

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-ST/633

<u>Applicant</u>	: Manbro Investments Limited represented by Lanbase Surveyors Limited
<u>Site</u>	: Wing Ping Tsuen, San Tin, Yuen Long
<u>Site Area</u>	: About 1,923 m ²
<u>Land Status</u>	: Government Land (GL)
<u>Plan</u>	: Approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8
<u>Zoning</u>	: “Village Type Development” (“V”) [maximum building height (BH) of 3 storeys (8.23m)]
<u>Application</u>	: Proposed Houses

1. The Proposal

- 1.1 The applicant seeks planning permission for the development of four houses at the application site (the site) near Wing Ping Tsuen, San Tin. According to the Notes of the OZP for “V” zone, ‘House (New Territories Exempted House (NTEH) only’ is a Column 1 use always permitted whilst ‘House (not elsewhere specified)’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The proposed houses are not NTEHs. The Site is currently fenced off, vacant and hard paved with some vegetation.
- 1.2 The Site (in whole or in part) is the subject of six previous applications (**Plan A-1**) as detailed in paragraph 6. The last application (No. A/YL-ST/495) submitted by the current applicant for two proposed houses at a plot ratio (PR) of 0.4 was rejected by the Rural and New Town Planning Committee (the Committee) on 14.10.2016.
- 1.3 As shown in **Drawing A-1**, the Site is accessible via a local track leading to Castle Peak Road – San Tin from the northeast. According to the applicant, the ingress/egress point is located in the northeastern part of the Site with a minimum clear width of 6m. The proposed development comprises four 2-storey detached houses with a total gross floor area (GFA) of 769.2m² and a site coverage of 20%. Each house has a BH of not more than 7.62m (25 feet) with a footprint of 96.15m² and a GFA of 192.3m². The site section and floor

plans are at **Drawings A-2 to A-5**. A comparison of the layout and major development parameters of the current application and the previous application (No. A/YL-ST/495) are in **Drawing A-6** and the following table:

Major Development Parameters	Application No. A/YL-ST/495	Application No. A/YL-ST/633
Site area (m ²)	1,923	1,923
GFA (m ²)	769.14	769.2
Domestic PR	0.4	0.4
Site coverage	20%	20%
BH (m/ number of storeys)	7.615m / 2 storeys	7.62 / 2 storeys
Number of blocks	2	4
Number of units	2	4
Parking Space for private cars	4	9 (including 1 visitor parking space)
Loading/ Unloading Space	0	1 for light goods vehicle

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form received on 28.10.2022 (Appendix I)
- (b) Planning Statement (Appendix Ia)
- (c) Further Information (FI) received on 8.12.2022 # (Appendix Ib)
providing response to departmental comments with a site access plan
- (d) FI received on 19.12.2022 providing clarification of the proposed development, response to public comment and an updated site layout plan # (Appendix Ic)

exempted from publication requirement

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Planning Statement and FI at **Appendices Ia to Ic**. They can be summarised as follows:

- (a) The Site was a building lot for private residential purpose and was subsequently re-entered by Government in 2016. The applicant, who was the former owner of the Site, applied for a relief against re-entry of the former Lot. A Consent Order was made by the court which requires the applicant to submit planning application before 31.10.2022 and obtain planning permission within 12 months from the Consent Order in order for a re-grant of the land for the proposed 'House' use under the current application. The re-grant will be subject to the same development conditions as the former Lot under the previous land grant (i.e. New Grant No. 2474) which are subject to, inter alias, the development restrictions of a BH not more than 2 storeys (25 feet), a roofed-over area of not more than

20% of the Site or a PR of 0.4, a building setback of 10 feet from the lot boundary and provision of a minimum of 2 parking spaces (details of New Grant No. 2474 are provided at Appendix 5 of **Appendix Ia**).

