

**REVIEW OF APPLICATION NO. A/YL-KTN/862**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Two Houses (New Territories Exempted Houses - Small Houses)  
in “Agriculture” zone,  
Lot 672 S.B (Part) in D.D. 109, Kam Tin North, Yuen Long, New Territories**

**1. Background**

- 1.1 On 10.10.2022, the applicants, 鄧世傑先生 and 鄧世樂先生 (both are 鄧鐸英祖司理) represented by M&D Planning and Surveyors Consultant Limited, sought planning permission to build two houses (New Territories Exempted Houses (NTEHs) – Small Houses) on the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within “Agriculture” (“AGR”) zone on the draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10<sup>1</sup> (**Plan R-1**).
- 1.2 On 9.12.2022, 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 was not in line with the planning intention of the “AGR” zone, which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention; and
  - (b) the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that more than 50% of the footprints of the two proposed Small Houses fell outside the “Village Type Development” (“V”) zone and village ‘environs’ (‘VE’) of Shui Tau Tsuen and Shui Mei Tsuen. There was no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-KTN/862 (**Annex A**)

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<sup>1</sup> Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9 at the time of submission of the s.16 planning Application. Draft Kam Tin North OZP No. S/YL-KTN/10 currently in force, with the zoning and development restrictions for the Site remain unchanged.

(b) Extract of minutes of the RNTPC meeting held on 9.12.2022 (Annex B)

(c) Secretary of the Board's letter dated 23.12.2022 (Annex C)

## 2. Application for Review

On 29.12.2022, the applicants applied under section 17(1) of the Ordinance for a review of the RNTPC's decision to reject the application (Annex D). The applicant has not submitted any written representation in support of the review application.

## 3. The Section 16 Application

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

3.1 The situation of the Site and the surrounding areas at the time of 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 the planning circumstances of the area since then.

3.2 The Site is:

- (a) currently mainly used for cultivation purpose;
- (b) located outside the 'VE' of Shui Tau Tsuen and Shui Mei Tsuen; and
- (c) accessible via a local track connecting to Shui Tau Road.

3.3 The surrounding areas have the following characteristics:

- (a) to the north, west and southwest are grassland, a barbecue site and some temporary structures / sheds forming part of a privately operated outdoor recreation centre (part of the site with valid planning permission under Application No. A/YL-KTN/830);
- (b) to the east and southeast is active farmland; and
- (c) to the further west and southwest are village houses of Shui Tau Tsuen, Shui Mei Tsuen, Pak Wai Tsuen and Kam Hing Wai within the "V" zone on the OZP.

### Planning Intention

3.4 There has been no change to the planning intention of the "AGR" zone as mentioned in paragraph 8 of Annex A, which is primarily to retain and safeguard good quality agriculture 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

- 3.5 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 has been revised several times subsequently. The latest set of Interim Criteria promulgated on 7.9.2007 is at Appendix II of **Annex A**.

### Previous Application

- 3.6 There is no previous application for the Site.

### Similar Applications

- 3.7 There were nine similar applications for Small House development within/straddling the same “AGR” zone and the adjacent “V” zone in the vicinity of the Site since the first promulgation of the Interim Criteria in November 2000.
- 3.8 Eight applications (No. A/YL-KTN/153, 177, 265, 284 to 286, 545 and 627) were rejected by the Committee or the Board on review between February 2003 and March 2019 mainly on the grounds that the proposed developments were not in line with the planning intention of “AGR” zone and/or the Interim Criteria in that the sites fell outside or mostly outside the “V” zone and ‘VE’; there was no general shortage of land in the “V” zone for meeting the demand for Small House development; approval of the applications would set undesirable precedents for Small House development within the “AGR” zone; and there was no sufficient information in the submissions to demonstrate that the proposed developments would not generate adverse landscape and ecological impacts.
- 3.9 Application No. A/YL-KTN/380 was approved with conditions by the Committee in May 2012 mainly on the reasons that the proposed development complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the “V” zone and there was a general shortage of land within the “V” zone to meet the demand of Small House development; relevant departments generally had no adverse comment on the application; and though the Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application, there was no active agricultural activities carried out on the site.
- 3.10 Details of the above similar applications are summarized in **Annex E** and their locations are shown on **Plan R-1**.

## **4. Comments from Relevant Government Departments**

- 4.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix IV of **Annex A**.
- 4.2 For the review application, the relevant government departments have been further consulted. All maintain their previous views on the s.16 application

and have no further comment on the review application. In relation to the reasons for rejection of the s.16 application, the views of DAFC are recapitulated as follows:

Agriculture

- the Site falls within the “AGR” zone and is under active cultivation. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also 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 proposed development is not supported from agricultural perspective.

**5. Public Comments Received During Statutory Publication Period (Annex F)**

- 5.1 On 13.1.2023, the review application was published for public inspection. During the statutory public inspection period, two public comments were received from Kadoorie Farm & Botanic Garden and an individual objecting to the application mainly on the grounds that the application does not comply with the Interim Criteria in that the proposed Small Houses fall entirely outside the ‘VE’ and “V” zone; the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent for similar applications; and active and quality farmland should be preserved.
- 5.2 Four public comments raising objection to the application were received at the s.16 application stage which are set out in paragraph 10 of **Annex A**.

