

REVIEW OF APPLICATION NO. A/TM-LTY Y/273-1
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Extension of Time for Commencement of
the Proposed Residential Development (Flat) for a Period of 4 Years
until 17.10.2022 (i.e. Additional 4 Years from the Original Approval)**

1. Background

1.1 On 22.2.2018, the applicant, Join Smart Limited represented by Llewelyn-Davies Hong Kong Limited, sought planning permission for the extension of time (EOT) for commencement of development of the approved development under Application No. A/TM-LTY Y/273 for an additional period of 4 years until 17.10.2022 under s.16A of the Town Planning Ordinance (the Ordinance). Due to departmental objection, the application was submitted to the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) for consideration. The RNTPC on 20.4.2018 decided to defer a decision on the application. The application was subsequently further considered by the RNTPC on 15.6.2018.

1.2 On 15.6.2018, the RNTPC decided to reject the application and the reason was:

the application is not in line with Town Planning Board Guidelines No. 35C (TPB PG-No. 35C) on Extension of Time for Commencement of Development in that there has been a material change in planning circumstances as the Government has committed to plan for a comprehensive public housing development which covers the Site, and the applicant fails to demonstrate that there is a good prospect to commence the proposed development within the extended time limit.

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

- (a) RNTPC Paper No. A/TM-LTY Y/273-1A (Annex 1)
- (b) Extract of minutes of the RNTPC meeting held on 20.4.2018 (Annex 2)
- (c) Extract of minutes of the RNTPC meeting held on 15.6.2018 (Annex 3)
- (d) Secretary of the Board's letter dated 4.5.2018 informing the applicant of the deferment of the RNTPC's decision (Annex 4)
- (e) Secretary of the Board's letter dated 6.7.2018 informing the applicant of the RNTPC's decision (Annex 5)
- (f) Two letters of 14.6.2018 from the applicant's representative and the applicant's legal representative (tabled at the RNTPC meeting on 15.6.2018) (Annex 6)

- 1.4 The application site (the Site) falls within an area zoned “Residential (Group E)” (“R(E)”) on the draft Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTY9/9 (the OZP) (**Plan R-1**). The Site is currently vacant and fenced off and accessible from San Tat Lane connected to San Hing Road (**Plan R-2**). According to the Government’s plan, the Site would encroach into a public housing development site at San Hing Road, which is currently under a consultancy study titled “Agreement No. CE 68/2017 (CE) – Site Formation and Infrastructural Works for the Development at San Hing Road and Hong Po Road, Tuen Mun – Feasibility Study” commissioned by the Civil Engineering and Development Department (CEDD) (**Plan R-1a**). The consultancy study commenced in February 2018 and scheduled for completion in Q1 2020.

2. Application for Review

On 11.7.2018, the applicant applied, under s.17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application. In support of the review, the applicant and his representative submitted the following document:

Letter of 11.7.2018 and Review Statement from the applicant’s (**Annex 7**) representative applying for review of the application

3. Justifications from the Applicant

- 3.1 The justifications put forth by the applicant in support of the application are detailed in the Review Statement in **Annex 7**. They can be summarised as follows:

No Material Change in Planning Circumstances

- 3.2 There is no change in the planning policy and planning intention as stipulated in the Explanatory Statement (ES) of the OZP, land-use zoning and development restrictions as stipulated on the OZP since the original permission was granted to the applicant. As such, there has been no material change in planning circumstances. The original planning application was made under s.16 of the Ordinance and the application for EOT is made under s.16A of the same Ordinance to effect an amendment to the planning approval. The EOT application must therefore be considered within the parameters of the OZP and the planning intention of the “R(E)” zone.
- 3.3 In so far as the “R(E)” zone is concerned, the OZP has not been amended since the original planning permission was granted. The potential public housing development is not part of the OZP planning intention, and is still a conceptual scheme that is undergoing environmental impact assessment study. It is wrong in law to take into consideration the on-going study by the Housing Department (HD), on the possibility or feasibility of including the Site for public housing development. The Administration and the Board should take into account the planning intention as shown on the OZP and the ES which assists in the interpretation of the planning intention when assessing application for EOT for commencement of development, but no regard should be made to the Administration’s intention or study to include the Site for public housing development which is not part of the OZP.