- (b) According to Special Conditions (SCs) of New Grant No. 2474, no 'NTEH' is permitted to be erected on the lot and development thereon must comply with the Buildings Ordinance (BO). The New Grant also contains a BC which forbids the erection of NTEH. In order to comply with the land grant conditions, it is necessary to seek planning permission for the proposed house development from the Board.
- (c) Although there are some other uses like local shops and public vehicle parks in the vicinity, the Site falls within the village environs of San Tin Heung, which is dominated by village houses. Therefore, the proposed house development is considered compatible with the surrounding environment in terms of land uses and building bulk. It is also in line with Government policy to increase housing supply and to utilise the scarce land resources.
- (d) The proposed development will not cause adverse traffic, drainage and sewerage impacts to the surrounding areas.

3. Compliance with the "Owner's Consent/Notification" Requirements

The Site was re-entered by Government on 14.9.2016 and is hitherto GL upon the re-entry. The "owner's consent/notification" requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for 'Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance' (TPB PG-No. 12C) is relevant to the application. Relevant extracts of the Guidelines are at **Appendix II**.

5. Background

- 5.1 The Site was formerly known as Lot 3405 in D.D. 102 ("the Ex-Lot") which was granted to the applicant under New Grant No. 2474 on 16.3.1977 for private residential purpose. The San Tin area was not covered by statutory plan and the Site was not zoned "V" in the 1970s at the time of the land grant. The Site was zoned "V" which was intended for Small House developments under the San Tin Interim Development Permission Area Plan No. IDPA/YL-ST/1 gazetted on 17.8.1990. Since then, the planning circumstance for the Site has remained unchanged and it is zoned "V" under the current approved San Tin OZP No. S/YL-ST/8.

- 5.2 On 17.8.2016, the current applicant submitted the previous application (No. A/YL-ST/495) for two proposed houses at a plot ratio (PR) of 0.4 at the Site (**Plan A-1**). As a result of a breach of the building covenant (BC) on failure to pursue the development in accordance with the lease conditions, the Site was re-entered by Government on 14.9.2016 under the Government Rights (Re-entry and Vesting Remedies) Ordinance as the grantee had not pursued any development at the concerned lot for 40 years. The application was then considered by the Rural and New Town Planning Committee (the Committee) on 14.10.2016. At the time for consideration of the application, the applicant had not yet submitted any petition or application to the High Court for relief against the re-entry. During the deliberation, noting that the applicant was the lot owner at the time of submission of the application, but the Site was a government land after re-entry by Government at the time of considering the application, Members generally considered that the application should be rejected as the proposed development was not in line with the planning intention of the “V” zone. However, it was considered that if the Site was subsequently re-granted to the applicant with similar special conditions as that in the original lease in 1977, the applicant could submit a fresh planning application for the proposed development, and the Committee could re-consider the proposed development in the context of the applicant’s building entitlement.
- 5.3 The applicant then applied to the High Court for a relief against the re-entry of the Ex-Lot and the Court made a Consent Order on 25.4.2022 which required the applicant to obtain planning permission from the Board for the proposed house use under the current application within 12 months by 24.4.2023. Following the Court Order, the applicant submitted the current application seeking the proposed private residential development at the Site.
- 5.4 The site is not subject to any active enforcement action.

6. **Previous Applications**

- 6.1 The site is the subject of 6 previous applications. Five applications (No. A/YL-ST/284, 304, 377, 422 and 472) were submitted by another applicant for temporary public vehicle park (excluding container vehicles) for a period of 3 years which were not relevant to the current application. Details of these applications are summarised at **Appendix III**. Their locations are shown on **Plan A-1**.
- 6.2 Details of the last application (No. A/YL-ST/495) submitted by the current applicant for proposed houses have been discussed in paragraph 5.

7. **Similar Application**

During the past five years, there is no similar application within the same “V” zone.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

8.1 The site is:

- (a) located near Wing Ping Tsuen, San Tin and within the ‘village environs’ (‘VE’) boundary of San Tin Heung;
- (b) accessible from the northeast via a local track leading to Castle Peak Road – San Tin;
- (c) currently fenced off, vacant and paved with some vegetation; and
- (d) located within the Wetland Buffer Area (WBA) of Deep Bay Area.

