

REVIEW OF APPLICATION NO. A/TM-LTY Y/362
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed House (New Territories Exempted House (NTEH) - Small House)
in “Residential (Group E)” and “Village Type Development” Zones,
Lots 190 S.D RP and 190 S.E in D.D. 130, San Hing Tsuen, Lam Tei,
Tuen Mun, New Territories**

1. Background

- 1.1 On 19.11.2018, the applicant, To Chun Sing, who claims to be an indigenous villager of Nai Wai, sought planning permission for proposed house (New Territories Exempted House (NTEH) - Small House) under s.16 of the Town Planning Ordinance (the Ordinance). The application site (“the Site”) falls within an area zoned “Residential (Group E)” (“R(E)”) (84%) and “Village Type Development” (“V”) (16%) on the approved Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTY Y/10 (the OZP) (**Plan R-1**).
- 1.2 On 3.5.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was land is still available within the “Village Type Development” (“V”) zone of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen where land is primarily intended for Small House development. It is considered more appropriate to concentrate Small House development close to the existing village cluster within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 1.3 For Members’ reference, the following documents are attached:
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| (a) RNTPC Paper No. A/TM-LTY Y/362A | (Annex A) |
| (b) Extract of minutes of the RNTPC meeting held on 3.5.2019 | (Annex B) |
| (c) Secretary of the Board’s letter dated 17.5.2019 | (Annex C) |

2. Application for Review

On 21.5.2019, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application (**Annex D**). In support of the application, the applicant submitted a letter dated 21.5.2019 applying for review with justifications.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the letter dated 21.5.2019 at **Annex D**. They can be summarized as follows:

- (a) The applicant solely owns the Site to build his own small house, other than that he could not purchase land within “V” zone.

- (b) The Site is within the Village Environ ('VE') boundary (Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen) that means indigenous villager could build Small House on it.
- (c) There was an approved case adjacent to the Site namely Lot 190 S.D ss.1 in D.D. 130.

4. The Section 16 Application

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

- 4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC were described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no material change of the situation since then.
- 4.2 The Site is:
 - (a) currently vacant;
 - (b) located within the common 'VE' of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen in Lam Tei, Tuen Mun which are recognised villages; and
 - (c) accessible by a footpath/village access road branched off from Ng Lau Road.
- 4.3 The surrounding areas have the following characteristics (**Plan R-2a**):
 - (a) to the east are land for parking of vehicles which are suspected unauthorised developments (UDs) and village-type houses;
 - (b) to the south are vacant land and village-type houses;
 - (c) to the west are temporary structures for residential dwellings purposes; and
 - (d) to the immediate north of the Site is a proposed house (NTEH - Small House) under application No. A/TM-LTY/301 approved by the Committee on 30.9.2016 and land for parking of vehicles and temporary structures for storage, which are suspected UD. To the further north of the Site are land for parking of vehicles, a car repairing workshop and yards for open storage, which are suspected UD.

Planning Intentions

- 4.4 There have been no change to the planning intentions of the concerned "R(E)" and "V" zones as mentioned in paragraph 9 of **Annex A** which are recapitulated below.
- 4.5 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.
- 4.6 The planning intention of the "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and

reprovisioning of village houses affected by government projects. 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

Assessment Criteria

4.7 The set of Interim Criteria for Consideration of Application for New Territories Exempted House (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. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at Appendix II of **Annex A**.

Previous Application

4.8 There is no previous application for the Site.

Similar Applications

4.9 When the s.16 application was considered by the RNTPC on 3.5.2019, there were nine similar applications for NTEH/Small House within the same “R(E)” zone (**Plan R-1**). There is no additional similar applications since then. Details of the applications are summarised at Appendix III of **Annex A**.

4.10 For Members’ information, review of Application No. A/TM-LTYYY/363 for the same use within the same “R(E)” zone on the OZP will also be considered at this meeting (**Plan R-1**).

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 IV of **Annex A**.

5.2 For the review application, relevant government departments have been further consulted. The following government departments have no further comment on the review application and maintain their previous views on the s.16 applications. The main views are recapitulated as follows:

Land Administration

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

- (a) The Site falls within the common ‘VE’ of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen. The Site also falls within “V” and “R(E)” zones on the approved Lam Tei and Yick Yuen OZP No. S/TM-LTYYY/10. According to the current policy, such Small House

(SH) application can be considered subject to obtaining of planning approval.

