

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATIONS NO. A/NE-KTS/463 and 464**

<b><u>Applicants</u></b>	Mr. WONG Ka Chun Mr. LEUNG Kin Man	(Application No. A/NE-KTS/463) (Application No. A/NE-KTS/464)
	Both represented by Goodluck Consultants & Co.	
<b><u>Sites</u></b>	Lot 842 (Part) Lot 840 RP	(Application No. A/NE-KTS/463) (Application No. A/NE-KTS/464)
	Both in D.D. 100, Hang Tau, Kwu Tung South, Sheung Shui, New Territories	
<b><u>Site Areas</u></b>	104m <sup>2</sup> 113.42m <sup>2</sup>	(Application No. A/NE-KTS/463) (Application No. A/NE-KTS/464)
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)	
<b><u>Plan</u></b>	Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16	
<b><u>Zoning</u></b>	“Agriculture” (“AGR”)	
<b><u>Application</u></b>	Temporary Private Swimming Pool and Private Garden for a Permitted House (New Territories Exempted House (NTEH) – Small House) for a Period of 3 Years	

**1. The Proposals**

- 1.1 The applicants seek planning permission to use the application sites (the Sites) for temporary private swimming pool and private garden for a period of 3 years for the residents of their adjoining existing houses<sup>(1)</sup> (**Plan A-2**). The Sites fall within an area zoned “AGR” on the Approved Kwu Tung South

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<sup>(1)</sup> The adjoining houses (NTEH - Small Houses) fall within the same “AGR” zone and were approved by the Rural and New Town Planning Committee (the Committee) under applications No. A/NE-KTS/114 and 112 on 19.5.2000, and their Certificates of Compliance were issued by Lands Department on 2.4.2004 and 20.4.2004 respectively.

Outline Zoning Plan (OZP) No. S/NE-KTS/16. According to the Notes of the OZP, temporary use not exceeding a period of three years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP.

- 1.2 The Sites are currently used for the applied uses without valid planning permission. The Site of A/NE-KTS/463 is the subject of 4 previous applications, while the Site of A/NE-KTS/464 is the subject of 2 previous applications. The last applications (No. A/NE-KTS/391 and 393) of both sites for temporary private swimming pool and/or private garden were approved with conditions by the Committee in 2015 and lapsed in 2018. The applicants had complied with all the approval conditions.
- 1.3 According to the applicants' submissions, the applied swimming pools and gardens have been in existence since 2013. The development parameters under the current applications are largely the same as their previous approved applications as follows:

Application No. A/NE-KTS/463

<b>Development parameters</b>	<b>Previous application No. A/NE-KTS/391 (a)</b>	<b>Current application No. A/NE-KTS/463 (b)</b>	<b>Difference (b) – (a)</b>
Site Area	104m <sup>2</sup>	104m <sup>2</sup>	0
Area of swimming pool	38m <sup>2</sup>	38m <sup>2</sup>	0
Area of garden	62m <sup>2</sup>	62.83m <sup>2</sup>	+ 0.83m <sup>2</sup>
Area of pump room	4m <sup>2</sup>	3.17m <sup>2</sup>	- 0.83m <sup>2</sup>
Height of pump room	-	1.6m	-

Application No. A/NE-KTS/464

<b>Development parameters</b>	<b>Previous application No. A/NE-KTS/393 (a)</b>	<b>Current application No. A/NE-KTS/464 (b)</b>	<b>Difference (b) – (a)</b>
Site Area	113.4m <sup>2</sup>	113.42m <sup>2</sup>	+ 0.02m <sup>2</sup>
Area of swimming pool	38m <sup>2</sup>	36.8m <sup>2</sup>	- 1.2m <sup>2</sup>
Area of garden	-	73.12m <sup>2</sup>	-
Area of pump room	3.5m <sup>2</sup>	3.5m <sup>2</sup>	0
Height of pump room	-	1.6m	-

- 1.4 The layout plans of the private swimming pools and private gardens are at **Drawings A-1** and **A-2**. According to the applicants' submissions, the swimming pool water would be drained through the existing stormwater drainage system.
- 1.5 In support of the applications, the applicants have submitted the following documents:
- (a) Application Form received on 12.11.2018 (Application No. A/NE-KTS/463) **(Appendix Ia)**
  - (b) Supplementary Information (Application No. A/NE-KTS/463) **(Appendix Ib)**
  - (c) FI dated 12.12.2018 (Application No. A/NE-KTS/463) **(Appendix Ic)**
  - (d) Application Form received on 12.11.2018 (Application No. A/NE-KTS/464) **(Appendix Id)**
  - (e) Supplementary Information (Application No. A/NE-KTS/464) **(Appendix Ie)**
  - (f) Further Information (FI) dated 12.12.2018 (Application No. A/NE-KTS/464) **(Appendix If)**

## **2. Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms at **Appendices Ia** and **Id** and the FI at **Appendices Ic** and **If**. They are summarized as follows:

- (a) Two previous planning approvals for the similar uses for each site under applications No. A/NE-KTS/319, 391, 318 and 393 were granted. As the applicants missed the deadline for renewal of the previous applications, they have to apply for new approval. The existing pools and private gardens were completed in 2013.
- (b) The swimming pools and gardens are for the leisure use of the residents of their adjoining existing Small Houses, which were approved under applications No. A/NE-KTS/114 and 112.
- (c) The applicants will pump away the swimming pool water not more than once per year with a submersible pump to keep water quality at an acceptable level. The swimming pools do not need connection to any foul water drainage system.
- (d) The Sites have no water flooding history. With all the existing channels, there will be no water flooding problem.

