

**Meeting Rescheduled for
25.2.2022**

TOWN PLANNING BOARD

**TPB Paper No. 10804
For Consideration by
the Town Planning Board**

**REVIEW OF APPLICATION NO. A/TM-LTYT/337-1
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Extension of Time for Commencement of
the Approved Residential Development (Flat) 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)
at 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**

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San Hing Road, Lam Tei, Tuen Mun, New Territories**

1. Background

- 1.1 On 16.3.2021, the applicant, Take Harvest Limited, sought planning permission for the extension of time (EOT) for commencement of the approved development under application No. A/TM-LTYT/337 for an additional period of 2 years until 23.6.2023 (the EOT application) under s.16A of the Town Planning Ordinance (the Ordinance). Since the EOT application was not supported by the Director of Housing (D of Housing), it was submitted to the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) for consideration according to the Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B).
- 1.2 On 14.5.2021, the RNTPC decided to reject the application for the following reason:

the application was not in line with the Town Planning Board Guidelines on EOT for Commencement of Development (TPB PG-No. 35C) in that the applicant failed to demonstrate that genuine effort had been made in taking reasonable actions for the implementation of the approved development, and that there was a good prospect to commence the proposed development within the applied extension period.
- 1.3 For Members' reference, the following documents are attached:
 - (a) RNTPC Paper No. A/TM-LTYT/337-1 (Annex A)
 - (b) Extract of Minutes of the RNTPC Meeting held on 14.5.2021 (Annex B)
 - (c) Secretary of the Board's Letter dated 28.5.2021 (Annex C)
- 1.4 The original s.16 application (No. A/TM-LTYT/337) for proposed flat development and minor relaxation of building height restriction at the application site (the Site) (**Plan R-1**) was approved with conditions by the RNTPC on 23.6.2017 and valid until 23.6.2021. The Site was zoned "Residential (Group E)" ("R(E)") at the time when the RNTPC considered the original s.16 application in 2017.

- 1.5 On 20.8.2021, the draft Lam Tei and Yick Yuen (LTY Y) Outline Zoning Plan (OZP) No. S/TM-LTY Y/11 incorporating amendments for the proposed public housing development at San Hing Road and Hong Po Road and the supporting infrastructural facilities was exhibited for public inspection under s.5 of the Ordinance. Under the amendments, the Site was rezoned from “R(E)” to “Residential (Group A)” (“R(A)”). Hearing of the representations and the comments on the representations in respect of the OZP by the Board will be arranged in due course. Upon completion of the statutory planning process, the Government will take further steps to proceed with the proposed public housing development including necessary land resumption under the Lands Resumption Ordinance (LRO).
- 1.6 The Site, falling within the boundary of the proposed public housing development, is currently zoned “R(A)” on the above LTY Y OZP No. S/TM-LTY Y/11 (**Plans R-1 and R-1a**). According to the Notes for the “R(A)” zone on the OZP, ‘Flat’ is a Column 1 use which is always permitted. The proposed plot ratio (PR) and building height (BH) under application No. A/TM-LTY Y/337 (PR of 1.0 and BH of 16.5m or 23.7mPD) complies with the relevant restrictions of the current “R(A)” zone ¹.

2. Application for Review

- 2.1 On 16.6.2021, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application (**Annex D**). In support of the review, the applicant submitted further information (FI) on 1.11.2021 (**Annex E**).
- 2.2 The review application was originally scheduled for consideration by the Board on 3.9.2021. Upon the request of the applicant, the Board agreed to defer a decision on the review application for two months on 3.9.2021. With the FI submitted, the review application is scheduled for consideration by the Board at this meeting.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the FI at **Annex E**. They are summarised as follows:

- (a) As a small size developer with limited financial budget, the applicant needs to act carefully to ensure fiscal balance. Submission of building plans would require substantial cost. In this regard, the applicant considers that the approval of land exchange application (LEA) is the first step to be met before proceeding with other requirements and submissions.
- (b) The applicant acts proactively in pursuing the implementation of the development at the Site by promptly submitted LEA to the Lands Department (LandsD) on 27.7.2017 and urging government departments for expediting the LEA over the past 4 years.

¹ Under the “R(A)” zone, development is subject to a maximum PR of 6.5 and maximum BH of 160mPD.

Appropriate steps have been taken to implement the approved development, which is one of the assessment criteria under TPB PG-No. 35C.

- (c) The submitted LEA has been put on hold by LandsD pending for the results of the feasibility study for the proposed public housing development at San Hing Road and Hong Po Road, Tuen Mun, and the applicant considers that the commencement of development is delayed due to problem which is beyond their control.
- (d) The Site is at the fringe of the proposed public housing development and its indicative layout could be realigned in order to avoid encroaching onto the Site.
- (e) The proposed extension of time for 2 years is considered appropriate and sufficient as building plans and relevant technical proposal have already been prepared.
- (f) The approval of the OZP is laden with uncertainty as representations and comments on the representations on the draft OZP are yet to be considered by the Board.
- (g) The applicant makes reference to the *International Trader* case which the Court of Appeal held that the discretion of the Board has to be exercised within the parameters of the relevant approved plan. If material considerations which fell outside the ambit of the approved plan were taken into account, the Board acted *ultra vires*. The applicant is of the view that the current application warrants the same consideration of the *International Trader* case as the proposed public housing development is yet to be reflected onto the OZP when the EOT application was submitted, and therefore should not be taken into account in considering the current application.

