

**REVIEW OF APPLICATION NO. A/SK-TMT/57**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House (NTEH) – Small House**  
**Lot 33 RP in D.D. 256, Tai Po Tsai Village, Tai Mong Tsai, Sai Kung, New Territories**

**1. Background**

- 1.1 On 2.11.2016, the applicant, Cheung Chun Wa, represented by Wong Sun Wo, sought planning permission for development of one NTEH (Small House) at the application site (the Site) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Green Belt” (“GB”) on the approved Tai Mong Tsai and Tsam Chuk Wan Outline Zoning Plan (OZP) No. S/SK-TMT/4 (**Plan R-1**).
- 1.2 On 12.5.2017, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were as follows:
- (a) the proposed Small House development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There are no exceptional circumstances or strong planning grounds in the submission for a departure from the planning intention;
  - (b) the proposed development is not in line with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the Site falls within Lower Indirect Water Gathering Ground (WGG) and there is no public sewerage connection available in the vicinity. The applicant fails to demonstrate that the proposed development located within WGG would not have adverse impact on water quality in the area;
  - (c) the proposed development is not in line with the Town Planning Board Guidelines No. 10 for ‘Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance’ in that it would involve vegetation clearance and adverse landscape impact is anticipated. The applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the Site and surrounding areas; and
  - (d) approval of the application will set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such applications will result in a general degradation of the environment and bring about cumulative adverse impact on the water quality and landscape of the area.

1.3 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/SK-TMT/57 (Annex A)
- (b) Extract of minutes of the RNTPC Meeting held on 12.5.2017 (Annex B)
- (c) Secretary of the Board's letter dated 26.5.2017 (Annex C)

## 2. Application for Review

13.6.2017, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). On 1.9.2017 and 1.12.2017, the Town Planning Board (the Board) decided to defer a decision on the review application for two months and one month respectively at the request of the applicant to allow time to resolve comments from relevant government departments. On 7.9.2017, 14.10.2017 and 2.1.2018, the applicant submitted further information (FI) in support of the review application (**Annexes E, F and G**).

## 3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in the applicant's submissions at **Annexes E, F and G**. They can be summarized as follows:

- (a) To address the previous concerns from Water Supplies Department (WSD) and Environmental Protection Department (EPD), a sewage treatment system with Membrane Biological Reactor (MBR) is proposed to meet the discharge standards for effluents discharged into Group B Inland Waters as required by EPD. Anticipated sewage generation will be limited (less than 4.5m<sup>3</sup>/d). Undetectable E.coli in discharge can be achieved.
- (b) The sewage treatment system will be equipped with electronic control programme for flow control and to avoid overflow/malfunctioning. The sewage treatment system will be placed above ground level to facilitate regular inspection and it will be enclosed with containment to prevent washing away during downpour and leakage/spillage.
- (c) Sewage will be recycled for toilet flushing of the village house. Any surplus treated effluent not consumed by toilet flushing will be reused for irrigation in the nearby organic farm to ascertain no discharge generation.

## 4. The Section 16 Application

### The Site and Its Surrounding Area (Plans R-1 to R-4)

4.1 The situation of the Site and its surrounding area at the time of consideration of the s.16 application by the RNTPC is described in paragraph 8 of **Annex A** and recapitulated below. There has been no material change of the situation since then.

- (a) the Site is:
  - (i) located at a vegetated slope and covered with grass/weeds;

- (ii) within the ‘Village Environs’ (‘VE’) of Tai Po Tsai Village; and
  - (iii) within the Lower Indirect WGG.
- (b) the surrounding area have the following characteristics:
- (i) to the north and east are densely vegetated land with mature trees;
  - (ii) two existing village houses built before the gazette of the Development Permission Area plan are located to the northeast and southeast of the Site;
  - (iii) to the west is a streamcourse; and
  - (iv) to the northeast and further west are the “Village Type Development” (“V”) zones of Tai Po Tsai Village.

#### Planning Intention

4.2 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

#### Assessment Criteria

4.3 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. On 23.8.2002, criterion (i) which requires that the application site, if located within WGG, should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at Appendix II of **Annex A**.

#### Town Planning Board Guidelines

4.4 Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for Application for Development within “GB” Zone under section 16 of the Town Planning Ordinance is relevant to this application in Appendix III of **Annex A**. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development in the “GB” zone;
- (b) applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas;
- (c) applications for NTEHs with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to

existing villages and in keeping the surrounding uses, and where the development is to meet the demand from indigenous villagers;

- (d) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (f) any proposed development on a slope or hillside should not adversely affect slope arability.

