

# TOWN PLANNING BOARD

TPB PAPER NO. 10630  
FOR CONSIDERATION BY  
THE TOWN PLANNING BOARD  
ON 22.5.2020

REVIEW OF APPLICATION NO. A/I-MWF/31  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed Houses (New Territories Exempted Houses – Small Houses)  
in “Agriculture” and “Village Type Development” Zones  
Lots No. 1040 s.B and 1040 s.C in D.D.1 MW, Tai Tei Tong Village, Mui Wo, Lantau

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**1. Background**

- 1.1 On 5.8.2019, the applicants, LAM Ka Ho and LAM Ka Ki, represented by LAM Ka Ho, sought planning permission for the development of two NTEHs (Small Houses) at the application site (the Site) (**Plan R-1**) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) and “Village Type Development” (“V”) on the approved Mui Wo Fringe Outline Zoning Plan (OZP) No. S/I-MWF/10.
- 1.2 On 4.10.2019, 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 development is not in line with the planning intention of the “AGR” zone in the Mui Wo Fringe area 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 such planning intention;
  - (b) land is still available within the “V” zone of Tai Tei Tong Village 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
  - (c) approval of the application would set an undesirable precedent to encourage similar applications involving active agricultural land within the “AGR” zone. The cumulative effect of approving such applications will result in loss of suitable land for agricultural purposes in the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/I-MWF/31 (Annex A)
  - (b) Extract of minutes of the RNTPC Meeting held on 4.10.2019 (Annex B)
  - (c) Secretary of the Board’s letter dated 18.10.2019 (Annex C)

## 2. Application for Review

- 2.1 On 29.10.2019, the applicants applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). On 29.11.2019, the applicants submitted written representation in support of the review application (**Annex E**).
- 2.2 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 28.2.2020 for consideration of the review application has been rescheduled, and the Board has agreed to adjourn consideration of the application. The review application is now scheduled for consideration by the Board at this meeting.

## 3. Justifications from the Applicants

The justifications put forth by the applicants in support of the review application are detailed in the written representation at **Annex E**. They can be summarized as follows:

- (a) although the proposed Small Houses are outside the village environ ('VE'), they are proposed to be located as close to the 'VE' as possible. Also, the proposed Small House footprints on the "AGR" zone have been minimised so that less than 50% of the proposed Small Houses fall within agricultural land;
- (b) the proposed Small Houses could co-exist harmoniously with the existing farming activities on Lot 1040. While the eastern part of Lot 1040 is proposed for the subject Small House development, the western part of the lot could be retained for agricultural use and the applicants support the farming activities by providing electricity and water connections and maintenance of fences. Such arrangement is acceptable to the nearby farmers;
- (c) approval of the subject application would not set undesirable precedent to other similar applications as the Tai Tei Tong Village is mainly bounded by existing roads / footpaths and there may not be any other sites similar to the Site which will have less than 50% of the proposed Small House footprints falling within "AGR" zone; and
- (d) the applicants endeavour to minimise the impact of the proposed development to the local community facilities and propose to improve the existing footpaths and street lights in accordance with Home Affairs Department's requirement.

## 4. The Section 16 Application

### The Site and 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 7 of **Annex A** and recapitulated below. There has been no material change of the situation since then.

- (a) the Site is:

- (i) flat and an active farmland;
  - (ii) partly encroaching onto existing footpaths;
  - (iii) located in proximity to the village cluster of Tai Tei Tong Village; and
  - (iv) accessible via an village road and a footpath.
- (b) the surrounding area has the following characteristics:
- (i) mainly surrounded by agricultural land, scattered tree groups and village houses;
  - (ii) to the immediate west is an active agricultural land;
  - (iii) to the northeast are some temporary structures; and
  - (iv) to the further south (about 40m) is the village cluster of Tai Tei Tong Village in the “V” zone.

#### Planning Intention

- 4.2 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.
- 4.3 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

#### Assessment Criteria

- 4.4 The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria), which is relevant to the consideration of the s.16 application, is still effective. 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 promulgated on 7.9.2007 is at Appendix II of **Annex A**.