4. The Section 16A Application

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

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16A application by the RNTPC are described in paragraph 6 of **Annex A**. There has been no material change since then except that the Site has been rezoned from “R(E)” to “R(A)” on the OZP, as mentioned in paragraph 1.5 above.
- 4.2 The Site is:
 - (a) currently vacant and fenced-off (**Plans R-2 and R-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 R-2 and R-3**).
- 4.3 The surrounding areas have the following characteristics (**Plans R-2 and R-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 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.

Planning Intention

- 4.4 The Site was zoned “R(E)” at the time when RNTPC considered the s.16A application on 14.5.2021. The planning intention of the “R(E)” zone is 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.
- 4.5 Subsequent to the consideration of the s.16A application, the OZP incorporating amendments for the proposed public housing development at San Hing Road and Hong Po Road and the supporting infrastructural facilities was gazetted on 20.8.2021. The Site and its adjoining area were rezoned to “R(A)”. The planning intention of the “R(A)” zone is for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. According to the Explanatory Statement of the OZP, the sites zoned “R(A)” are intended for public housing developments.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36B) and the Town Planning Board Guidelines on EOT for Commencement of Development (TPB PG-No. 35C) are relevant to the application. The relevant assessment criteria under TPB PG-No. 35C 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.

6. **Similar Application**

- 6.1 There is a similar application (No. A/TM-LTYT/273-1) (**Plan R-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 and Hong Po Road. The application was rejected by the RNTPC on 15.6.2018 and the Board upon review on 28.9.2018 on the consideration that the application was not in line TPB PG-No. 35C in that there had been a material change in planning circumstances in respect of a clear intention and plan for a comprehensive public housing development which covered the application site.
- 6.2 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 was 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 was 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;
 - (d) the appellant had worked hard to fulfil the approval conditions attached to the planning permission ²;
 - (e) there was no adverse planning implications arising from the EOT;
 - (f) the commencement of development had been delayed due to problems which are beyond the control of the appellant;

² The appellant had complied with all approval conditions attached to the planning permission except those involving implementation.

- (g) the appellant had demonstrated that reasonable actions had been taken for the implementation of the approved development³; and
 - (h) the applicant had demonstrated that there was a good prospect to commence the proposed development within the extended time limit.
- 6.3 Details of the similar application are summarised in Appendix IV of **Annex A** and the location is shown on **Plan R-1**.

7. Comments from Relevant Government Departments

- 7.1 Comments on the s.16A application made by relevant government departments were stated in paragraph 8 of **Annex A**.
- 7.2 For the review application, the following government department has been further consulted and her updated comments are summarised as follows:
- 7.2.1 Comments of the D of Housing:
- CEDD's feasibility study for the proposed public housing development at San Hing Road and Hong Po Road has been substantially completed. In this connection, the application is not supported.
- 7.3 The following government departments maintain their previous comments on the s.16A application in paragraph 8.1 of **Annex A**, which are recapitulated below:

Land Administration

- 7.3.1 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 she reserves her 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, her office would not process the LEA for the time being.

Long-term Development

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

³ The appellant had submitted building plans for the approved development for several times.

The Site encroaches onto the proposed public housing development site at San Hing Road. The feasibility study undertaken by CEDD to support the public housing developments at San Hing Road and Hong Po Road, Tuen Mun 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.

7.4 The following government departments maintain their previous views and have no objection to or no comment on the review application:

- (a) Director of Environmental Protection (DEP);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Commissioner 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).

8. Planning Considerations and Assessments

- 8.1 The application is for a review of the RNTPC's decision on 14.5.2021 to reject the s.16A application for EOT for commencement of the approved development under application No. A/TM-LTYT/337 for an additional period of 2 years until 23.6.2023. The application was rejected on the ground of not in line with TPB PG-No. 35C in that the applicant failed to demonstrate that genuine effort had been made in taking reasonable actions for the implementation of the approved development, and that there was a good prospect to commence the proposed development within the applied extension period.
- 8.2 The applicant submitted FI (**Annex E**) providing justifications in support of the review application as summarised in paragraph 3 above. The applicant reiterated that its proactive action on implementing the proposed development had been demonstrated through the submission of LEA, which has been put on hold due to reasons which are

beyond the control of the applicant, approval of the OZP is laden with uncertainty and the discretion of the Board has to be exercised within the parameters of the relevant approved plan. Taking into account the justifications submitted, the planning considerations and assessments on the review application are appended below.

