

TOWN PLANNING BOARD

TPB Paper No. 10745

**For Consideration by
the Town Planning Board on 2.7.2021**

**REVIEW OF APPLICATION NO. A/NE-LK/135
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House – Small House)
in “Agriculture” zone
Lot 1406 S.A ss.1 in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories**

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1. Background

- 1.1 On 23.11.2020, the applicant, Mr. TSANG Kwok Wo represented by Honest Land Surveys Company, sought planning permission to build a New Territories Exempted House (NTEH) - Small House at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls entirely within an area zoned “Agriculture” (“AGR”) on the approved Luk Keng and Wo Hang Outline Zoning Plan (the OZP) No. S/NE-LK/11 (**Plan R-1**).
- 1.2 On 22.1.2021, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- “(a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily 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. There is no strong planning justification in the submission for a departure from the planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.”
- 1.3 For Members’ reference, the following documents are attached:
- | | | |
|-----|---|-----------|
| (a) | RNTPC Paper No. A/NE-LK/135 | (Annex A) |
| (b) | Extract of minutes of the RNTPC meeting held on 22.1.2021 | (Annex B) |
| (c) | Secretary of Town Planning Board’s letter dated 5.2.2021 | (Annex C) |

2. Application for Review

On 22.2.2021, the application for a review of the RNTPC’s decision to reject the application (**Annex D**) was received. In support of the review, the applicant submitted written justifications on 9.4.2021 and 7.5.2021 respectively (**Annexes E1 and E2**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in the applicant's further information at **Annexes E1 and E2**. They can be summarized as follows:

- (a) While Ma Tseuk Leng village and Shek Kiu Tau village are located adjacent to each other, they are individual village and therefore the land available for Small House development for each village should be estimated separately;
- (b) With the assistance from the Sha Tau Kok District Rural Committee (STKDRC), the land available within the "V" zone covering Ma Tseuk Leng village for Small House development has been reviewed by a surveying company. According to that review, old schedule lots; land in front of the ancestral hall, private gardens, areas reserved for planned roads, sites subject to Small House grant applications and Government land should not be counted as land available. Taking into account these factors and based on the assumption that each Small House would occupy an area of 1,000 sq. ft. (with circulation area on all four sides), the land available in the "V" zone of Ma Tseuk Leng village is just about 26 Small Houses, which is insufficient to meet the 51 outstanding Small House applications as well as the 10-year Small House demand for 138 Small Houses for the village;
- (c) The applicant's previous application (No. A/NE-LK/121) on another site in the same village (i.e. Lot 1512 RP in D.D. 39) was rejected by the RNTPC in 2019 mainly on the reason that land is still available within the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster. Subsequently, he tried to identify suitable land in the "V" zone for his development but in vain. Eventually, he purchased the Site under current application. Although the Site falls outside the "V" zone, it is within 'VE' and is close to the village cluster and the proposed development is considered compatible with other surrounding uses. However, his application was still rejected by the RNTPC. Since all areas currently available in the village are not under his ownership, it is not reasonable to assume that the applicant can secure a suitable site within "V" zone for his Small House development. If the same logic applies, the Government should first utilise those suitable land for housing held by private developers before developing areas falling within Country Park and "Green Belt" or pursuing projects like land reclamation under Lantau Tomorrow Vision;
- (d) The proposed development is in line with the Interim Criteria. In particular, according to paragraph (a) of the Interim Criteria, sympathetic consideration should be given if not less than 50% of the proposed Small House footprint falls within the 'village environs' ('VE') of a recognized village and there is a general shortage of land in meeting the demand for Small House development in the "V" zone of the village; and
- (e) Unlike other rejected applications, the proposed development would not cause landscape and drainage impacts to the surrounding areas and relevant departments have no objection to the application.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1, R-2a and R-2c, R-3 and R-4)

- 4.1 The situation of the Site and the surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of

Annex A. There has not been any major change in planning circumstances of the area since then (**Plan R-2a**).

4.2 The Site is:

- (a) vacant and mainly covered with wild grass; and
- (b) adjacent to a local track leading to Sha Tau Kok Road in the south.

4.3 The surrounding areas have the following characteristics:

- (a) the Site is situated in an area of rural landscape character surrounded by fallow agricultural land, tree groups and village houses;
- (b) to the immediate north is village houses with planning approval, further north is a village cluster of Ma Tseuk Leng;
- (c) to the immediate east and west are some village houses with planning approval and a local track respectively; and
- (d) to the south is vacant land.