Application Conforms to Planning Intention

- 3.4 The planning intention for the “R(E)” zone is to be ascertained from the OZP including the Notes. As the Privy Council held in *Henderson Real Estate Agency Ltd. v Lo Chai Wai* [1997] HKLRD 258, the ES, though not part of the OZP, should also be taken into account in ascertaining the planning intention. There is nothing in the ES which indicates who the applicant or developer of the zone must or should be.

No Adverse Planning Implications

- 3.5 There would not be any adverse planning implications arising from the EOT application. When the Board granted the original permission to the application on 17.10.2014, thorough discussion was made to assess if the approval of the private residential development would have any adverse implications to a potential proposed public housing development under planning in the area. The Board considered the private residential development appeared to be more advanced than the conceptual public housing scheme in terms of readiness for implementation. After detailed consideration, the Board decided to approve the private residential development, which represented a conclusion that the Board accepted the development scheme was in full compliance with all the statutory development restrictions and was generally acceptable.

On-going Processing of Land Exchange

- 3.6 The commencement of the approved development has not been commenced due to the on-going processing of land exchange application and fine-tuning of the site boundary. The applicant applied to the Lands Department (LandsD) for a land exchange as early as 13.1.2015. The land exchange case is currently under processing. During the land exchange application process, the applicant has undertaken normal and important land administrative procedures.

All Reasonable Actions taken to Implement the Approved Development

- 3.7 The applicant has demonstrated that all reasonable actions have been taken for the implementation of the approved development which have all been detailed in the submissions made in relation to the application for EOT, e.g. submission of building plans for approval by the Buildings Department (BD), submission of application for land exchange by the LandsD, submissions for the discharge of approval conditions by the Planning Department (PlanD) and relevant departments.

Good Prospect to Commence the Approved Development

- 3.8 The applicant has demonstrated that there is a good prospect to commence the approved development within the extended time limit. Most of the approval conditions have already been partially/fully complied with. The latest General Building Plan (GBP) has already been re-submitted to resolve the outstanding technical comments. Active negotiation with the LandsD has been in progress regarding the basic terms and land premium offers. Since July 2017, the open storage yards and workshop uses within the Site have ceased operation. The Site has been cleared and ready for commencement of development.

Extension Period of Four Years is Reasonable

- 3.9 The extension period applied for is reasonable. The original duration for commencement of the approved development was 4 years. The applicant has applied for an EOT for commencement of the approved development for another 4 years (i.e. a period of 48 months). It does not result in an aggregated extension period longer than the original duration for commencement of the approved development. An application for such an extension is only a Class B amendment as accepted by the Board.

Ultra Vires

- 3.10 The Court of Appeal (CA) held in *International Trader Limited v Town Planning Appeal Board* [2009] 3 HKLRD 339 that when determining an application for planning permission under s.16 of the Ordinance and hence any amendment of permission under s.16A, the Board does not have the power to have regard to any and all planning considerations which it believes would assist it to reach the decision in the public interest. As the CA held in *International Trader* case, the RNTPC when determining the application for EOT, does not have the power to have regard to any and all planning circumstances which it believes to reach the decision in the public interest. It cannot take into account the possible public housing development which is outside the parameters of the OZP. Hence, it must ignore the objection of the HD. If the RNTPC was to take into account the objection of the HD, it acts *ultra vires*.

Premature to take Uncertain Public Housing into Consideration

- 3.11 The Board has not considered the suitability, development intensity and height of the proposed public housing development on the Site. The proposed public housing development is still conceptual in nature. The Feasibility Study being carried out by the government will not be completed until 2020 and the outcome is unknown. There is no certainty of the proposed public housing being permitted on the Study Area. The extent of the public housing development to be permitted would need to take into account the permitted and committed developments in accordance with the extant OZP. The Board could decide to exclude the applicant's land from any possible future zoning amendments to permit public housing development. It is therefore premature for the Board to reject the application for an EOT based on an unknown future outcome.

Considerable Time required for Public Housing Development Process

- 3.12 Should the Board propose to rezone the Site and include the Site for future public housing development, the applicant will object to such rezoning. Taking into account the size of the Study Area, and delays that might be caused by objections and judicial reviews, it could take up to 12 to 15 years before any public housing units would be ready for occupation. If the applicant's land was excluded from any possible future rezoning of the Site, then the approved development could be completed at an earlier date, probably, within 4 to 5 years.

Need for Mix for Private and Public Housing with Good Social Mix

- 3.13 It is more desirable to have a mix of forms of private and public housing in providing variety to the urban form. The approval of private housing on the Site has ensured that this mix of housing types, development forms and social mix would be achieved.

