

**REVIEW OF APPLICATION NO. A/YL-TT/477**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House - Small House)  
in “Agriculture” and “Village Type Development” Zones,  
Lot 2964 S.B in D.D. 116, Kong Tau Tsuen, Yuen Long, New Territories**

**1. Background**

- 1.1 On 11.7.2019, the applicant, Winner Surveying Consultants Company, represented by R-riches Property Consultants Limited<sup>1</sup>, sought planning permission to build a house (New Territories Exempted House (NTEH) - Small House) at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within areas zoned “Agriculture” (“AGR”) (about 50.6%) and “Village Type Development” (“V”) (about 49.4%) on the approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16 (**Plan R-1**).
- 1.2 On 29.11.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) in that there is no general shortage of land in meeting the demand for Small House development in the “V” zone of Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen; and
  - (b) approval of the application would set an undesirable precedent for similar applications at the subject “AGR” zone resulting in a general degradation of the rural agricultural character of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TT/477A (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 29.11.2019 (Annex B)
  - (c) Secretary of the Board’s letter dated 13.12.2019 (Annex C)

**2. Application for Review**

On 2.1.2020, 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 its representative, Wong Wing Kin 黃榮健, submitted the following documents:

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<sup>1</sup> R-riches Property Consultants Limited is no longer the representative of the applicant for the review application.

- (a) Letter dated 2.1.2020 applying for review (Annex D)
- (b) Further Information (FI) received on 6.3.2020 providing written representation in support of the application (Annex D-1)  
*[accepted but not exempted from the publication and recounting requirements]*

### 3. Justification from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the FI at **Annex D-1**. They can be summarised as follows:

#### Incompliance with the Interim Criteria

- (a) About 53.1% of the proposed NTEH footprint falls within an area zoned “V”, while the remaining 46.9% (about) falls within an area zoned “AGR”. There are no ‘village environs’ (‘VE’) boundaries for Kong Tau San Tsuen and Kong Tau Tsuen. The relevant criteria under the Interim Criteria are thus not applicable to this application.
- (b) The figures provided by the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) only covered the total number of outstanding Small House applications and the 10-year forecast of Small House demand for Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen, which did not take into account the cross-village applications within the same Heung. For the current application, the land owner of the Site, who intends to build a Small House, is an indigenous villager of Tung Tau Tsuen in Shap Pat Heung, Yuen Long, while the above four villages are also within Shap Pat Heung. The Small House demand and “V” land availability of the entire Shap Pat Heung should be taken into account for consideration. Government land (GL) and land that would be affected by future government projects within the “V” zone should also be excluded from the calculation of the available “V” land. Given the above, the assertion that there is no general shortage of land in meeting the demand for Small House development in the subject “V” zone is questionable. In the light of this uncertainty, sympathetic consideration should be given to this application.

#### Setting of Undesirable Precedent

- (c) The current application is unique and different from the five similar applications (No. A/YL-TT/265, 283, 287, 299 and 307) rejected by the Committee or the Board on review between 2010 and 2013. The Site is the subject of a previous application (No. A/DPA/YL-TT/12) approved on 24.1.1992 by the RNTPC for two Small Houses when the Site was zoned “Unspecified Use” on the then draft Tai Tong Development Permission Area (DPA) Plan No. DPA/YL-TT/1. The application was submitted by DLO/YL, LandsD on behalf of two house owners whose houses were affected by the Yuen Long Southern Bypass Project and had to be resumed. The site of application No. A/DPA/YL-TT/12, including the current Site, should have been rezoned to “V” in line with the Board’s usual practice. Moreover, the Site has been used as a garden of one of the approved Small House for many years. This application is clearly unique and should be considered on individual merit. As the Site was covered by a planning approval, a precedent has already been set. Approval of the application would not set an undesirable precedent for similar applications at the subject “AGR” zone.

- (d) The proposed NTEH would not result in a general degradation of the rural agricultural character of the area. The Site is paved, fenced off and forming part of a private garden of an adjoining Small House. The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong views on the application from agriculture point of view as the Site possesses low potential for agricultural rehabilitation. The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) also has no objection to the application as the Site is not incompatible with the surrounding environment. Other government departments have no adverse comment on/objection to the application.

#### **4. Background of the Site**

The Site is currently not subject to planning enforcement action.