Planning Intention

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

Assessment Criteria

4.5 The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria was promulgated on 7.9.2007 which is at Appendix II of **Annex A**.

Previous Application

4.6 The Site forms part of the subject of a previous planning application No. A/NE-LK/94, covering a larger area for Small House development submitted by a different applicant as the current application. That application, approved with conditions by the RNTPC on 16.1.2015, had lapsed on 17.1.2019. Compared with the previous application, the site area has been reduced from 204.4 m² to 137.4 m² (i.e. – 67 m²) with the major development parameters for the Small House remain unchanged.

4.7 Details of the previous application are summarised at **Annex F** and its location is shown on **Plans R-1** and **R-2a**.

Similar Applications

4.8 There are 46 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Site (**Plan R-1**) since the first promulgation of

the Interim Criteria on 24.11.2000. There has been no change in the number of similar applications since the subject s.16 application was considered by the RNTPC on 22.1.2021.

- 4.9 Among these similar cases, 34 of them were considered before the cautious approach being adopted by the Board in August 2015. 31 were approved mainly on the considerations that the applications generally complied with the Interim Criteria. For the three rejected applications, application No. A/NE-LK/78 within the “AGR” zone was rejected in 2013 mainly on the ground of adverse impact on the stream. As for the two applications (No. A/NE-LK/92 and 93) straddling “AGR” and “Green Belt” (“GB”) zones, they were rejected in 2014 mainly on the grounds that the proposed developments did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape.
- 4.10 After the adoption of the more cautious approach, 12 applications were considered. Five applications No. A/NE-LK/106, 107, 109, 111 and 112 were approved by the RNTPC between December 2016 and April 2018 mainly for the reason of being the subject of previously approved applications submitted by the same applicants. Six applications No. A/NE-LK/114¹, 115, 116, 117, 122 and 134 were rejected by the Board on review or by the RNTPC between November 2018 and December 2020 mainly on similar grounds that the application did not comply with the Interim Criteria in that the proposed developments would cause drainage and landscape impacts on the surrounding areas; and land was still available within the “V” zone for Small House development. For the last rejected application (No. A/NE-LK/121) (**Plan R-2b**), it was submitted by the current applicant and that application was rejected by the RNTPC on 6.9.2019 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone for Small House development.
- 4.11 Details of the above similar applications are summarized in **Annex G** and their locations are shown on **Plan R-1**.

5. Comments from Relevant Government Departments

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

Land Administration

- 5.2.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the latest number of outstanding Small House applications and the number of 10-year Small House demand for the villages concerned, which are the **same as in s.16 application stage**, are as follows:

¹ The appeal hearing was heard by the Town Planning Appeal Board on 30.9.2020. The decision is yet to be available.

Villages	No. of the outstanding Small House applications	No. of 10-year Small House demand forecast
Ma Tseuk Leng (including Ma Tseuk Leng San Uk Ha)	51	138
Shek Kiu Tau	6	380

- (b) she has no further comments on the review applications and maintains her other previous views on the s.16 application as stated in paragraph 1 of the Appendix V in **Annex A** which are recapitulated below:
- (i) the Site falls within the 'VE' of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha;
 - (ii) the applicant claimed himself to be the indigenous villager of Ma Tseuk Leng of Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained;
 - (iii) the Site is not covered by any Modification of Tenancy/Building Licence;
 - (iv) the Small House grant application on Lot 1512 RP in D.D. 39 (No. A/NE-LK/121) was made to her office on 24.9.2014 but the applicant could not obtain the planning permission from TPB. The applicant changed the application site to Lot 1406 S.A. ss.1 in D.D. 39 (i.e. the subject site) on 31.8.2020.

District Officer's Comment

5.2.2 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- she has consulted the locals regarding the application. The Chairman of STKDRC, the incumbent North District Council member and the Indigenous Inhabitant Representative of Ma Tseuk Leng San Uk Ha had no comment on the application. The Resident Representative of Ma Tseuk Leng San Uk Ha supported the application on the grounds that the proposed development would not cause significant traffic impact to the surrounding area.

5.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9 and Appendix V of **Annex A** respectively which are recapitulated below:

Agriculture

5.3.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site is currently an abandoned land. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the applications is not supported from agricultural point of view.

Environment

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

- (a) in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution; and
- (b) septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" and are duly certified by an Authorized Person.