Acute Demand for Private Housing

- 3.14 The refusal to grant an EOT for the approved private housing on the Site will adversely affect the supply of private housing and will result in further increase in prices. There is also evidence to show that increased provision of public housing is not going to address the issue of providing affordable private housing. It is envisaged that if the development is permitted to proceed, the private housing units should be completed within 4 to 5 years. The Board should grant EOT so that the approved private housing supply can be completed as soon as possible so that demand for home ownership can be facilitated.

Town Planning Board should not define the Developer of a Piece of Land

- 3.15 The Board has zoned the Site as “R(E)” and the OZP does not state who the developer should or would have to implement the zoning. The rejection of the EOT is depriving the current private land ownership rights to proceed with an approved development. In this respect, the Board should take account of the Court of Final Appeal (CFA)’s judgement in the *Hysan Development & Ors v Town Planning Board* (FACV 21/2015), and the need to respect the constitutional rights of the private land owner. Should the Government decide that the area should be used for a more intensive form of development and the Board agree to rezoning the Site, then implementation could be up to the current owners to consider submitting application for a land exchange. Otherwise, the rezoning or resumption for public housing is challenged by judicial review which will result in considerable delay.
- 3.16 It is worth pointing out to the Board that the Chief Executive has indicated that the implementation of private housing and subsidised housing through the Public Private Partnership (PPP) approach is a possible means for involving the private sector in increasing the supply of housing. That possibility could apply to the Site, but as mentioned above, it is premature to prevent the current application from proceeding under the current approval and the current zoning. The Board needs to clearly differentiate its role from that of the Government as landlord.

Rejection of Application Made on Wrong Advice

- 3.17 Paragraph 5.9 of the RNTPC Paper No. A/TM-LTY/273-1A provided the wrong basis for the RNTPC to reject to EOT application. The Government had instigated a feasibility study which would not be completed until 2020 is not a committed plan and not a relevant factor for consideration by the Board. However, to rely on this at this early stage of study was completely speculative and should not have been considered either material or significant.

- 3.18 In the CFA case of *Town Planning Board v Society for Protection of the Harbour Ltd.* (2004) 7 HKCFAR 1, the Board acted on the advice of English Queen’s Counsel in making a decision to amend an OZP for reclamation of the harbour. The advice on the meaning of the Protection of the Harbour Ordinance was held to be wrong and the decision of the Board was quashed. Likewise, the decision of the RNTPC, based on wrong advice, cannot stand.
- 3.19 PlanD provided wrong advice by indicating that “Tuen Mun District Council (TMDC) indeed supported the proposed public housing development at San Hing Road” (minutes of TMDC meeting on 1.11.2016 refers (**Annex G of Annex 1**)), as instructions were given to HD to continue public consultation, prepare clarifications to the queries raised, and report back to TMDC for consideration (paragraph 124 of the relevant TMDC minutes). Hence, the endorsement of TMDC on the proposed public housing development is incomplete, and requires further public consultation.

Discriminatory Treatment

- 3.20 There was another s.16 Application No. A/TM-LTY Y/337 that applied for a residential development and minor relaxation of building height, in the same “R(E)” zone under the OZP. PlanD did not object to the application, and other departments also had no objection. PlanD was aware of the study for public housing development in the area; however, it considered this future development would be subject to refinement. The RNTPC approved the application on 23.6.2017, and the planning permission is valid until 23.6.2021. At about the same time of the approval, the CEDD had submitted an EIA Study Brief to the Environmental Protection Department (EPD) on 21.6.2017, and the study brief was issued on 4.8.2017, under Application No. ESB-299/2017. The applicant is aggrieved by the discriminatory treatment.

4. The Section 16A Application

The Site and Its Surrounding Areas (Plan R-2 to Plan 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 was described in paragraphs 5.1 and 5.2 of the RNTPC Paper No. A/TM-LTY Y/273-1 at **Annex A of Annex 1**. There has been no major change of the situation since then.
- 4.2 The Site is:
- (a) currently vacant and fenced off; and
 - (b) accessible from San Tat Lane connected to San Hing Road.
- 4.3 The surrounding areas have the following characteristics:
- (a) to the north are orchard, metal workshop and storage yards. To the further north are car repair workshop, storage yards and residential dwellings;

- (b) to the east are godown and San Tat Lane. To the further east are godown, storage yards and residential dwellings;
- (c) to the south are open storage yards, orchard and vacant land. To the further south is Hong Po Road; and
- (d) to the west is open storage of construction materials and vacant.