#### **5. The Section 16 Application**

##### **The Site and Its Surrounding Areas (Plans R-2a to R-4)**

- 5.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC are described in paragraph 8 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
- (a) located at the northern fringe of Kong Tau San Tsuen;
  - (b) accessible by a local track leading from Long Ho Road to its west (**Plans R-2a and R-3**);
  - (c) generally flat, formed, and partially fenced off; and
  - (d) forming part of the private garden of an adjoining Small House approved under application No. A/DPA/YL-TT/12 (**Plan R-2a**).
- 5.3 The surrounding areas have the following characteristics:
- (a) predominantly rural in character intermixed with residential structures and some scattered vacant land, open storage yards, parking of vehicles, a workshop and a pavilion;
  - (b) the Shap Pat Heung Interchange of the Yuen Long Highway and a nullah flanked by Long Ho Road are located to the further north; and
  - (c) apart from the aforementioned pavilion, the remaining parking of vehicles, workshop and open storage yards in the vicinity of the Site are mostly suspected unauthorised developments subject to enforcement action taken by the Planning Authority.

### Planning Intentions

- 5.4 There has been no change in planning intentions of the concerned “AGR” and “V” zones as mentioned in paragraph 9 of **Annex A**, which are recapitulated below.
- 5.5 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.
- 5.6 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. 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

### Assessment Criteria

- 5.7 The set of 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 full set of Interim Criteria is at **Annex E**.

### Previous Application

- 5.8 The Site involves one previous approved application (No. A/DPA/YL-TT/12) covering a much larger site (i.e. about 930m<sup>2</sup>) for two Small Houses when the Site was zoned “Unspecified Use” on the then draft Tai Tong DPA Plan No. DPA/YL-TT/1 and before promulgation of the Interim Criteria. The application was submitted by DLO/YL, LandsD on behalf of two house owners whose houses were affected by the Yuen Long Southern Bypass Project and had to be resumed. The application was to enable rehousing of the two house owners under the village removal terms. The application was approved by RNTPC on 24.1.1992 mainly on the grounds that the proposed development was not incompatible with the surrounding area. The two houses have since been implemented and built, with the current Site forming part of the private garden of one of the houses. The Site has also been carved out as a separate lot with no building status (Lot 2964 S.B). Details of the application are summarised at Appendix III of **Annex A** and their locations are shown on **Plan R-1** and **R-2a**.

### Similar Applications

- 5.9 There are five similar applications (No. A/YL-TT/265, 283, 287, 299 and 307) for proposed NTEH/Small House development within or straddling the same “AGR” zone, which have all been rejected by RNTPC or the Board on review between 2010 and 2013, mainly on the grounds that the proposed developments were not in line with the planning intention of the “AGR” zone; there were insufficient information in the submission to demonstrate that there were no suitable sites within the “V” zone for the proposed development; approval of the application would set an undesirable precedent; and the proposed development did not comply with the Interim Criteria. The applicant

of application No. A/YL-TT/307 subsequently lodged an appeal against the Board's decision. The appeal was also dismissed by the Town Planning Appeal Board on 31.7.2014 mainly on the same rejection grounds as per the review stage. Details of the applications are summarised in Appendix IV of **Annex A** and the locations of the sites are shown on **Plan R-1**.

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

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 10.1 to 10.3 and Appendix V of **Annex A**.
- 6.2 The following government departments have new/additional comments on the review application, which are as follows:

### **Land Administration**

#### 6.2.1 Comments of DLO/YL, LandsD:

- (a) There is one Small House application under processing within the Site, while 3 Small House applications under processing and 4 Small House applications approved are located within 30m radius circle measured from the boundary of the Site. The Small House applications under her processing are at departmental circulation stage.
- (b) The number of outstanding Small House applications of Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau, and Tong Tau Po Tsuen are 54, 6, 35 and 5 respectively, which are inclusive of cross-village Small House applications. The 10-year forecast (2016-2025) of Small House demand for Kong Tau Tsuen and Kong Tau San Tsuen, Nga Yiu Tau, and Tong Tau Po Tsuen are 275, 81 and 35 respectively. The figure of the 10-year forecast is provided by the Indigenous Inhabitant Representatives and she is unable to verify such information.
- (c) The Site does not fall within the 'VE' boundary of any recognised village in the locality.
- (d) The Site is an Old Schedule Agricultural Lot and does not have a building status.
- (e) If a proposed Small House site is outside or more than 50% of it is outside the 'VE' boundary of a recognised village and the "V" zone which encircles the recognised village, the concerned Small House application will be rejected under the New Territories Small House Policy even though the applicant is an indigenous villager who has successfully sought planning permission. On the other hand, consideration will be given to application for proposed house site within or at least 50% of it is within a "V" zone which encircles a recognised village and is larger than the 'VE'. Her approval to Small House grant is not automatic even if the applicant has obtained s.16 approval from the Board. The grant is subject to all criteria being met and all relevant factors being considered.