8.2 The site is located in a village settlement and the surrounding areas have the following characteristics:

- (a) to the north are village houses and a vehicle parking area;
- (b) to the west are grassland, village settlement of Wing Ping Tsuen and Tai Fu Tai Mansion;
- (c) to the further west and northwest are the village areas of 6 recognised villages including Tung Chan Wai, Yan Shau Wai, On Lung Tsuen, Fan Tin Tsuen, San Lung Tsuen and Tsing Lung Tsuen;
- (d) to the south are storage use, village houses, local shops and vehicle parking areas; and
- (e) to the east are village houses and vehicle parking areas.

9. Planning Intention

The planning intention of “V” zone 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

10.1 Apart from the government departments as set out in paragraph 10.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices IV and V** respectively.

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

Land Administration

- 10.2.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site, formerly known as Lot 3405 in D.D. 102 / the Ex-Lot, was granted to Manbro Investments Limited (the applicant) by way of land exchange under New Grant No. 2474 dated 16.3.1977 (the New Grant). Some salient SCs of the New Grant in relation to the development on the Ex-Lot are as follows:
 - (i) SC (6) provided that the lot should not be used for any purpose other than for private residential purposes;
 - (ii) SC (13) provided that the building or buildings erected or to be erected on the lot should not contain more than 2 storeys. No part of any structure to be erected on the lot should exceed a height of 25 feet above the mean formation level of the land on which it stood and the maximum area of the lot that might be built over should not exceed 20% of the area of the lot or a PR of 0.4. No flatted development would be permitted;
 - (iii) SC (15) provided that space should be provided within the lot for the parking of not less than 2 motor vehicles. Single story car ports would be permitted but would not be regarded as buildings for the purpose of calculating coverage limitation; and
 - (iv) SC (17) provided that no building should be erected on the lot of a type which by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance (~~BO~~) and any regulations made thereunder is exempted from the provisions of ***the Buildings Ordinance*** ~~BO~~ and any regulations made thereunder.
- (b) As a result of a breach of the BC under SC 12 of the New Grant (~~on completion of building works~~) ~~caused by~~ ***and*** failure to pay BC extension premium, the Ex-Lot was re-entered by the Government on 14.9.2016 by virtue of an Instrument of Re-entry dated 5.9.2016. The applicant then applied to the High Court for relief against re-entry of the Ex-Lot (HCMP 437/2017). Subsequently, the Court made a Consent Order on 25.4.2022 which required the applicant to submit planning application to the Board within 3 months (with further time extension granted up to 31.10.2022) and obtain planning approval within 12 months (i.e. 24.4.2023).

- (c) The San Tin area was not covered by any statutory plan and the Site was not zoned “V” in 1977 when the New Grant was executed. The applicant was entitled to develop the Ex-Lot in accordance with the conditions of the New Grant. It is noted that at the meeting on 14.10.2016 for consideration of Application No. A/YL-ST/495, Members of the Committee generally considered that “if the site was subsequently re-granted to the applicant with similar SCs as that in the original lease in 1977, the applicant could submit a fresh planning application for the proposed development, and the Committee could re-consider the proposed development in the context of the applicant’s building entitlement” (paragraph 109 of the confirmed Minutes of the RNTPC Meeting on 14.10.2016).
- (d) The Site falls within the Common Village Environs of San Tin Heung shared by 7 recognised villages including Ching Loong Tsuen, Fan Tin, On Loong Tsuen, San Loong Tsuen, Tung Chun Wai, Wing Ping Tsuen and Yau Sau Wai.
- (e) According to DLO/YL’s record, there is no Small House application received/under processing within the Site. The number of outstanding and approved Small House applications (as at November 2022) of the concerned recognised villages is 95 and 302 respectively. The 10-year forecast of Small House demand for the concerned recognised villages is 2,830. The figure of the 10-year forecast is provided by the Indigenous Inhabitant Representatives of the respective recognised villages. DLO/YL is unable to verify such information.
- (f) Should the planning application be approved by the Board, the applicant would settle the Relevant Sums as mentioned in the Consent Order, sign a BC extension letter and pay the associated administrative and registration fees. LandsD would then arrange with the Land Registry for the cancellation of the Instrument of Re-entry including registration of a memorandum for cancellation of the Instrument of Re-entry and registration of the executed BC extension letter. After the payment of the remaining interest on the premium, an extension of building covenant for a period of 24 months from the date of cancellation of the Instrument of Re-entry would be granted to the applicant for development of the Ex-Lot in accordance with the conditions contained in the New Grant and relevant ordinances.