Landscape

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

- (a) she has no objection to the application from the landscape planning point of view;
- (b) the Site is a vacant scrubland and no existing trees were observed within the Site. The Site is located in an area of rural landscape character predominated by abandoned farmlands, tree groups, and village houses. The applied use is considered not incompatible with the landscape character of the surrounding area. The layout of proposed house is not in conflict with any existing trees; and
- (c) as significant landscape impact arising from the proposed development is not anticipated, it is considered not necessary to impose any landscape condition should the application be approved by the Board.

Traffic

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

- (a) he has reservation on the application. Such type of development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be

significant, such type of development outside the “V” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial; and

- (b) notwithstanding the above, the application involves the construction of one Small House. He considers that the application can be tolerated unless being rejected on other grounds.

Drainage

5.3.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Fire Safety

5.3.6 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application; and
- (b) the applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department; and
- (c) Project Manager (North), Civil Engineering and Development Department.

6. Public Comments Received During Statutory Publication Period (Annex H)

- 6.1 The review application and subsequent further information submitted by the applicant were published for public inspection on 5.3.2021 and 23.4.2021 respectively. During the statutory public inspection periods, a total of 6 public comments were received. Two comments submitted by the Chairman of Sheung Shui District Rural Committee (DRC) indicate no comment on the application (**Annexes H-1 and H-2**). The other four public comments, including Kadoorie Farm and Botanic Garden (KFBG) (**Annex H-3**), Designing Hong Kong Limited (**Annex H-4**), and two individuals (**Annexes H-5 and H-6**) object to the application mainly on the grounds that the proposed

development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone for Small House development; the Site has potential for agricultural rehabilitation; the proposed development would cause environmental and traffic impact to the surroundings; and approval of the application would set an undesirable precedent for similar applications in the area.

- 6.2 Five public comments were received at the s.16 application stage. Designing Hong Kong Limited, KFBG and two individuals raised objection to the application while the Chairman of Sheung Shui DRC indicated no comment on the application and details are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The subject s.16 application was rejected by the RNTPC on 22.1.2021 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development. Since the consideration of the s.16 application by RNTPC on 22.1.2021, there has been no material change in planning circumstances.
- 7.2 In support of the review application, the applicant has put forward justifications that the land available for Small House development for Ma Tseuk Leng village and Shek Kiu Tau village should be counted separately. The land available within Ma Tseuk Leng Village is overestimated as old schedule lots, land in front of the ancestral hall, private gardens, areas reserved for planned roads, sites subject to Small House grant applications and Government land should not be counted. The land available in “V” zone of Ma Tseuk Leng village is therefore only about 26 Small House sites, which is insufficient to meet even the 51 outstanding Small House applications as well as the 10-year future demand for 138 Small Houses. Also, it is also not reasonable to assume that the applicant can secure a suitable site within “V” zone for his Small House development. The proposed development is in line with the Interim Criteria as there is a general shortage of land in meeting the demand for Small House development in the “V” zone.
- 7.3 One of the main arguments raised by the applicant in support of the review application is that the land available for Ma Tseuk Leng village and Shek Kiu Tau village should be counted separately as they are two separate villages. It should be noted that the two villages located next to each other are covered by the same “V” zone since the gazettal of the draft Luk Keng and Wo Hang OZP No. S/NE-LK/1 in 1994 and there is no change to the boundary of the “V” zone since then. Although there is no overlapping of the ‘village environs’ of Ma Tseuk Leng with that of Shek Kiu Tau, it is noted from LandsD’s record that there were applications from indigenous villagers of Ma Tseuk Leng for development of Small Houses in Shek Kiu Tau within the same “V” zone. As such, the calculation of land available for Small House development is based on the boundary of the “V” zone covering the two indigenous villages.
- 7.4 In respect of the applicant’s claim that land available within Ma Tseuk Leng Village is overestimated by PlanD, it should be noted that in estimating the land available for Small House development within “V” zone, PlanD has adopted a consistent approach and would make use of the latest available information. In general, the land occupied

by road, existing village houses, steep slope, major tree clusters, stream buffer etc. will be deducted from the area available for Small House development. Government land and old schedule lots are included unless they are constrained by other factors such as those mentioned above. For the remaining areas claimed by the applicant as not suitable for Small House development, they are mainly occupied by internal/informal access, private gardens and sites of outstanding Small House applications, which can be considered as a source of land supply. The applicant also states that he does not own any piece of land within “V” zone for his Small House development. However, land ownership is not a material consideration as it could be subject to change and land parcel could be sub-divided to suit development needs.