#### Previous Application

4.5 The Site is the subject of a previous planning application (Application No. A/SK-TMT/53) for the development of one Small House submitted by the same applicant. The previous application was rejected by the RNTPC on 10.6.2016 on the grounds that the proposed development was not in line with the planning intention of “GB” zone; not in line with the Interim Criteria and the TPB PG-No. 10 in that the Site falls within WGG and there is no public sewerage connection available in the vicinity; the applicant fails to demonstrate that the proposed development would not cause adverse landscape impact on “GB” zone; slope stability; and setting an undesirable precedent for other similar applications within the “GB” zone. The details are set out in paragraph 6 of **Annex A**.

#### Similar Application

4.6 There is one similar application (Application No. A/SK-TMT/31) for 4 proposed NTEHs (Small Houses) in the vicinity on OZP (**Plans R-1 and R-2a**). The application was rejected by the Board upon review on 23.12.2011 on grounds of not in line with the planning intention of “GB” zone; general incompliance with the Interim Criteria and possible adverse impacts on the water quality of the area. Details of the similar application are summarized at Appendix IV of **Annex A** and its location is shown on **Plans R-1 and R-2a**.

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

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 10 and Appendix V of **Annex A**.
- 5.2 For the review application, the following government departments have been further consulted and their comments are summarised as follows:

#### **Water Supply**

- (a) Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):
  - (i) objects to the application; and

- (ii) the application site is located within the Lower Indirect WGG. There is high risk of pollution to the WGG.

### **Environment**

- (b) Comments of the Director of Environmental Protection (DEP):
  - (i) does not support the application;
  - (ii) the application site is located within the Lower Indirect WGG where no public sewer is available, and he concurs with WSD's comments that it is necessary to avoid contamination of water resources designated for portable water supply; and
  - (iii) the submitted information cannot demonstrate that the treated effluent can fully and sustainably attain the stringent standards set out in the Technical Memorandum under the Water Pollution Control Ordinance in which the E.coli requirement is less than 1 cfu/100ml.

5.3 The following government departments have no further views/comments on the review application and maintain their previous views on the s.16 application as below:

### **Land Administration**

- (c) District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) maintains her previous views on the s.16 application. Her comments as stated in Appendix V of **Annex A** are recapitulated below:
  - (i) no objection to the application;
  - (ii) the subject lot is held under Block Government Lease (demised for agricultural use);
  - (iii) 10-year Small House Demand Forecast for Tai Po Tsai Village is 87 and the outstanding Small House Application for Tai Po Tsai Village is 12;
  - (iv) the applicant is an Indigenous Villager of Tai Po Tsai Village; and
  - (v) the Site falls entirely within the Village Environs ('VE') of Tai Po Tsai Village.

### **Drainage**

- (d) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in Appendix V of **Annex A** are recapitulated below:
  - (i) the proposed house is located in very close proximity of an existing streamcourse which is a key drainage to convey stormwater runoff from upstream catchment; and

- (ii) he has no objection to the application on the condition that the applicant can submit satisfactory stormwater drainage and site formation proposals to demonstrate that there would be adequate measures provided at the resources of the applicant to avoid the proposed site from being eroded and flooded, and to ensure the capacity of streamcourse and flooding susceptibility of the adjoining areas would not be adversely affected by the proposed development.

### **Landscape**

- (e) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no further comment on the review application and maintains her previous views on the s.16 application. Her comments as stated in Appendix V of **Annex A** are recapitulated below:
  - (i) with reference to the aerial photos in 2010 to 2014 and a recent site visit, it is observed that the Site is located on a platform of gentle sloping ground. There is a stream nearby to west of the Site which has been dried up in winter and covered by dense vegetation. Weed is found within the Site and mature trees of good forms are found along the perimeter of the Site. Trees and vegetation originally within the Site are found removed. In addition, the trees at the adjacent area outside the site boundary connected to Yan Yee Road are replaced by asphalt (**Plan R-4**). Landscape impact on existing landscape resources in the Site and its vicinity has taken place;
  - (ii) has some reservations on the application from the landscape planning perspective for the following reasons:
    - a. the proposed Small House and septic tank located at vegetated slope may require construction of retaining wall/ extensive slope work which may cause adverse impact on the existing trees and vegetation adjacent to the application site. Although the applicant proposes to plant some new trees near the northern boundary, the proposed tree location will be in conflict with existing trees. As there is no information on the treatment of existing trees, the landscape impact arising from the proposed development cannot be ascertained. Besides, the proposed planting of 62 trees within the Site and along the Site boundary is not realistic;
    - b. approval of the application would set an undesirable precedent attracting other similar applications resulting in encroachment into the “GB”, encouraging unauthorized vegetation clearance and site modification prior to obtaining planning approval. The landscape quality of “GB” zone will therefore be undermined; and
  - (iii) should the application be approved, a planning condition requiring the applicant to submit and implement a landscaping and tree preservation proposal to the satisfaction of the Director of Planning or of the Board is recommended.