Planning Intention

4.4 The planning intention of the “R(E)” zone is intended 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.

5. Town Planning Board Guidelines

5.1 The Town Planning Board Guidelines for Class A and Class B Amendments to Approved Development Proposals (TPB PG-No. 36A¹) is applicable to this application. The applied EOT for commencement of the development is a Class B amendment under Category 19 of the TPB PG-No. 36A. According to the Guidelines, the Board has delegated its authority to the Director of Planning to consider applications for Class B amendments. However, application for Class B amendments which is unacceptable by the concerned Government departments will need to be submitted to the Board for consideration. In this regard, the Director of Housing (D of H) does not support the application as stated in paragraph 7.1.2 of **Annex A of Annex 1**. As such, the application is submitted to the RNTPC for consideration.

5.2 TPB PG-No. 35C is also applicable to this application. Any EOT for commencement of development shall not result in an aggregated extension period longer than the original duration for commencement of the approved development proposal. The criteria for assessing applications for EOT for commencement of development are as follow:

- (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

¹ TPB PG-No. 36A has been revised and superseded by TPB PG-No. 36B on 2.3.2018. As the subject EOT application was submitted before 2.3.2018, TPB PG-No. 36A is applicable. Nevertheless, the revision to TPB PG-No. 36A has no direct bearing on the assessment of the EOT application.

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. Comments from Relevant Government Departments

- 6.1 Comments on the s.16A application made by relevant Government departments are stated in paragraph 7 of **Annex A of Annex 1**.
- 6.2 For the review application, the following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

6.2.1 Comments of the District Lands Officer/Tuen Mun (DLO/TM), LandsD:

- (a) He has no comment on the submission of 11.7.2018 from land administration point of view.
- (b) Regarding the land exchange application mentioned in the submission, after consulting the relevant bureaux/departments, his office informed the applicant on 26.7.2018 that the processing of the land exchange had to be put on hold pending the results of the feasibility study of the proposed public housing development at San Hing Road and Hong Po Road being undertaken by CEDD for the Government.

Long Term Development

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

His office is currently conducting a consultancy study titled “Agreement No. CE 68/2017 (CE) – Site Formation and Infrastructural Works for the Development at San Hing Road and Hong Po Road, Tuen Mun – Feasibility Study” for the Government. The consultancy study commenced in February 2018 scheduled for completion in Q1 2020. The subject land lots under application (for private residential

development) would encroach into the public housing development area at San Hing Road. It would affect the comprehensive public housing development and infrastructure works in San Hing Road and Hong Po Road if these land lots are earmarked for private residential development. As such, his office has strong reservation to the proposed land exchange/review application.

6.2.3 Comments of the D of H:

CEDD is now conducting the Site Formation and Infrastructural Works for the Development at San Hing Road and Hong Po Road, Tuen Mun – Feasibility Study. In this connection, the application is not supported.

6.3 For the review application, the following Government departments have no further comment and maintain their previous comments on the s.16A application as stated in paragraph 7.1 in **Annex A of Annex 1**:

- (a) Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD); and
- (b) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD).

6.4 The following Government departments have no further comment on or no objection to the review application and maintain their previous views of having no comment on or no objection to the s.16A application as stated in paragraph 7.2 in **Annex A of Annex 1**:

- (a) Chief Building Surveyor/New Territories West (CBS/NTW), BD;
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Environmental Protection (DEP);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (f) Commissioner of Police (C of P);
- (g) Director of Fire Services (DFS);
- (h) Director of Agriculture, Fisheries and Conservation (DAFC);
- (i) Director of Food and Environmental Hygiene (DFEH);
- (j) Director of Leisure and Cultural Services (DLCS);
- (k) Antiquities and Monument Office, Development Bureau (AMO,DEVB);
- (l) District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD);
- (m) Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L, PlanD); and
- (n) Project Manager (West) (PM(W)), CEDD.

7. Planning Considerations and Assessments

7.1 The application is for a review of RNTPC's decision on 15.6.2018 to reject the subject EOT application. The application was rejected for the reason of not in line with TPB PG-No. 35C on EOT for Commencement of Development in that there has been a material change in planning circumstances as the Government has committed to plan for a comprehensive public housing development which

covers the Site, and the applicant fails to demonstrate that there is a good prospect to commence the proposed development within the extended time limit.