#### Previous Application

- 4.5 There is no previous application at the Site.

#### Similar Application

- 4.6 There is no similar application within the same “AGR” zone.

## 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 III of **Annex A**.
- 5.2 For the review application, the following government departments have been further consulted and their comments are summarised as follows:

### Land Administration

Comments of the District Lands Officer/Islands, Lands Department (DLO/Is, LandsD):

- (a) the latest 10-year forecast of Small House demand of Tai Tei Tong Village is still 131 for the period from 1.1.2019 to 31.12.2028. Please be reminded that the figure of 10-year forecast Small House demand is estimated and provided by the Indigenous Inhabitant Representative (IIR) and the information so obtained has not been in any way verified by his office;
- (b) the number of outstanding Small House applications for sites within the “V” zone and straddling / outside “V” zone is 21 as at 22.11.2019;
- (c) DLO/Is, LandsD maintains his previous views on the s.16 application which are recapitulated below:
- (i) no in-principle objection to the application;
- (ii) the two subject lots are held under Block Government Lease demised for agricultural uses;
- (iii) the respective footprints of the two proposed Small Houses are outside the ‘VE’ of any recognised village;
- (iv) the applicant, LAM Ka Ho, who submitted a Small House application in respect of Lot No. 1040 s.C in D.D. 1 MW in 2018, has claimed himself as an indigenous villager (IV) of Tai Tei Tong Village but his IV status has not been verified yet. The registered owner of Lot No. 1040 s.B, LAM Ka Ki, who submitted a Small House application to his office in 2015 and subsequently changed the Small House application site to Lot No. 1040 s.B in D.D. 1 MW in 2018, has claimed himself as an IV of Tai Tei Tong Village. However, his IV status has not yet been verified; and
- (v) if and after planning approval is given by the Board to the application, his office will continue to process the two Small House applications in accordance with the established procedures. However, there is no guarantee that the two Small House applications would be approved. If the two Small House applications are approved by the LandsD acting in the capacity as landlord at its sole discretion, the approvals will be subject to such terms and conditions as may be imposed by LandsD. Please also note that there is no guarantee of right of way to the Small

House sites concerned or approval of any Emergency Vehicular Access thereto.

- 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:

**Traffic**

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

- (a) since the applicants only seek planning approval for two proposed houses at the Site, she considers that the proposed development can be tolerated from traffic engineering point of view; and
- (b) the access roads in the vicinity of the Site are not managed by Transport Department.

**Environment**

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

- (a) no objection to the application; and
- (b) the applicants are reminded to design and operate the septic tank and /or soakaway system following the requirements in Environmental Protection Department (EPD)'s Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department", including the percolation test, sufficient clearance distances from sensitive receivers and certifications by Authorized Person.

**Landscape**

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

- (a) no objection to the application from landscape planning perspective;
- (b) according to the aerial photo of 2018, the Site was used for agriculture and no existing tree was observed within the Site. The Site is situated in a rural inland landscape character surrounded by village houses and shrubland with individual tree groups scattered within the area. The proposed development is not incompatible with the surrounding environment; and
- (c) in consideration of limited space within the Site, implementation of effective landscape treatment to enhance the public realm seems not practicable. It is considered not necessary to impose any landscape condition should the application be approved by the Board.

### **Fire Safety**

#### 5.3.4 Comments of the Director of Fire Services (D of FS):

- (a) no objection to the application; and
- (b) the applicants are 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 LandsD.