### **Traffic**

- (f) Commissioner for Transport (C for T) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in Appendix V of **Annex A** are recapitulated below:
- (i) has reservation on the application;
  - (ii) 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
  - (iii) as the application only involves one Small House, he considers that the application can be tolerated unless it is rejected on other grounds.

### **Building Matters**

- (g) Chief Building Surveyor/New Territories East 2 & Rail, Buildings Department (CBS/NTE2 & Rail, BD) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in Appendix V of **Annex A** are recapitulated below:
- (i) no comment on the application;
  - (ii) the applicant should be reminded that all non-exempted ancillary site formation and/or communal drainage works are subject to compliance with Buildings Ordinance; and
  - (iii) Authorized Person must be appointed for the aforesaid site formation and communal drainage works.

### **Fire Safety**

- (h) Director of Fire Services (D of FS) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in Appendix V of **Annex A** are recapitulated below:
- (i) no in-principle objection to the application; and
  - (ii) the applicant is reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by Lands Department. Detailed fire safety requirements will be formulated upon receipt of formal application referred by Lands Department.

### **Geotechnical**

- (i) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no comment on the review application. Should the application be approved, the applicant is required to submit a Natural

Terrain Hazard Study and implement the mitigation measures recommended therein to his satisfaction.

5.4 The following government departments have no comment on the review application:

- (a) District Officer (Sai Kung), Home Affairs Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Director of Agriculture, Fisheries and Conservation;
- (d) Chief Engineer (Works), Home Affairs Department; and
- (e) Project Manager (East), CEDD.

## **6. Public Comment on the Review Application Received During the Statutory Publication Period**

6.1 On 23.6.2017 and 15.9.2017, the review application and FI submitted on 13.6.2017 and 7.9.2017 respectively were published for public inspection. During the first three weeks of the statutory public inspection periods, which ended on 14.7.2017 and 6.10.2017 respectively, a total of eight public comments were received from three individuals of the public, two from Kadoorie Farm & Botanic Garden Corporation, two from World Wide Fund for Nature and one from Designing Hong Kong Limited (**Annex H**). Seven commenters object to the review application mainly on the grounds of being not in line with the planning intention of the “GB” zone; being not in line with Interim Criteria and Town Planning Board Guidelines TPB-PG No. 10; setting an undesirable precedent for similar applications; deterring suspected “destroy first, build later” application; as well as having adverse impacts on water quality, landscape and environment of the area. The other comment received is not related to the review application.

6.2 The public comments received at the s.16 application stage are set out in paragraph 11 of **Annex A**.

## **7. Planning Considerations and Assessments**

7.1 The applicant sought planning permission from the Board for development of one NTEH (Small House) at the Site. The subject application was rejected by the RNTPC on 12.5.2017 mainly on the grounds that the proposed development was not in line with the planning intention of the “GB” zone; the proposed development was not in line with the Interim Criteria in that the site falls within the Lower Indirect WGG and there is no public sewerage connection available in the vicinity; the proposed development is not in line with the TPB Guidelines No. 10 in that it would involve vegetation clearance and adverse landscape impact is anticipated; and the approval of the application would set an undesirable precedent for similar applications within the “GB” zone, the cumulative effect of approving such applications would result in a general degradation of the environment and bring about cumulative adverse impact on the water quality and landscape of the area. There is a general presumption against development within the “GB” zone. No strong justifications have been provided in the review application to support a departure from the planning intention.

7.2 In support of the s.17 review application, the applicant submitted FI on 7.9.2017, 14.10.2017 and 2.1.2018 respectively involving technical assessment to respond to comments of WSD and EPD regarding their concerns on adverse impacts arising from



the proposed development such as water quality deterioration and water contamination within the WGG. The applicant proposes to use a sewage treatment system with MBR to meet the discharge standards for effluents discharged into Group B inland waters as required by EPD and indicates that anticipated sewage generation will be limited (less than 4.5m<sup>3</sup>/d) and undetectable E.coli in discharge can be achieved. The sewage treatment system will be equipped with electronic control programme for flow control and to avoid overflow/malfunctioning. The system will also be enclosed with containment to prevent washing away during downpour and leakage/spillage. Any surplus treated effluent not consumed by toilet flushing will be reused for irrigation in nearby organic farm to ascertain no discharge generation. However, WSD objects to the application as the Site is located within Lower Indirect WGG and there is high risk of pollution to the WGG. EPD considers that the Site is located within WGG where no public sewer is available and it is necessary to avoid contamination of water resources designated for portable water supply. DEP maintains his objection to the application.