- 7.5 Regarding the Interim Criteria, while land available within the “V” zone covering Ma Tseuk Leng and Shek Kiu Tau is insufficient to fully meet the Small House demand for 575 Small Houses, such available land (about 2.25 ha or equivalent to 89 Small House sites) is still available within the “V” zone to meet the 57 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in 2015. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 7.6 Having regard to the fact that there is no overlapping of the ‘VE’ of Ma Tseuk Leng with Shek Kiu Tau, a breakdown on the land available within the “V” zone for the two villages with reference to the ‘VE’ boundaries is also prepared for Members’ reference. In gist, while land available within the “V” zone (covered by the ‘VE’ of Ma Tseuk Leng) is insufficient to fully meet the Small House demand for 189 Small Houses, such available land (about 1.54 ha or equivalent to 61 Small House sites) is still available within the “V” zone to meet the 51 outstanding Small House applications.

Recognised Villages	Land Available within “V” zone (ha.)	No. of Houses could be Accommodated based on Land Available	Outstanding Small House applications (iii)	No. of 10-year Small House demand forecast (iv)	Small House Demand (iii) + (iv)
(i) Ma Tseuk Leng	1.54	61	51	138	189
(ii) Shek Kiu Tau	0.71	28	6	380	386
Total (i) + (ii)	2.25	89	57	518	575

- 7.7 The proposed Small House development is not in line with the planning intention of the “AGR” zone which is primarily 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. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation.

7.8 The other planning considerations and assessment, as set out in paragraphs 11.3, 11.5 and 11.6 of **Annex A**, are still valid, which are briefly capitulated below:

- (a) the Site, situated in an area of rural landscape character predominated by fallow/active agricultural land, tree groups and village houses, is not entirely incompatible with the surrounding environment. CTP/UD&L, PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated, C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves construction of one Small House only, the application could be tolerated; and other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on/no objection to the application.
- (b) the Site forms part of the subject of a previously approved planning application (No. A/NE-LK/94) for a Small House submitted by a different applicant as the current application. The application was approved in January 2015 before the adoption of a cautious approach by the Board. The planning permission, however, lapsed on 17.1.2019. According to the Interim Criteria (d) (Appendix II of **Annex A**), application with previous planning permission lapsed will be considered on its own merits. Given that the current application is submitted by a different applicant and land is still available within the “V” zone of Ma Tseuk Leng for Small House development, sympathetic consideration may not be given to the application.
- (c) there are 17 similar applications for Small House development in the vicinity of the Site (**Plan R-2a**). Of them, 16 applications within “AGR” zone were approved by the Committee between 2002 and 2015 mainly on the grounds of generally complying with the Interim Criteria. After the adoption of the more cautious approach, only one application (No. A/NE-LK/109) to the southeast of the Site was approved by the Committee in 2017 on the grounds that the Site was the subject of a previous planning application (No. A/NE-LK/30) submitted by the same applicant. It is considered that the circumstances of the current application are different from the recently approved application No. A/NE-LK/109.

7.9 Regarding the public comments objecting to the review application on the grounds as detailed in paragraph 6 above, Government departments’ comments and the planning assessments above are relevant.

8. **Planning Department’s Views**

8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department maintains its previous view of not supporting the review application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily 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. There is no strong planning justification in the submission for a departure from the planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.

8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **2.7.2025**, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

8.3 The recommended advisory clauses are attached at **Annex I**.

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 conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Drawing R-1	Layout Plan
Plan R-1	Location plan
Plan R-2a	Site plan
Plan R-2b	Location Plan of Previous Planning Application No. A/NE-LK/121

Plan R-2c	Estimated amount of land available for Small House development within “V” zone
Plan R-3	Aerial photo
Plan R-4	Site photos
Annex A	RNTPC Paper No. A/NE-LK/135
Annex B	Extract of minutes of the RNTPC meeting held on 22.1.2021
Annex C	Secretary of the Town Planning Board’s letter dated 5.2.2021
Annex D	Letter received on 23.2.2021 from the applicant applying for a review of the RNTPC’s decision
Annex E1	Further Information received on 9.4.2021
Annex E2	Further Information received on 7.5.2021
Annex F	Previous Application
Annex G	Similar applications
Annex H	Public Comments
Annex I	Recommended Advisory Clauses

PLANNING DEPARTMENT
JULY 2021