### **Water Supply**

#### 5.3.5 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) no objection to the application; and
- (b) the water main located within the Site is trunk main (**Plan R-2a**). In addition, the areas close to the Site are private lots such that the diversion of which is technically not feasible from operation and maintenance perspective. Therefore, he has no in-principle objection to the planning application provided that the applicants agree to fulfil the following requirements from waterworks operation and maintenance points of view:
  - (i) existing water mains are affected as indicated on **Plan R-2a** and no development which requires resiting of water mains will be allowed;
  - (ii) details of site formation work shall be submitted to the Director of Water Supplies (D of WS) for approval prior to commencement of works;
  - (iii) no structures shall be built or materials stored within 1.5m from the centre line(s) of water main(s) shown on **Plan R-2a**. Free access shall be made available at all times for staff of the D of WS or their contractor to carry out construction, inspection, operation, maintenance and repair works;
  - (iv) no trees or shrubs with penetrating roots shall be planted within 1.5m from the centre line(s) of water main(s) as shown on **Plan R-2a**. No change of existing site condition shall be undertaken within the aforesaid area without the prior agreement of the D of WS;
  - (v) no planting or obstruction of any kind except turfing shall be permitted within the space of 1.5m around the cover of any valve or within a distance of 1m from any hydrant outlet; and

- (vi) tree planting may be prohibited at specific location if the existing water mains in the vicinity are found vulnerable to such tree planting.

### **Nature Conservation**

5.3.6 Comments of the Director of Agriculture, Fisheries & Conservation (DAFC):

- (a) the application is not supported from agriculture perspective; and
- (b) the Site is now actively used for farming activities. Besides, the subject lots possess potential for agricultural rehabilitation, considering the accessibility and availability of water source.

### **Others**

5.3.7 Comments of the Head of Sustainable Lantau Office, Civil Engineering and Development Department (H(SLO), CEDD):

- (a) no comment on the application for the proposed Small Houses development, noting that the Site falls within an area zoned "V" and "AGR" on the Mui Wo Fringe OZP; and
- (b) in view that there are frequent complaints of disposal of construction wastes in South Lantau resulting in damage to the natural environment, and the future small houses development would inevitably trigger construction waste, should the application be approved, the applicants should be reminded on the proper disposal of Construction and Demolition (C&D) wastes during the construction works.

### **District Officer's Comments**

5.3.8 Comments of the District Officer (Islands), Home Affairs Department (DO(Is), HAD):

no comment on the subject application given that the applicants will provide an alternative route to public if the existing footpaths will be blocked due to the proposed development.

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

- (a) Chief Engineer/Consultants Management, Drainage Services Department;
- (b) Chief Engineer/Hong Kong & Islands, Drainage Services Department; and
- (c) Chief Highway Engineer/New Territories East, Highways Department.



## **6. Public Comments Received During Statutory Publication Period**

- 6.1 On 8.11.2019 and 13.12.2019, the review application and written representation were published for public inspections respectively. During the first three weeks of the statutory public inspection periods, a total of 13 public comments were received from the IIR of Tai Tei Tong Village, Kadoorie Farm and Botanic Garden, Committee of Living Islands Movement, Hong Kong Bird Watching Society, World Wide Fund – Hong Kong, Designing Hong Kong Limited and four individuals (**Annex F**). The IIR of Tai Tei Tong Village supports the subject review application. The other commenters raise objection to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone. It will lead to loss of active farmland, disruption of existing access roads, nuisance to the neighbourhood, adverse traffic and drainage impacts as well as flooding and odour problems. Also, approval of the application would set an undesirable precedent to future similar applications and destroy the tranquillity of the rural setting and the fung shui feature. Some commenters suggest that the proposed Small Houses should be located close to the village proper and the drainage system should be upgraded.
- 6.2 Five public comments objecting to the application were received at the s.16 application stage. They are set out in paragraph 10 of the RNTPC Paper at **Annex A**.

