed comprehensive public housing development was always a planned project since the approval of the original application in 2014;
 - (b) there is uncertainty for the Government to rezone the appeal site for public housing development;
 - (c) the Government could still implement the public housing development by either increasing the plot ratios in the surroundings outside the appeal site or by resuming the appeal site even the EOT for commencement was allowed;

² As the overall study area is larger than 20 ha, the Study is considered a Schedule 3 designated project under the Environmental Impact Assessment Ordinance (EIAO). Thus an EIA report is required to demonstrate the environmental acceptability of the development project.

- (d) the appellant has worked hard to fulfil the approval conditions attached to the planning permission ³;
- (e) there is no adverse planning implications arising from the EOT;
- (f) the commencement of development has been delayed due to problems which are beyond the control of the appellant;
- (g) the appellant has demonstrated that reasonable actions have been taken for the implementation of the approved development ⁴; and
- (h) the applicant has demonstrated that there is a good prospect to commence the proposed development within the extended time limit.

5.3 Details of the application are summarised in **Appendix IV** and the location is shown on **Plan AA-1**.

6. The Site and Its Surrounding Areas (Plans AA-1 to AA-4b)

6.1 The Site is:

- (a) currently vacant and fenced-off (**Plans AA-2 and AA-4b**); and
- (b) accessible from San Hing Road via an existing public car park at the junction of San Hing Road and Ng Lau Road (**Plans AA-2 and AA-3**).

6.2 The surrounding areas have the following characteristics (**Plans AA-2 and AA-3**):

- (a) to the northeast and east are car park, vehicle repair workshop, and residential dwellings;
- (b) to the southeast and south are warehouses/storages, some graves and vacant land. To the further south, there is an ice manufacturing plant;
- (c) to the southwest, west and northwest are parking of vehicles, warehouses/storages, vacant temporary structures, temporary structures for dwelling purposes and orchard/cultivated agricultural land; and
- (d) to the north is San Hing Road, across which are San Hing Tsuen Children Playground, storage/open storage yards and factory uses.

7. Planning Intention

The planning intention of the “R(E)” zone is intended primarily for phasing out of existing industrial uses through redevelopment for residential use on application to the Board. Whilst existing industrial uses will be tolerated, new industrial developments are not permitted in order to avoid perpetuation of industrial/residential interface problem.

³ The appellant has complied with all approval conditions attached to the planning permission except those involving implementation.

⁴ The appellant has submitted building plans for the approved development for several times.

8. Comments from Relevant Government Departments

- 8.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

- 8.1.1 Comments of the District Lands Officer/Tuen Mun, LandsD (DLO/TM, LandsD):

Irrespective of whether or not planning permissions are given, there is no guarantee that any LEAs will be approved and he reserves his comment on such. Pursuant to the planning permission granted to the planning application No. A/TM-LTYT/337, the applicant had submitted a LEA for a proposed residential development in 2017. The LEA will be considered by LandsD acting in the capacity as the landlord at its sole discretion. However, the application has been put on hold pending the result of the feasibility study of the proposed public housing development at San Hing Road and Hong Po Road. Notwithstanding whether the EOT is given or not, his office would not process the LEA for the time being.

Long-term Development

- 8.1.2 Comments of the Chief Engineer/Housing Project 2, CEDD (CE/HP2, CEDD):

The Site encroaches onto the public housing development at San Hing Road (SHR) Site, which is currently under the Study undertaken by his department. The Study has been substantially completed. If the Board decides to grant the planning permission, it is suggested to include an advisory clause to inform the applicant that the Site might be subject to land resumption for the implementation of the San Hing Road and Hong Po Road Public Housing Development which might take place at any time within the validity period of the planning permission.

- 8.1.3 Comments of the D of Housing:

CEDD is now conducting the Study. In this connection, the application is not supported.

- 8.2 The following government departments have no comment on or no objection to the EOT application:

- (a) DEP;
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Commission for Transport (C for T);
- (d) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (e) Chief Engineer/Railway Development 2-2, Railway Development Office, HyD (CE/RD2-2, RDO, HyD);
- (f) Director of Agriculture, Fisheries and Conservation (DAFC);

- (g) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (h) Director of Fire Services (D of FS);
- (i) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (j) Project Manager (West), CEDD (PM(W), CEDD);
- (k) Director of Leisure and Cultural Services (DLCS);
- (l) Director of Electrical and Mechanical Services (DEMS);
- (m) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO);
- (n) Commissioner of Police (C of P); and
- (o) District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD).