- 7.2 The applicant submitted justifications in support of the review application as detailed in paragraph 3 above and government departments' responses are as follow.

Planning Intention

- 7.3 The planning intention for the "R(E)" zone is primarily for phasing out of existing industrial uses through redevelopment for residential use on application to the Board. New development within this zone is restricted to a maximum plot ratio of 1.0, a maximum site coverage of 40% and a maximum building height of 4 storeys over single-storey car park (15m). The approved development under Application No. A/TM-LTY/273 is in line with the planning intention and complies with the OZP restrictions.

Town Planning Board Guidelines No. 35C

- 7.4 TPB PG-No. 35C, which is specifically applicable to EOT applications, has set out the assessment criteria as summarized in paragraph 5.2 above. The main considerations include any material change in planning circumstances, any adverse planning implications arising from the EOT, the reason for delay in commencement of development, any reasonable action taken by the applicant to comply with approval conditions, any good prospect to commence the development within the extended time limit and reasonableness of the extension period applied.
- 7.5 Regarding the applicant's justifications that there is no change in land use zoning, no change in the planning intention of "R(E)" zone and reasonable actions have been taken to implement the approved development, there is no dispute in these aspects. The actions taken by the applicant to take forward the approved development have been clearly set out in paragraph 4 of **Annex A of Annex 1**. Information on compliance with approval conditions is also presented in paragraph 4.6 of **Annex A of Annex 1**, which is recapitulated below:

Approval Conditions	Status of Compliance
(a) the implementation of the mitigation measures identified in the Environmental Assessment and Sewerage Impact Assessment to the satisfaction of the Director of Environmental Protection or of the Board;	To be complied with at implementation stage
(b) the provision of vehicular access, parking and loading and unloading facilities to the satisfaction of the Commissioner for Transport or of the Board;	To be complied with at implementation stage
(c) the submission and implementation of detailed drainage proposal to the satisfaction of the Director of Drainage Services or of the Board;	Partially complied with* on 17.8.2015

Approval Conditions	Status of Compliance
(d) the provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Board;	To be complied with at implementation stage
(e) the submission of detailed archaeological impact assessment and implementation of the mitigation measures identified therein to the satisfaction of the Director of Leisure and Cultural Services or of the Board;	Fully complied with[^] on 15.9.2017
(f) the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Board; and	Partially complied with[#] on 28.12.2016
(g) the design of the boundary treatment and provision of measures to mitigate the visual impact along the boundary of the proposed development, including its boundary fence, to the satisfaction of the Director of Planning or of the Board.	Partially complied with[@] on 28.12.2016

Remarks:

- * The Director of Drainage Services accepted the applicant's submission of detailed drainage proposal and the approval condition (c) was partially complied with.
- [^] According to the findings of the detailed archaeological impact assessment, it is concluded that the Site has no archaeological potential, thus no mitigation measure for the proposed development is required. AMO on 13.9.2017 agreed that approval condition (e) is considered fully complied with.
- [#] The Director of Planning accepted the applicant's submission of tree preservation and landscape proposal and the approval condition (f) was partially complied with.
- [@] The Director of Planning accepted the applicant's design of the boundary treatment and the approval condition (g) was partially complied with.

7.6 Regarding the reasonable actions taken by the applicant to implement the approved development, the applicant submitted a land exchange application to LandsD on 13.1.2015. LandsD advised the applicant on 26.7.2018 that as the Site falls within the potential public housing development area under the feasibility study of the proposed public housing development at San Hing Road and Hong Po Road, the land exchange application for the proposed development at the Site has been put on hold pending the results of the feasibility study scheduled for completion in Q1 2020. BD also advised that GBP submissions had been made by the applicant between 2015 and 2018 but there is currently no approved GBP.

7.7 The original planning Application No. A/TM-LTY/273 was objected to by HD and not supported by PlanD mainly because of its encroachment onto a public housing site. The RNTPC approved the application upon further consideration on 17.10.2014 noting that, amongst others, the proposed public housing development at San Hing Road was still at the conceptual stage, the TMDC had

concern on the public housing development (see paragraph 7.11 below), the proposed development complied with the OZP restrictions, and the “Industrial/Residential” interface and other technical issues were adequately addressed.