- (b) The applicant claimed to be an indigenous villager. According to the procedures and guidelines for processing SH application, the applicant is required to attend a vetting interview for verification of his eligibility of SH grant and make a statutory declaration for his indigenous villager status together with the confirmation of his indigenous villager status submitted by his indigenous inhabitant representative upon satisfactory resolution of technical problems of his lots. Hence, the eligibility of SH grant of the applicant is yet to be verified.
- (c) The updated number of outstanding SH applications for Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen is 128 houses in total and the number of 10-year forecasts of SH demand for Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen provided by the respective Indigenous Inhabitant Representatives is 832 houses¹.
- (d) The lots concerned are Old Schedule lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (e) The applicant had submitted an application to erect a SH on the lots which has been held in abeyance. If planning permission is given by the Board, his office may continue processing the application.
- (f) Notwithstanding the above, there is no guarantee that the concerned SH application will be approved and he reserves his right to take any action as may be appropriate. In the event that the SH application is approved, it would be subject to such any terms and conditions as the Government shall deem fit.
- (g) Pursuant to the prevailing guidelines, any land that is within 30m from known resumption/clearance limits is “prohibited areas”. Having checked his records, the Site was situated at close vicinity (within 30m) to the northeast corner of the proposed San Hing Road development site. According to Chief Engineer/Housing Project 2 of Civil Engineering and Development Department (CE/HP2. CEDD), the exact site boundary, phasing of development and land requirement are still under refinement by CEDD. His office may consider to process the SH application subject to no adverse comments received from CEDD and other concerned government departments.

¹ The total number of outstanding SH applications and the number of 10-year forecast of SH demand of the three villages are updated as follows:

	s.16 Application	s.17 Review
Outstanding SH applications	150	128
10-year forecast of SH demand	862	832

Building Matters

5.2.2 Comments of the Chief Building Surveyor/New Territories West (CBS/NTW, BD):

- (a) Noting that the building to be erected on the Site will be NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121), DLO/TM should be in a better position to comment on the application.
- (b) In case DLO/TM decides not to issue the certificates of exemption for the site formation works and/or drainage works associated for the NTEH development, such works will require prior approval and consent under the Buildings Ordinance. In the circumstance, an Authorised Person (AP) should be appointed as the coordinator for the proposed works. The applicant may approach DLO/TM or seek AP's advice for details.

Traffic

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

In view that there is no public road being managed by Transport Department (TD) adjacent to the Site, he has no comment on the application from traffic engineering viewpoints. There is no planned road project under the TD's purview at the Site.

5.2.4 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) It is noted from the application that no run-in/out and direct vehicular access to the Site are proposed.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Drainage

5.2.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

He has no in-principle objection to the application subject to the following conditions from public drainage viewpoints.

- (a) Should the application be approved, a condition should be stipulated requiring the applicant to submit a drainage proposal for the development and to implement and maintain the drainage facilities proposed in the drainage proposal to the satisfaction of his department.
- (b) There is no public sewerage facility located in the vicinity of the Site. Environmental Protection Department (EPD), the planning authority of

sewerage infrastructure, should be consulted regarding the sewerage treatment/disposal aspects of the development.

He would also like to take this opportunity to provide the following advice/comments on the drainage works for the proposed SH development:

- (a) The proposed development should have its own stormwater collection and discharge system to cater for the runoff generated within the SH site as well as overland flow from areas in the vicinity.
- (b) Surface channel should be provided along the perimeter of the lot to collect all the runoff generated from the Site or passing through the Site, and discharge the runoff collected to a proper discharge point.
- (c) All the proposed drainage works, whether within or outside the lot boundary, should be constructed and maintained by the applicant at his own expense. For works to be undertaken outside the lot boundary, the applicant should consult and obtain prior consent from DLO/TM and relevant lot owners.

5.2.6 Comments of the District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

A 900mm diameter underground drain constructed and maintained by his office may be affected by the application. In case the proposed works would interface with the drainage channel, his office should be informed in advance. His office has no adverse comment on the application subject to the conditions listed below:

- (a) The existing village drainage channel maintained by his office is a storm water channel. Discharge of influent from the SH site to the channel is not allowed.
- (b) The developer(s) should check and ensure storm water to be discharged from the SH site will not adversely affect the discharging capacity of the existing drainage system maintained by his office.
- (c) The developer(s) should not block or choke the aforesaid drainage system during and after the construction period.
- (d) The developer(s) should make good of any damages to the aforesaid drainage system at his own cost.
- (e) His office will not take up maintenance responsibility of any drainage work connected by the developer(s).