- (f) Should planning approval be given to the subject planning application, the registered lot owner should inform her, and she will consider the Small House application acting in the capacity as the landlord and there is no guarantee that such application would be approved. Any applications, if approved, would be subject to such terms and conditions including, among others, the payment of premium and/or administrative fee as may be imposed by her department.

6.2.2 Comments of Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organising and supervising any activity near the underground cable or overhead line under the mentioned application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

6.3 The following government departments have no further views/comments on the review application and maintain their previous views on the s.16 application as stated in paragraphs 10.1 to 10.2 and Appendix V of **Annex A**.

- (a) Commissioner for Transport (C for T);
- (b) Director of Environmental Protection (DEP);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (d) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (e) CTP/UD&L, PlanD;
- (f) Director of Fire Services (D of FS);
- (g) DAFC;
- (h) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD); and
- (i) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD).

6.4 The following government departments maintain their previous views of having no comment on the review application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (c) Commissioner of Police (C of P).

## **7. Public Comments Received During Statutory Publication Periods**

- 7.1 On 10.1.2020 and 13.3.2020, the review application and its FI were published for public inspection. During the first three weeks of the statutory public inspection periods, three objecting public comments were received. Two comments from Designing Hong Kong Limited (**Annexes F-1 and F-2**) and one comment from an individual (**Annex F-3**) objected to the review application on similar grounds as per the s.16 stage in that the proposal is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zones for Small House development; and approval of the application would set an undesirable precedent leading to a general degradation of the local environment. The latter comment also questioned the eligibility of the applicant in applying for a Small House.
- 7.2 Four public comments, raising concerns/objecting to the application, received at the s.16 application stage are set out in paragraph 11 of **Annex A**.

## **8. Planning Considerations and Assessments**

- 8.1 The application is for a review of RNTPC’s decision on 29.11.2019 to reject the subject application for a proposed house (NTEH- Small House) at a site straddling the “AGR” (about 46.9% of the proposed NTEH footprint) and “V” zones (about 53.1%) on the OZP (**Plan R-1**). The application was rejected mainly on the grounds of incompliance with the Interim Criteria; land was still available within the “V” zone of Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen for Small House development; and setting of undesirable precedent. The applicant submitted justifications in support of the review application mainly on grounds that there were no ‘VE’ boundaries for Kong Tau San Tsuen and Kong Tau Tsuen; it is questionable whether there is no general shortage of land in meeting the demand for Small House development in the subject “V” zone; approval of the application would not set an undesirable precedent for similar applications at the subject “AGR” zone; the proposal would not result in a general degradation of the rural agricultural character of the area; and the subject case is unique and should be considered on individual merit with sympathetic consideration given. Since the consideration of the subject application by the RNTPC on 29.11.2019, there is no change in planning circumstances.

### Applicability of the Interim Criteria

- 8.2 DLO/YL, LandsD advises that the Site does not fall within the ‘VE’ boundaries of any recognised village. Nonetheless, relevant provisions in the Interim Criteria are still applicable to such cases where the application site falls outside any ‘VE’ boundaries (**Annex E**). The consideration is whether there is a general shortage of land in meeting the demand for Small House development in the “V” zone and the other criteria being satisfied. Regarding whether there is general shortage of land in meeting the demand for Small House development in the subject “V” zone, according to DLO/YL, LandsD’s record, the total number of outstanding Small House applications for Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen is 100 (i.e. equivalent to about 2.50 ha of land) while the 10-year forecast of Small House demand is 391 (i.e. about 9.78 ha of land). As such, land is required to accommodate a total of 491 Small Houses within the subject “V” zone, equivalent to about 12.28 ha of land. The outstanding Small House applications are already inclusive of cross-village

applications, which includes the one under processing within the Site. As for the 10-year forecast of Small House demand, this may vary from time to time as per the information provided by the Indigenous Inhabitant Representatives.