- 7.8 After the planning approvals for the two applications for private residential developments were granted by the RNTPC on 17.10.2014 (Application No. A/TM-LTYT/273) and 13.3.2015 (Application No. A/TM-LTYT/282) respectively (**Plan R-1a**), the Government had further explored whether the proposed public housing developments in the area could be adjusted to take into account the approved private housing developments. However, in view of the acute demand for public housing, the Government has stepped up its effort in increasing the supply by maximising the development potential of each public housing site. The Site, together with the other approved private residential development site (Application No. A/TM-LTYT/282), has been included into the study area of the much larger-scale San Hing Road and Hong Po Road public housing project (**Plan R-1a**). The planning and engineering study has an area of larger than 20 ha which is a “Designated Project”² requiring an Environmental Impact Assessment (EIA) report. The project profile for applying the EIA Study Brief was submitted on 21.6.2017. The Study Brief under the Environmental Impact Assessment Ordinance (EIAO) (**Appendix V of Annex A of Annex 1**) was issued on 4.8.2017 and the feasibility study had commenced in February 2018 and was expected for completion in Q1 2020. In accordance with established practice, the zoning amendment for the public housing site will be submitted to the Board for consideration upon completion of the feasibility study. As such, the Government has a clearer policy on the planned land use for the area and greater commitment in the proposed comprehensive public housing development. There has thus been a material change in planning circumstances since the original planning approvals were granted, and the applicant fails to demonstrate that there is a good prospect to commence the proposed development within the extended 4-year period in the circumstances.

Legal Considerations

- 7.9 With respect to the *International Trader* case quoted by the applicant’s legal representative, the case is relevant to the current EOT application in the sense that it provided guidance as to what kind of documents that the RNTPC might rely on when ascertaining the true planning intention contained in an OZP. Accordingly, in considering the current EOT application, the Board should take that (i) an OZP and the Notes attached hereto are obviously material documents that the Board is bound to have regard to; (ii) the ES, although not forming part of an OZP, is prepared by the Board to assist in an understanding of the same; and (iii) although the Board is not bound to follow an ES or any Town Planning Board Guidelines, such documents could not be disregarded. Hence, the Board should consider the planning intention under the OZP as well as the relevant Town Planning Board Guidelines, i.e. TPB PG-No. 35C. The subject application does not comply with the TPB PG-No. 35C in that there is material change in

² Item 1 under Schedule 3 of EIAO, i.e. “Engineering Feasibility Study of urban development projects within a study area covering more than 20 ha or involving a total population of more than 100,000.”

planning circumstances and the applicant fails to demonstrate that there is good prospect in implementing the development within the extended period.

- 7.10 For the *Hysan Development* case, it was related to the imposition of development restrictions on the OZP thus affecting the development right and is considered not applicable to the current application. The current application is related to the commencement of development for private residential development. LandsD has also advised the applicant that its land exchange application has been put on hold pending the results of the feasibility study of the proposed public housing development at San Hing Road and Hong Po Road. The rejection of the EOT application does not deprive the development right of the applicant.
- 7.11 For the *Society for Protection of the Harbour Ltd.* case, it should be noted that the relevant parts of the minutes of the TMDC meeting on 1.11.2016 had been submitted to the RNTPC for consideration (**Annex G of Annex 1**). The proposed public housing development was discussed at the TMDC meeting held on 1.11.2016. At the meeting, members expressed views that the TMDC indeed supported the proposed public housing development at San Hing Road. However, TMDC did not support HD's proposal in 2014 on grounds that there were no detailed planning, supporting transport facilities had not been properly provided, and there was a lack of sufficient local consultation and therefore requested the Government to do more work. Some members also considered that TMDC's intention was distorted by media and requested HD to clarify TMDC's position. This was clearly recorded in the minutes of TMDC meeting. As such, the applicant's claim that the RNTPC's decision was made on wrong advice could not be established.

Discriminatory Treatment

- 7.12 Regarding the claim of discriminatory treatment, it should be noted that the feasibility study for the proposed public housing development at San Hing Road and Hong Po Road had not yet commenced at the time of consideration of Application No. A/TM-LTYY/337 in June 2017. HD had not raised objection to the application. For the current application, the Site is located in the middle section of the proposed public housing development at San Hing Road and Hong Po Road (**Plans R-1a to R-1b**), which is planned for public housing and school developments. The development at the Site would impose a major constraint on the proposed public housing development. The feasibility study has subsequently commenced in February 2018 and both HD and CEDD do not support the subject application. There is no discriminatory treatment as alleged as the Site is dealt with in accordance with the specific implications arising from the proposed development on the Site.