**6. Planning Considerations and Assessments**

- 6.1 The subject s.16 application was rejected by the RNTPC on 9.12.2022 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone and the Site falls entirely outside the “V” zone and the ‘VE’ of the Shui Tau Tsuen and Shui Mei Tsuen. The applicants have not submitted any written representation in support of the review application. Since the consideration of the subject application by the RNTPC, there has been no material change in the planning circumstances. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid as recapitulated below.

Planning Intention of the “AGR” zone

- 6.2 The Site and the footprints of the proposed Small Houses fall entirely within the “AGR” zone on the OZP. The proposed Small Houses 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 development point of view as the Site is under active cultivation and possesses potential for agricultural rehabilitation, together with the active farmland in its vicinity. There is no strong justification given in the submission for a departure from the planning intention.

*The Site and the Surrounding Land Uses*

- 6.3 The Site, located to the east of the “V” zone of Shui Tau Tsuen and Shui Mei Tsuen (**Plan R-1**), is currently mainly used for cultivation purpose (**Plan R-4**). It is situated in an area of rural landscape character comprising active farmland, vacant land, ponds, scattered tree groups and village houses. The Chief Town Planner/Urban Design and Landscape of Planning Department has some reservation on the application from the landscape planning perspective and concerns that approval of the application would alter the landscape character and degrade the landscape quality of the “AGR” zone.

*Land Availability within the “V” zone*

- 6.4 Regarding the Interim Criteria, the proposed development does not comply with the Interim Criteria in that both the Site and the two proposed Small Houses footprints fall entirely outside the ‘VE’ and “V” zone of Shui Tau Tsuen and Shui Mei Tsuen. The District Lands Officer/Yuen Long of Lands Department (DLO/YL of LandsD) states that these types of Small House applications would not be considered under the Small House Policy even if planning approval is given. Besides, according to DLO/YL of LandsD’s records, the total number of outstanding Small House applications for Shui Tau Tsuen, Shui Mei Tsuen and Kam Hing Wai is 119 while the 10-year Small House demand forecast for the villages concerned is 136. Based on the latest estimation by the Planning Department (PlanD), about 8.025 ha (or equivalent to about 321 Small House sites) of land is available within the “V” zone of the concerned villages. There is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.

*Departmental Comments*

- 6.5 The Site is not served by public sewer. The applicants propose to use septic tank and soakaway system to treat the sewage generated by the two proposed Small Houses. The Director of Environmental Protection and Chief Engineer/Mainland North of Drainage Services Department have no objection to the application provided that the design and operation of the septic tank and soakaway system follows the requirements in the Environmental Protection Department’s (EPD’s) Practice note for Professional Person (ProPECC) PN 5/93 ‘Drainage Plans subject to Comment by EPD’, including percolation test and certification by Authorized Person. Other relevant government departments consulted including the Director of Fire Services, Chief Highway Engineer/New Territories West of Highways Department and District Officer (Yuen Long) of Home Affairs Department have no objection to or no adverse comment on the application.

Previous and Similar Applications

- 6.6 There is no previous application for the Site. There are eight similar applications within the same “AGR” zone in the vicinity of the Site rejected by the Committee or the Board on review between February 2003 and March 2019 for reasons as stated in paragraph 3.8 above. The planning circumstances of the rejected applications are similar to the current application. Rejection of this application is in line with the previous decisions of the RNTPC.

Public Comments

- 6.7 Regarding the public comments objecting to the review application on the grounds as detailed in paragraph 5.1 above, government departments’ comments and the planning assessments above are relevant.

**7. Planning Department’s Views**

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 and given that there is no material change in the planning circumstances since the consideration of the subject application by the RNTPC, PlanD maintains its previous views 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 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. There is no strong planning justification in the submission for a departure from the planning intention; and
  - (b) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that more than 50% of the footprints of the two proposed Small Houses fall outside the “V” zone and ‘VE’ of Shui Tau Tsuen and Shui Mei Tsuen. There is no general shortage of land in meeting the demand for Small House development in the concerned “V” zone.
- 7.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 24.3.2027, 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 condition of approval and advisory clauses are also suggested for Members’ reference:

Approval condition

- the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning

Board.

Advisory clauses

7.3 The recommended advisory clauses are attached at **Annex G**.

**8. Decision Sought**

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 8.3 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.

**9. Attachments**

<b>Drawing R-1</b>	Layout Plan
<b>Drawing R-2</b>	Section Plan
<b>Plan R-1</b>	Location plan
<b>Plan R-2a</b>	Site plan
<b>Plan R-2b</b>	Estimated amount of land available for Small House development within "V" zone
<b>Plan R-3</b>	Aerial photo
<b>Plan R-4</b>	Site photos
<b>Annex A</b>	RNTPC Paper No. A/YL-KTN/862
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 9.12.2022
<b>Annex C</b>	Secretary of the Board's letter dated 23.12.2022
<b>Annex D</b>	Email received by the Board on 29.12.2022 from the applicants' representative applying for a review of the RNTPC's decision
<b>Annex E</b>	Similar applications
<b>Annex F</b>	Public comments on the review application
<b>Annex G</b>	Recommended advisory clauses

**PLANNING DEPARTMENT  
MARCH 2023**



**TPB Paper No. 10887**

**For Consideration by  
the Town Planning Board on 24.3.2023**

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