9. Planning Considerations and Assessments

- 9.1 The application is for EOT for commencement of the approved development under application No. A/TM-LTYYY/337 for an additional period of 2 years until 23.6.2023. Since the EOT application is considered unacceptable by D of Housing, it is submitted to the Committee for consideration. The assessment criteria in TPB PG-No. 35C as summarised in paragraph 3.2 above are relevant and the main considerations include any material change in planning circumstances, any adverse planning implications arising from EOT, the reason for delay in commencement of development, any reasonable action to comply with approval conditions, any good prospect to commence the development within the extended time limit and reasonableness of the extension period applied.
- 9.2 Since the original approval given on 23.6.2017, the only action taken by the applicant for implementing the approved development is the submission of LEA (Appendix 2.1 of **Appendix I**). Aside from various letters between the applicant and the Government between 2018 and 2020 as shown in **Appendix I**, the applicant has not made any effort on submitting building plans nor complying with any approval conditions attached to the planning permission (**Appendix II**). Though the LEA has been put on hold pending the result of the Study which is beyond the control of the applicant, it does not stop the applicant from submitting building plans and complying with approval conditions which are governed by different regimes as such submissions/approvals are also essential for taking forward the approved development. In view of this, the applicant fails to demonstrate that reasonable actions have been taken for the implementation of the approved development.
- 9.3 While the proposed extension period of 2 years will not result in an aggregate extension period longer than the original duration (i.e. 4 years) for commencement of the approved development proposal, the applicant did not provide any solid information on the way forward for implementing the approved development within the proposed extension period. Hence, the applicant fails to demonstrate that there is a good prospect to commence the proposed development ⁵ within the applied extension period.
- 9.4 Since the approval of the original application (No. A/TM-LTYYY/337) was given, significant progress has been made on the proposed public housing development that

⁵ According to TPB PG-No. 35C, the approval of building plans or the date of execution of land grant/lease modifications would constitute a commencement of development.

covers the Site (**Plan AA-1**). The Study has been commenced in February 2018 and substantially completed in Q1 2021 with its EIA approval obtained on 30.12.2020. The Government has demonstrated its strong commitment on implementing the proposed public housing development since the original approval was given in 2017. In relation to this, D of Housing does not support the current application. DLO/TM, LandsD advised that notwithstanding whether the EOT is given or not, they would not process the LEA for the time being. Other concerned departments have no objection to or adverse comments on the application.

- 9.5 Having considered the above, the EOT application is not in line with the assessment criteria set out in TPB PG-No. 35C in that the applicant fails to demonstrate that genuine effort has been made in taking reasonable actions for the implementation of the approved development, and that there is a good prospect to commence the proposed development within the extended time limit.
- 9.6 While it is noted that the TPAB allowed the appeal for the similar EOT application (No. A/TM-LTYT/273-1) on 15.3.2021 and found that, amongst others, there is no material change of planning circumstances pertained to the appeal site which also falls within the proposed public housing development, as mentioned in the background information in paragraphs 4 and 5 above, the applicant of that approved application has taken reasonable actions for implementation of the approved scheme (e.g. submission of building plans) and in complying with the approval conditions, which is not demonstrated in the current EOT application.

10. Planning Department's Views

- 10.1 Based on the assessments made in paragraph 9 above, the Planning Department does not support the application for EOT for commencement of the approved development for the following reason:

the application is not in line with TPB PG-No. 35C in that the applicant fails to demonstrate that genuine effort has been made in taking reasonable actions for the implementation of the approved development, and that there is a good prospect to commence the proposed development within the applied extension period.

- 10.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **23.6.2023**, 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 design and reprovision of the existing public car park (at the junction of San Hing Road and Ng Lau Road) at the applicant's own cost, as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Board;
- (b) the design and implementation of vehicular access connecting from San Hing Road to the site at the applicant's own cost, as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Board;

- (c) the provision of vehicular access, parking, loading and unloading facilities, and the details of the location of gate houses and drop bars, if any, to the satisfaction of the Commissioner for Transport or of the Board;
- (d) the submission of a revised noise impact assessment and implementation of noise mitigation measures identified therein to the satisfaction of Director of Environmental Protection or of the Board;
- (e) the submission of a revised drainage impact assessment and implementation of the mitigation measures identified therein to the satisfaction of the Director of Drainage Services or of the Board; and
- (f) the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

[Relevant advisory clause has been updated in light of DLO/TM's comments on the EOT application.]

11. Decision Sought

- 11.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 11.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 11.3 Alternatively, Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

12. Attachments

Appendix I	Application Form with Attachments Received on 16.3.2021
Appendix II	Approval Letter Issued by the Secretary of the Board Dated 14.7.2017
Appendix III	Approved Development Parameters under Application No. A/TM-LTYT/337
Appendix IV	Similar Application
Appendix V	Advisory Clauses
Drawing AA-1	Approved Master Layout Plan under Application No. A/TM-LTYT/337
Plan AA-1	Location Plan
Plan AA-1a	Location of the Site on the Site Layout Plan of the Approved EIA Report
Plan AA-2	Site Plan

Plan AA-3	Aerial Photo
Plans AA-4a and	Site Photos
AA-4b	

PLANNING DEPARTMENT
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