- 7.3 The Site and the footprint of the proposed Small House fall entirely within the common 'VE' of Tai Po Tsai village. According to DLO/SK, LandsD's latest record, there are 12 outstanding Small House applications within the village and the 10-year Small House demand forecast is 87. It is estimated that about 2.04ha of land are available in the "V" zone of Tai Po Tsai Village for the development of about 81 Small Houses. Therefore, there is still land available within the "V" zone to meet the outstanding demand of 12 Small Houses, although it cannot fully meet the future Small House demand for 87 Small House sites in the long run. It is considered more appropriate to concentrate the proposed Small House within the "V" zone for orderly development pattern, efficient use of land and provision on infrastructures and services.
- 7.4 The Site is located on a vegetated slope surrounded by dense mature trees (**Plans R-2a and R-3** and photo on **R-4**). As advised by CTP/UD&L, PlanD, with reference to the aerial photographs in 2010-2014 and recent site visit, trees and vegetation originally within the Site are found removed. The trees at the adjacent area outside the site boundary connected to Yan Yee Road are replaced by asphalt (**Plan R-4**). Landscape impact on existing landscape resources in the Site and its vicinity has taken place. According to the revised Geotechnical Planning Review Report submitted by the applicant at Appendix Ib of **Annex A**, the proposed development would involve site formation work with construction of building platform above the existing ground level. The proposal may cause adverse impact on the existing trees and vegetation adjacent to the Site. CTP/UD&L has reservation on the application as no information on the treatment of existing trees has been provided. The proposed development is not in line with TPB-PG No. 10 in that it would involve vegetation clearance and adverse landscape impact is anticipated. The applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the Site and surrounding areas.
- 7.5 The Site is the subject of a previous application for the same use rejected by the RNTPC on 10.6.2016 mainly on grounds that the proposed development was not in line with the planning intention of "GB" zone and not in line with the Interim Criteria and TPB PG-No. 10. Since the rejection of the previous application, there is no change in planning circumstances. The approval of the application will set an undesirable precedent for other similar applications extending the village towards the "GB" zone in the future. The cumulative effect of approving such application will result in a general degradation of the landscape character and undermining the intactness of the "GB" zone.
- 7.6 As there is no major change in planning circumstance of the Site and its surrounding

areas since the rejection of the subject application, the planning considerations and assessments as stated in paragraph 12 of **Annex A** remain relevant and there is no strong justification to warrant a departure from the RNTPC's rejection of the application.

- 7.7 There are eight public comments on the application, with seven commenters object to the review application as detailed in paragraph 6.1 above. The planning assessments and comments of government departments 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 change in the planning circumstances since the rejection of the application by the RNTPC, PlanD maintains its previous view of not supporting the review application for the following reasons:

- (a) the proposed Small House development is not in line with the planning intention of the "GB" zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There are no exceptional circumstances or strong planning grounds in the submission for a departure from the planning intention;
- (b) the proposed development is not in line with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the Site falls within Lower Indirect WGG and there is no public sewerage connection available in the vicinity. The applicant fails to demonstrate that the proposed development located within WGG would not have adverse impact on water quality in the area;
- (c) the proposed development is not in line with TPB-PG No. 10 in that it would involve vegetation clearance and adverse landscape impact is anticipated. The applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the Site and surrounding areas;
- (d) land is still available within the "V" zone of Tai Po Tsai where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services; and
- (e) approval of the application will set an undesirable precedent for other similar applications within the "GB" zone. The cumulative effect of approving such applications will result in a general degradation of the environment and bring about cumulative adverse impact on the water quality and landscape of the area.

8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until **23.3.2022**, 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 at Annex I are suggested for Members' reference.

Approval Conditions

- (a) the submission and implementation of a landscaping and tree preservation proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the submission of a sewerage impact assessment, including a sewage treatment proposal, and implementation of the mitigation measures identified therein to the satisfaction of the Director of Environmental Protection or of the Town Planning Board; and
- (d) the submission of a Natural Terrain Hazard Study and implementation of the mitigation measures recommended therein to the satisfaction of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

Advisory Clauses

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 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.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reasons for rejection should be given to the applicant.

**10. Attachments**

<b>Plan R-1</b>	Location plan
<b>Plans R-2a and R-2b</b>	Site plans
<b>Plan R-3</b>	Aerial photo
<b>Plan R-4</b>	Site Photo
<b>Annex A</b>	RNTPC Paper No. A/SK-TMT/57
<b>Annex B</b>	Extract of Minutes of the 579 <sup>th</sup> RNTPC on 12.5.2017
<b>Annex C</b>	Secretary of the Board's letter dated 26.5.2017
<b>Annex D</b>	Letter dated 13.6.2017 from the Applicant's representative
<b>Annex E</b>	Letter dated 7.9.2017 providing FI
<b>Annex F</b>	Letter dated 14.10.2017 providing FI
<b>Annex G</b>	Letter dated 2.1.2018 providing FI
<b>Annex H</b>	Public comments received on the review application
<b>Annex I</b>	Recommended advisory clauses

**PLANNING DEPARTMENT  
MARCH 2018**