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

- 7.1 The application is for a review of the RNTPC’s decision on 4.10.2019 to reject the application for development of two NTEHs (Small Houses) at the Site. The subject application was rejected 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, and the approval of the application will set an undesirable precedent for similar applications within the “AGR” zone.
- 7.2 In support of the review application, the applicants claim that the proposed Small House footprints on the “AGR” zone have been minimised so that less than 50% of the proposed Small Houses fall within agricultural land. According to PlanD’s assessment in paragraph 9.1 of **Annex A**, although about half of the footprints of the proposed Small Houses fall within the “V” zone, majority of the Site fall within the “AGR” zone. The applicants indicate that there are at present farming activities in Lot 1040 which covers the Site. The applicants would use only the eastern part of the lot for the proposed Small Houses, while the western part would be reserved for agricultural use. However, DAFC does not support the application from the agriculture perspective as the Site is now actively used for farming activities and possesses potential for agricultural rehabilitation. The proposed development is considered not in line with the planning intention of the “AGR” zone which is intended 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.
- 7.3 The Site is situated in an area of rural landscape character surrounded by agricultural land, scattered tree groups and village houses. The proposed Small Houses are considered not incompatible with the surrounding environment (**Plans R-3 and R-4**). The applicants claim in the review application that approval of the subject application would not set an undesirable precedent to other similar applications as there may not

be any other similar sites which will have less than 50% of the proposed Small House footprints falling within “AGR” zone. However, as the Site is at present actively used for farming activities and there are other agricultural lots along the “AGR” zoning boundary (**Plans R-2a** and **R-2b**), approval of the application would set an undesirable precedent to encourage similar applications involving active agricultural land within the “AGR” zone. The cumulative effect of approving such applications will result in loss of suitable land for agricultural purposes in the area.

- 7.4 In the review application, the applicants propose to improve the existing footpaths and street lights in accordance with HAD’s requirement. In this regard, it is noted that DO(Is), HAD has no specific comment on the applicants’ proposal given that the applicants will provide an alternative route to public if the existing footpaths will be blocked due to the proposed development. However, it is not clear whether such improvement works which fall on other private lots would infringe other landowners’ property right and could be implemented.
- 7.5 Regarding the Interim Criteria, the proposed Small Houses fall entirely outside the ‘VE’ of Tai Tei Tong Village. According to DLO/Is, the estimated 10-year Small House demand forecast for the village is 131 and the total number of outstanding Small House applications is 21. As such, the total estimated Small House forecast for the village is 152 (or equivalent to about 3.8ha of land). According to the latest estimate by PlanD, about 0.93 ha of land (equivalent to 37 Small House sites) are available in the “V” zone of Tai Tei Tong Village for Small House development (**Plan R-2b**). While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is adequate to meet the 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 recent years. 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. As such, 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 infrastructure and services. There has been no significant change in planning circumstances since the application was rejected by the RNTPC, and there is no strong reason to depart from the RNTPC’s previous decision.
- 7.6 Regarding the public comments on the review application as mentioned in paragraph 6 above, the assessments in paragraphs 7.1 to 7.5 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 has been no change in the planning circumstances since the consideration of the subject application by the RNTPC on 4.10.2019, 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 in the Mui Wo Fringe area 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 such planning intention;

- (b) land is still available within the “V” zone of Tai Tei Tong Village 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
- (c) approval of the application would set an undesirable precedent to encourage similar applications involving active agricultural land within the “AGR” zone. The cumulative effect of approving such applications will result in loss of suitable land for agricultural purposes in 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 27.3.22.5.2024, 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 approval condition and advisory clauses are also suggested for Members’ reference:

Approval Condition

The provision of septic tank, as proposed by the applicants, at a location to the satisfaction of the Director of Lands or of the Town Planning Board.

8.3 The advisory clauses at **Annex G** are suggested for Members’ reference.

**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 applicants.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

**10. Attachments**

<b>Drawings R-1 to R-2</b>	Layout Plans
<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/I-MWF/31
<b>Annex B</b>	Extract of Minutes of the 635 <sup>th</sup> RNTPC on 4.10.2019
<b>Annex C</b>	Secretary of the Board's letter dated 18.10.2019
<b>Annex D</b>	Letter from the applicants' representative dated 29.10.2019 applying for a review of the RNTPC's decision
<b>Annex E</b>	Letter from the applicants' representative dated 29.11.2019 with submission supporting the s.17 review
<b>Annex F</b>	Public comments
<b>Annex G</b>	Recommended advisory clauses

**PLANNING DEPARTMENT**  
**~~MARCH~~ MAY 2020**