Traffic

10.2.2 Comments of the Commissioner for Transport (C for T):

- (a) Having considered the applicant’s submission including the FI, he has no adverse comment on the application.

- (b) The Site is connected to public road network via a section of a local access (**Drawing A-1**) which is not managed by Transport Department. The land status of the local access should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access should be clarified with the relevant lands and maintenance authorities accordingly.
- (c) The applicant should seek the relevant land owner(s) on the right of using the vehicular access.
- (d) No vehicle is allowed to queue back to or reverse onto/from public road at all times.

Environment

10.2.3 Comments of the Director of Environmental Protection (DEP):

- (a) He has no comment on the application from the environmental point of view.
- (b) In view of the small population and nature of the proposed development, septic tank and soakaway system are acceptable means for collection, treatment and disposal of the 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 Authorised Person.

Urban Design and Landscape

10.2.4 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

Urban Design

- (a) The Site is within an area characterised by low-rise buildings. The proposed development of four 2-storey detached houses of not more than 7.62m in height at the Site does not exceed the building height restriction stipulated in the approved San Tin Outline Zoning Plan No. S/YL-ST/8. It is considered that the proposed development is not incompatible with the neighbourhood.

Landscape

- (b) She has no objection to the application from the landscape planning perspective.
- (c) With reference to the site photos taken in November 2022, the site is fenced off and mainly hard paved with small portion of self-seeded grass/vegetation. Several existing trees of common species in fair condition are observed at the centre of the Site and adjacent to the northern, southern and western

boundary outside the Site. No significant landscape resources of high sensitivity are observed within the Site. Significant adverse landscape impact within the Site arising from the proposed development is not anticipated and the proposed use is considered not incompatible with the landscape setting in the proximity.

- (d) Since significant adverse landscape impact arising from the proposed development is not envisaged and the Site is not abutting prominent public frontage, it is considered not necessary to impose any landscape-related condition should the application be approved by the Board.
- (e) Her advisory comments are at **Appendix V**.

11. Public Comments Received During Statutory Publication Period

On 4.11.2022, the application was published for public comment. During the statutory publication period, two public comments were received from individuals raising objection to the application on the grounds that the proposed development in a crowded living area would result in traffic congestion, environmental pollution, fire risk thereby affecting the safety and living environment of the local residents; the Site which was re-entered by Government and was not pursued for the permitted development for a long time should be used for community uses but not for parking purpose, approval of the application would set an undesirable precedent and would reduce the land available for Small House development (**Appendix VI**).

12. Planning Considerations and Assessments

Planning Intention

- 12.1 The application is proposed for 4 detached 2-storey houses which are not NTEH or Small House development by indigenous villagers. House other than NTEH or Small House is a Column 2 use which requires planning permission from the Board. The Site falls within the “V” zone and “VE” of seven recognised villages including Wing Ping Tsuen, Tung Chan Wai, Yan Shau Wai, On Lung Tsuen, Fan Tin Tsuen, San Lung Tsuen and Tsing Lung Tsuen. The “V” zone is intended primarily for designation of 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.
- 12.2 According to DLO/YL, LandsD, the 10-year Small House demand forecast of 2,830 for the seven recognised villages is not verified, whereas the total number of outstanding Small House applications for these seven recognised villages are 95. Based on the estimate as at May 2022 by PlanD, about 8.02ha (equivalent to 318 Small House sites) of land is available within the “V” zone. Hence, the land available within the “V” zone could cater for the outstanding Small House demand even if the current application is approved. While the proposed residential development at the Site which is not for NTEH/ Small House development by indigenous villager is not entirely in

line with the planning intention of the “V” zone, sympathetic consideration may be given taking account of the special circumstances below.