Public Private Partnership Scheme

- 7.13 Regarding the possibility of PPP development at the Site, DEVB comments that since the feasibility and details of PPP have yet to be established, it would be premature to evaluate the applicant's proposal from the perspective of the PPP.

Conclusion

7.14 Having considered the above, whilst the land use zoning for the Site remains unchanged as “R(E)” since 2014, there is a material change in planning circumstances when compared to that at the time of consideration of Application No. A/TM-LTYT/273 in that the Government has a clearer policy on the planned land use for the area and greater commitment to plan for a larger scale public housing project on the San Hing Road/Hong Po Road site including the Site and the related feasibility study including an EIA had commenced. CEDD has strong reservation to the application as it would affect the comprehensive public housing development and infrastructure works in San Hing Road and Hong Po Road while HD points out that the application is not supported. DLO/TM, LandsD advises that the land exchange for the proposed development at the Site has been put on hold pending the results of the feasibility study. Approval of the EOT is not recommended as this will run against the clear Government policy on the planned land use for the area. The applicant has failed to demonstrate, in the circumstances, that it has good prospect for implementing the development within the extended period.

8. Planning Department’s Views

8.1 Based on the assessment made in paragraph 7 above, the PlanD maintains its view that the review application **is not supported** as it is not in line with TPB PG-No. 35C in that there has been a material change in planning circumstances in that as the Government has committed to plan for a comprehensive public housing development which covers the Site, and the applicant fails to demonstrate that there is a good prospect to commence the proposed development within the extended time limit.

8.2 Alternatively, should the Board decide to approve the EOT application, it is suggested that the permission shall be valid until **17.10.2022**, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval conditions

- (a) the implementation of the mitigation measures identified in the Environmental Assessment and Sewerage Impact Assessment to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (b) the provision of vehicular access, parking and loading and unloading facilities to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (c) the submission and implementation of detailed drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) the provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board;

- ~~(e)~~ the submission of detailed archaeological impact assessment and implementation of the mitigation measures identified therein to the satisfaction of the Director of Leisure and Cultural Services or of the Town Planning Board;
- ~~(f)~~(e) the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board; and
- ~~(g)~~(f) the design of the boundary treatment and provision of measures to mitigate the visual impact along the boundary of the proposed development, including its boundary fencing, to the satisfaction of the Director of Planning or of the Town Planning Board.

[Except the original approval condition (e) which has been fully complied with and the original approval conditions (f) and (g) which have been partially complied with, the other approval conditions are the same as those of Application No. A/TM-LTYT/273.]

Advisory Clauses

The recommended advisory clauses are at **Annex 8**.

[The advisory clauses at Annex 8 are the same as those of Application No. A/TM-LTYT/273.]

9. Decision Sought

- 9.1 The Board is invited to consider the application for review of 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 condition(s) and advisory clause(s), if any, to be attached to the permission.
- 9.3 Alternatively, 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. Attachments

Drawing R-1	Indicative block layout plan submitted by the applicant during the previous Application No. A/TM-LTYT/273
Plan R-1	Location Plan
Plan R-1a	Location Plan of the Proposed Development at San Hing Road and Hong Po Road, Tuen Mun
Plan R-1b	Proposed Development at San Hing Road and Hong Po Road, Tuen Mun
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to 4b	Site Photos

Annex 1	RNTPC Paper No. A/TM-LTY Y/273-1A
Annex 2	Extract of minutes of the RNTPC meeting held on 20.4.2018
Annex 3	Extract of minutes of the RNTPC meeting held on 15.6.2018
Annex 4	Secretary of the Board's letter dated 4.5.2018 informing the applicant of the deferment of the RNTPC's decision
Annex 5	Secretary of the Board's letter dated 6.7.2018 informing the applicant of the RNTPC's decision
Annex 6	Two letters of 14.6.2018 from the applicant's representative and the applicant's legal representative (tabled at the RNTPC meeting on 15.6.2018)
Annex 7	Letter of 11.7.2018 and Review Statement from the applicant's representative applying for review of the application
Annex 8	Recommended Advisory Clauses
Annex 8a	Detailed comments of Government Departments Concerned (extracted from Appendix IV of RNTPC Paper No. A/TM-LTY Y/273C)

**PLANNING DEPARTMENT
SEPTEMBER 2018**