- 8.3 The Site and the footprint of the proposed Small House fall entirely outside the 'VE' of any recognised village. It is noted that about 808 Small House sites (equivalent to about 20.20 ha of land) are available within the relevant "V" zone for Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen, which can accommodate the outstanding Small House applications and the forecasted long-term Small House demand. As such, the proposed development does not comply with the Interim Criteria (**Annex E**) in that there is no general shortage of land in meeting the demand for Small House development in the concerned "V" zone. It is therefore 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 infrastructures and services.
- 8.4 Out of the aforementioned 20.20 ha of land available for Small House development, the vast majority (i.e. 18.57 ha, equivalent to about 743 Small House sites) is private land and only a minor portion of the subject "V" zone (i.e. 1.63 ha, equivalent to about 65 Small House sites) is GL. Moreover, apart from some proposed road works<sup>2</sup> at the northern tip of the subject "V" zone on GL (**Plan R-2c**), there are no other major known government projects and infrastructure works concerning the subject "V" zone. As such, the considerations in paragraph 8.3 above are valid.

#### Setting of Undesirable Precedent

- 8.5 The previous application (No. A/DPA/YL-TT/12) for two Small Houses covered a much larger site (about 930m<sup>2</sup>, original Lot 2964 in D.D. 116), which was approved with conditions by RNTPC on 24.1.1992 before the promulgation of the Interim Criteria (**Plan R-2a**). The site was zoned "Unspecified Use" at the time of that application and the previous application warranted special circumstances as the houses were for rehousing under village removal terms due to the Yuen Long Southern Bypass Project. Since then, the original Lot 2964 in D.D. 116 was divided into two and the previous planning permission was implemented with the completion of the two approved Small Houses. The southern lot, to which one of the approved Small Houses belonged, was further sub-divided resulting in the current Site being carved out (as Lot 2964 S.B. in D.D. 116). The current Site thus carries no building status and the special circumstances warranted by the previous approval are no longer relevant to the current application. The prevailing Interim Criteria should instead be used in assessing the current case.
- 8.6 There are five similar applications within or straddling the subject "AGR" zone, which were all rejected on the grounds that the proposed developments were not in line with the planning intention of the "AGR" zone; there were insufficient information in the submission to demonstrate why suitable sites within the concerned "V" zone could not be made available for Small House development; approval of the application would set an undesirable precedent; and/or the proposed development did not comply with the Interim Criteria. Such considerations are generally applicable to the current application. Overall, rejecting this application would be in line with RNTPC/the

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<sup>2</sup> Proposed widening of Long Ho Road under the "Planning and Engineering Study for Housing Sites in Yuen Long South – Investigation".



Board's previous decisions.

- 8.7 On the applicant's justification that the proposed NTEH would not result in a general degradation of the rural agricultural character of the area since the Site is currently formed, paved and partly fenced off as part of a private garden of an adjoining Small House. In this connection, while DAFC has no strong views on the application from agriculture point of view, approval of the current application would set an undesirable precedent and encourage similar applications within the "AGR" zone. The cumulative impact would result in a general degradation of the rural agricultural character of the area. Other concerned government departments, including C for T, DEP, CTP/UD&L, PlanD, D of FS and CE/MN of DSD, have no adverse comment on/objection to the application.
- 8.8 Regarding the public comments objecting to the review application on the grounds as detailed in paragraph 7 above, the planning considerations and assessments in paragraphs 8.1 to 8.7 above are relevant.

## 9. Planning Department's Views

- 9.1 Based on the assessments made in paragraph 8, having taken into account the public comments as mentioned in paragraph 7, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 29.11.2019, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that there is no general shortage of land in meeting the demand for Small House development in the "V" zone of Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen; and
  - (b) approval of the application would set an undesirable precedent for similar applications at the subject "AGR" zone resulting in a general degradation of the rural agricultural character of the area.
- 9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 5.6.2024. 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 attached at **Annex G**.

**10. Decision Sought**

- 10.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 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.

**11. Attachments**

<b>Plan R-1</b>	Location Plan with Previous and Similar Applications
<b>Plan R-2a</b>	Site Plan
<b>Plan R-2b</b>	Estimated Amount of Land Available for Small House Development within the "V" Zone
<b>Plan R-2c</b>	Extent of GL and Private Land within the "V" Zone
<b>Plan R-3</b>	Aerial Photo
<b>Plan R-4</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/YL-TT/477A
<b>Annex B</b>	Extract of minutes of the RNTPC Meeting held on 29.11.2019
<b>Annex C</b>	Secretary of the Board's letter dated 13.12.2019
<b>Annex D</b>	Letter dated 2.1.2020 applying for review
<b>Annex D-1</b>	FI received on 6.3.2020
<b>Annex E</b>	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
<b>Annexes F-1 to F-3</b>	Public comments received during statutory publication periods of the review application
<b>Annex G</b>	Recommended Advisory Clauses