Planning Intention

- 8.3 After the rejection of the s.16A application on 14.5.2021, the Site has been rezoned from “R(E)” to “R(A)” on the OZP currently in force. The planning intention of the “R(A)” zone is for high-density residential developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. New development within the “R(A)” zone is restricted to a maximum plot ratio of 6.5 and a maximum building height of 160mPD. The approved development under application No. A/TM-LTYT/337 complies with the restrictions of the “R(A)” zone under the current OZP.

Town Planning Board Guidelines No. 35C

- 8.4 The assessment criteria in TPB PG-No. 35C as summarised in paragraph 5 above are relevant to the review application. 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.
- 8.5 Since the original approval given on 23.6.2017, the only action taken by the applicant for implementing the approved development was the submission of LEA (Appendix 2.1 of Appendix II of **Annex E**). Aside from various letters between the applicant and the Government between 2018 and 2020 as shown in Appendix II of **Annex E**, the applicant had not made any effort on submitting building plans nor complying with any of the 6 approval conditions attached to the planning permission (Appendix II of **Annex A**). Though the LEA has been put on hold by LandsD pending the result of the feasibility study for the proposed public housing development 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 and could be pursued separately by the applicant in parallel with the land exchange procedures. Although the applicant claims that there would be cost implication on the submission of building plans and compliance with the approval conditions, it should be noted that financial viability and cost implications are not justified grounds for not taking any action for compliance with approval conditions and submission of building plans so as to take forward the approved development. Furthermore, it should be pointed out that approval conditions should be complied with by the applicant as far as practicable before the use applied for actually comes into place according to the Town Planning Board Guidelines on Compliance of Approval Conditions (TPB PG-No. 20). Therefore, the applicant fails to demonstrate that reasonable actions has been taken for the implementation of the approved development.
- 8.6 Although 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 has yet to 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 development⁴ within the applied extension period.

- 8.7 Since the approval of the original application (No. A/TM-LTTY/337) was given in 2017, significant progress has been made on the proposed public housing development that covers the Site (**Plans R-1 and R-1a**). The feasibility study had been substantially completed in 2021 and the amendments to the OZP for rezoning the Site and its adjoining area from “R(E)” to “R(A)” for the proposed public housing development were gazetted and exhibited for public inspection under the Ordinance on 20.8.2021. Hearing of the representations and the comments in respect of the OZP by the Board will be arranged in due course. Upon completion of the statutory planning process, the Government will take further steps to proceed with the proposed public housing development including necessary land resumption under LRO. In this regard, the Government has already demonstrated its strong commitment on implementing the proposed public housing development. In relation to this, D of Housing does not support the current review application. DLO/TM, LandsD advises 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 review application.
- 8.8 With respect to the *International Trader* case quoted by the applicant, it provides guidance as to what kind of documents that the Board might rely on when ascertaining the true planning intention contained in an OZP. However, for the subject application, it is related to whether an EOT should be granted for an approved development, rather than whether the proposed development, which has been approved, is in line with the planning intention or the development parameters of the OZP. In this regard, TPB PG-No. 35C setting out the relevant planning considerations for EOT are considered relevant, and the subject application does not comply with TPB PG-No. 35C in that there is a material change in planning circumstances as the Government has already demonstrated its strong commitment on implementing the proposed public housing development by rezoning the Site to “R(A)” on the OZP. Nevertheless, regarding the planning intention for the “R(A)” zone covering the Site, as clearly stated in the Explanatory Statement of the OZP, the zone is intended for public housing development.
- 8.9 While it is noted that the TPAB allowed the appeal for the similar EOT application (No. A/TM-LTTY/273-1) on 15.3.2021 and found that, amongst others, there was no material change of planning circumstances pertained to the appeal site which also falls within the proposed public housing development, as mentioned in paragraph 6 above, the applicant of that approved application had taken reasonable actions for implementation of the approved scheme (e.g. submission of building plans) and in complying with the approval conditions, which were not demonstrated in the current EOT application as mentioned in paragraph 8.5 above. Furthermore, as mentioned above, there is a material change in planning circumstances pertaining to the Site in

⁴ 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.

which the amendments to the OZP to facilitate the proposed public housing development were gazetted on 20.8.2021.

9. Planning Department's Views

- 9.1 Based on the assessments made in paragraph 9 above, the Planning Department maintains its previous view of not supporting the review application 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.

- 9.2 Alternatively, should the Board 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 **Annex F**.

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

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 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 date when the validity of the permission should expire.

11. Attachments

Drawing R-1	Approved Master Layout Plan under Application No. A/TM-LTTY/337
Plan R-1	Location Plan
Plan R-1a	Location of the Site on the Site Layout Plan of the Approved EIA Report
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a and R-4b	Site Photos
Annex A	RNTPC Paper No. A/TM-LTTY/337-1
Annex B	Extract of Minutes of the RNTPC Meeting held on 14.5.2021
Annex C	Secretary of the Board's Letter dated 28.5.2021
Annex D	Letter dated 16.6.2021 applying for a review of RNTPC's decision by the applicant
Annex E	Letter dated 1.11.2021 providing FI to support the review application by the applicant
Annex F	Advisory Clauses

**PLANNING DEPARTMENT
JANUARY 2022**