Building Entitlement under the Ex-Lot

- 12.3 At the time of the land grant (Ex-Lot) to the applicant on 16.3.1977, the Site was not under any statutory plan. The Site was first zoned “V” for NTEH development under the IDPA Plan No. IDPA/YL-ST/1 for San Tin area which was gazetted on 17.8.1990. As the applicant had not pursued the residential development on site as per the lease requirements, it had resulted in re-entry of the Site by the Government in 2016.
- 12.4 Building entitlement of the Site was one of the determining considerations for the previous application. At the Committee meeting on **14.10.2016** ~~10.4.2016~~, it was considered that as the Site was reverted to Government as government land at the time of consideration of Application No. A/YL-ST/495, the proposed house development was not in line with the planning intention of the “V” zone and the application should be rejected. The Committee also remarked that if the Site was subsequently re-granted to the applicant with similar lease conditions of the previous land grant, the applicant could submit a fresh planning application for the proposed residential development and the Committee could re-consider the proposed development in the context of the applicant’s building entitlement. Subsequently, the applicant applied to the High Court for a relief against the re-entry of the Ex-Lot and the Court made a Consent Order on 25.4.2022 which required the applicant to obtain planning permission from the Board for the proposed house use under the current application within 12 months by 24.4.2023. As advised by DLO/YL, LandsD, should the planning application be approved by the Board, the applicant would settle the Relevant Sums as mentioned in the Consent Order, sign a BC extension letter and pay the associated administrative and registration fees. LandsD would then arrange with the Land Registry for the cancellation of the Instrument of Re-entry. A period of 24 months from the date of cancellation of the Instrument of Re-entry would be granted to the applicant for development of the Ex-Lot in accordance with the conditions contained in the New Grant and relevant ordinances. Sympathetic consideration may be given to the application for house development taking into account the Consent Order, the previous considerations of the Board and LandsD’s comments.

Land Use Compatibility

- 12.5 The Site is located near the village settlement of Wing Ping Tsuen, and the adjacent areas are predominantly occupied by village houses of 2 to 3-storeys, with local shops and vehicles parking areas in close vicinities. The proposed house use is not incompatible with the adjacent uses. The proposed residential development for 4 detached 2-storey houses has not exceeded the BH restriction of 3 storeys (8.23m) for development within the “V” zone. The proposed development parameters with a total GFA of about 769.2m² at PR of 0.4, BH of about 7.62m and a SC of not more than 20% are in line with the lease entitlements of the Ex-Lot. CTP/UD&L, PlanD also considers the proposed development of four 2-storey detached houses of 7.62m in height at the Site is not incompatible with the neighbourhood and significant adverse landscape impact arising from the proposed development

is not anticipated and thus she has no objection to the application from visual and landscape planning perspectives.

Other Technical Concerns

- 12.6 In view of the nature of use and the proposed scale of development, the proposed development is not envisaged to impose significant impacts on the surrounding areas. Other concerned departments including C for T, DEP, CE/MN, DSD, D of FS and CE/C, WSD have no objection to or no comment on the application. The technical concerns could be addressed by approval conditions in paragraph 13.2.
- 12.7 Regarding the public comments received on the application as detailed in paragraph 11, the departmental comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments in paragraph 11, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 23.12.2026, 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 submission of drainage proposal and implementation of drainage facilities to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the provision of water supply for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection are suggested for Members' reference:

the proposed development is not in line with the planning intention of the "V" zone which is to reflect existing recognised villages, and to provide land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from such planning intention.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 28.10.2022
Appendix Ia	Planning Statement
Appendix Ib	FI received on 8.12.2022
Appendix Ic	FI received on 19.12.2022
Appendix II	Relevant Extracts of TPB PG-No. 12C
Appendix III	Previous applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comments
Drawing A-1	Site Access
Drawing A-2	Block Plan and Section
Drawing A-3	Ground Floor Plan
Drawing A-4	First Floor Plan
Drawing A-5	Roof Plan
Drawing A-6	Comparison of Proposed Development under Application No. A/YL-ST/495 and Current Application
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2022**