Environment

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

- (a) The proposed SH development is not anticipated to have adverse environmental impact and he has no objection to the application.

- (b) There is no public sewer serving the Site. He notes that there is a concreted and mostly covered drainage channel within the Site. The applicant is reminded to properly treat and dispose of any sewage and wastewater arising in accordance with the Water Pollution Control Ordinance. Meanwhile, he has no specific comment on the proposed use of septic tank and soakaway pit system for collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the ProPECC PN5/93 namely “Drainage Plans subject to Comments by the EPD” and are duly certified by an AP.

Fire Safety

5.2.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no specific comment on the application.
- (b) The applicant is advised to observe “New Territories Exempted Houses – A Guide to fire safety requirements” published by the Lands Department.

Water Supply

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

He has no comment on the application. The Site is not located within water gathering ground.

Nature Conservation

5.2.10 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

The Site falls within “V” and “R(E)” zones under the OZP. According to his recent visit, the Site is vacant and paved. No trees or species of conservation interest were found within the Site. Noting the applicant has stated that the development proposal would not involve felling of trees and/or cause damage to branches and roots of trees in the application, he has no comment on the subject application from the nature conservation perspective.

Landscape

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

With reference to the aerial photo of 2018, it is observed that the Site is vacant. In view of existing village houses in the vicinity, significant change to the landscape character arising due to the application is not envisaged.

Archaeology

- 5.2.12 Comments of the Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO):

The Site falls within the San Hing Tsuen Site of Archaeological Interest. In view of the location and scope of the proposed works, the applicant is required to notify the AMO two weeks prior to the commencement of construction work so as to facilitate his staff to conduct site inspection in the course of excavation.

Others

- 5.2.13 Comments of the Chief Engineer/Housing Project 2, Civil Engineering and Development Department (CE/HP2, CEDD):

His consultant is currently carrying out a study under Agreement No. CE 68/2017 (CE) – Site Formation and Infrastructural Works Development at San Hing Road and Hong Po Road, Tuen Mun – Feasibility Study. According to the latest layout plan extracted from the consultancy brief, the proposed house application is found locating adjacent to the north boundary of the proposed San Hing Road housing development site. However, the exact boundary, phasing of development and land requirement are still under refinement by the consultant to be agreed by the Housing Department, the Lands Department and other government departments concerned.

District Officer's Comments

- 5.2.14 The District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD) has the following comments on the review application:

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct. He trust the Board would take into account the local views when further deliberating on the application.

- 5.3 The following government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 applications as below:

- (a) Director of Housing (D of Housing);
- (b) Director of Leisure and Cultural Services (DLCS);
- (c) Director of Food and Environmental Hygiene (DFEH);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (f) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (g) Commissioner of Police (C of P).

6. Public Comments Received During Statutory Publication Period

- 6.1 On 31.5.2019, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.6.2019, one public comment was received (**Annex E**) from Designing Hong Kong raising objection to the review application mainly on the grounds of not in line with the planning intention of the “R(E)” zone, land is still available within the “V” zone of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen, and undesirable precedent for similar applications within the “R(E)” zone. The cumulative effect of approving such application would result in a general degradation of the rural environment of the area.
- 6.2 At the stage of s.16 application, two public comments were received. One of the public comments supported the application, while the other objected to the application. Details of the comments are in paragraph 11 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of RNTPC’s decision on 3.5.2019 to reject the application for proposed house (NTEH – SH) at the Site within the “R(E)” (84%) and “V” (16%) zones (**Plan R-1**). The application was rejected on the ground that land was still available within the “V” zone of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen where land was primarily intended for SH development. It was considered more appropriate to concentrate SH development close to the existing village cluster within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 7.2 To support the review application, the applicant has put forward the justifications claiming that he solely owns the Site to build his own SH and other than that he could not purchase land within “V” zone. The Site is within the ‘VE’ boundary (Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen) that means indigenous villager could build SH on it; and there was an approved case adjacent to the Site namely Lot 190 S.D ss.1 in D.D. 130.
- 7.3 The Site is mainly zoned “R(E)” (**Plan R-1**) which is intended primarily for phasing out of existing industrial uses through redevelopment for residential use on application to the Board. Developments within the “R(E)” zone is subject 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) except NTEH. A small portion of the Site falls within the “V” zone, which is primarily intended for development of SHs 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. The proposed SH development does not contravene the planning intentions of the “R(E)” and “V” zones.
- 7.4 The Site is mainly surrounded by village type houses in the east and west and parking of vehicles and vacant land to the north and south respectively. The proposed development is not incompatible with the low-rise developments in the surrounding areas (**Plan R-2a**). Government departments consulted, including C for T, DEP, CE/MN, DSD and CTP/UD&L, PlanD have no adverse comment on the application.

- 7.5 According to the Interim Criteria (Appendix II of **Annex A**), sympathetic consideration may be given if not less than 50% of the proposed SH footprint falls within the ‘VE’ of a recognized village and there is a general shortage of land in meeting the demand for SH development in the “V” zone of the village. For the current application, 100% of the footprint of the proposed SH falls within the ‘VE’ of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen (**Plan R-2a**).
- 7.6 According to the latest information from DLO/TM, the total number of outstanding SH applications of the three villages is 128 (i.e. about 3.2 ha of land) while the 10-year forecast of SH demand of the three villages is 832 (i.e. about 20.8 ha of land) (i.e. a total of 960 houses or about 24 ha of land). Based on the latest estimate by PlanD, about 21.46 ha (equivalent to about 858 SH sites) of land is available within the “V” zone of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen on the OZP. Although land available within the “V” zone cannot fully meet the total future demand of 960 SHs (i.e. about 24 ha of land), it is capable to meet the 128 outstanding SH applications. Since the Board has adopted a cautious approach in approving applications for SH developments, more weighting has been put on the number of outstanding SH applications provided by LandsD in considering whether there is general shortage of land in meeting SH demand. Notwithstanding that the Site is within the ‘VE’ boundary as claimed by the applicant and “R(E)” zone for phasing out existing industrial uses through redevelopment for residential use on application to the Board, it is considered more appropriate to concentrate the proposed SH development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. In this regard, it is considered that sympathetic consideration should not be given to the current application.
- 7.7 The applicant pointed out that there was an approved application adjacent to the Site, namely Lot 190 S.D ss.1 in D.D. 130. The site was the subject of Application No. A/TM-LTYY/301 for proposed SH approved by RNTPC on 30.9.2016 (**Plan R-2a**). The major considerations at that time were that the proposal was in line with the planning intention of the “R(E)” zone and it was not incompatible with the low-rise village type houses in the surrounding areas, and there was insufficient land in the concerned “V” zone to meet forecasted long-term SH demand. However, it should be noted that during the deliberation of the current application by the RNTPC on 3.5.2019, some Members pointed out that similar applications for SH developments in the same zone in the past should only serve as a reference; and the planning intention of “R(E)” zone should be achieved by other types of residential development instead of SH (**Annex B**). Besides, on 17.5.2019, the RNTPC had also rejected two planning applications for proposed SHs mainly within “Residential (Group D)” (“R(D)”) zone (Applications No. A/NE-KTS/461 and A/NE-KTS/462 on the approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16) on the ground, amongst others, that land was still available within the “V” zone for SH development.
- 7.8 The applicant claimed that he solely owned the Site to build his own SH and other than that he could not purchase land within “V” zone. In this regard, it should be noted that land ownership and the possibility in acquisition of land within the “V” zone are not material considerations and it could be subject to change.
- 7.9 One public comment was received during the statutory publication period at the s.17 review objecting to the application. The planning considerations and assessments in paragraphs 7.1 to 7.8 above are also relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 and having taken into account the public comment mentioned in paragraph 6 and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC, the Planning Department does not support the review application for the following reason:

land is still available within the “V” zone of Tsing Chuen Wai, Tuen Tsz Wai and San Hing Tsuen where land is primarily intended for Small House development. It is considered more appropriate to concentrate Small House development close to the existing village cluster within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 9.8.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

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

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of 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 applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Plan R-1	Location Plan
Plan R-2a	Site Plan

Plan R-2b	Estimated Amount of Land Available for Small House Development within the “V” Zone
Plan R-3	Aerial Photo
Plan R-4	Site Photos
Annex A	RNTPC Paper No. A/TM-LTY Y/362A
Annex B	Extract of minutes of the RNTPC meeting held on 3.5.2019
Annex C	Secretary of the Board’s letter dated 17.5.2019
Annex D	Letter of 21.5.2019 from the applicant applying for review with justifications
Annex E	Public Comment on the review application
Annex F	Recommended advisory clauses

**PLANNING DEPARTMENT
AUGUST 2019**