### **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicants are the sole “current land owners” of their respective sites. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

The private swimming pool use and the hard paving area within the Sites would be subject to planning enforcement action.

### **5. Previous Applications**

- 5.1 The Sites involve a number of previous applications. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

#### Application No. A/NE-KTS/463

- 5.2 The Site involves 4 previous applications. Application No. A/NE-KTS/40 covering a larger site for NTEH (Small House) was approved with conditions on 14.6.1996 mainly on the grounds of being compatible with the surrounding land uses and no significant adverse impacts on the surrounding areas. The house was not implemented the planning permission lapsed on 15.6.2000. Application No. A/NE-KTS/114 covering the same site and for the same use was approved with conditions on 19.5.2000 on the similar considerations and inadequate land to fully meet the future demand for Small House. The NTEH has been completed, which is adjoining the Site of application No. A/NE-KTS/463.
- 5.3 Application No. A/NE-KTS/319 for proposed temporary private swimming pool and private garden for a period of 3 years at the Site for the adjoining permitted house was approved with conditions on 30.3.2012 mainly on the grounds of applied uses being not incompatible with the surrounding rural land uses and for exclusive use of residents of adjoining house; unlikely to have significant adverse impacts on the surrounding areas; and no adverse comment from concerned Government departments. The applicant has complied with all the approval conditions relating to drainage facilities and landscape proposal. The planning permission was renewed on 27.3.2015 under application No. A/NE-KTS/391 for a period of 3 years mainly on the similar grounds. The applicant has complied with all the approval conditions. The planning permission lapsed on 31.3.2018.

#### Application No. A/NE-KTS/464

- 5.4 Application No. A/NE-KTS/318 for proposed temporary private swimming pool, private garden and private car parking spaces for a period of 3 years for the

adjoining permitted house was approved with conditions on 30.3.2012 mainly on the similar grounds in paragraph 5.3. The applicant has complied with all the approval conditions relating to drainage facilities and landscape proposal. The planning permission lapsed on 31.3.2015. Application No. A/NE-KTS/393 covering the same site for temporary private swimming pool for a period of 3 years for the adjoining permitted house was approved with conditions on 17.4.2015 on the similar considerations. The applicant has complied with all the approval conditions. The planning permission lapsed on 18.4.2018.

## **6. Similar Applications**

- 6.1 There are 3 similar applications covering the same site for temporary private swimming pool and/or private garden within the same “AGR” zone which were all approved by the Committee. Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/NE-KTS/307 for a proposed temporary private swimming pool for a period of 3 years for a permitted house was approved with conditions on 15.4.2011 mainly on the considerations that the proposed development was for the leisure use of the residents of the existing adjoining house; it would not adversely affect the village character of the area nor cause adverse impact to the surrounding areas; and the site was with low potential for agricultural rehabilitation. The planning permission was renewed on 4.4.2014 under application No. A/NE-KTS/363 for a period of 3 years mainly on the similar grounds. The planning permission lapsed on 16.4.2017. Application No. A/NE-KTS/459 covering the same site for private swimming pool and garden for a period of 3 years was approved with conditions by the Committee on 21.12.2018 mainly on the similar grounds.

## **7. The Sites and Their Surrounding Areas (Plan A-2, aerial photo on Plan A-3 and site photos on Plans A-4a and 4b)**

### **7.1 The Sites are:**

- (a) located to the immediate southwest of the “Village Type Development” (“V”) zone of Hang Tau Village and falls entirely within the ‘VE’ of Hang Tau;
- (b) fenced together with their adjoining houses, and currently occupied by swimming pools with pump rooms and gardens without valid planning permission; and
- (c) accessible via a village road leading to Hang Tau Road.

7.2 The surrounding areas have the following characteristics:

- (a) to the northeast, east and southeast are vacant land, car park, village houses and domestic structures;
- (b) to the north within the “V” zone of Hang Tau are mainly village houses; and
- (c) to the south, southwest and west beyond the existing houses are vacant land and active/fallow agricultural land.

## **8. Planning Intention**

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.

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

9.1 The following Government departments have been consulted and their views are summarised as follows:

### **Land Administration**

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) according to the applications, the Sites comprise private lots namely lot No. 842 and 840 RP in D.D. 100. The lots are Old Schedule Lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicants should make their own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement;
- (b) the adjoining houses on lots No. 842 and 840 S.A in D.D. 100 is covered by Building Licence granted under the New Territories Small House Policy for erection of a NTEH in each lot. According to land search records, the applicants are the current registered owners of lots No. 842 and 840 S.A;
- (c) Certificate of Exemption and Certificate of Compliance for the NTEH on lot No. 842 were issued on 8.10.2001 and 2.4.2004 respectively, while those for the NTEH on lot No. 840 S.A were

issued on 11.5.2001 and 20.4.2004 respectively;

- (d) the existing structures on lots No. 842 and 840 RP (the Sites) were erected without approval from his office. The numbers of the aforesaid structures do not tally with those mentioned in the planning applications. The aforesaid structures are not acceptable under the Lease concerned and his office reserves the right to take necessary lease enforcement actions against the aforesaid structures;
- (e) For application No. A/NE-KTS/463, given that the structures were erected on the non-building portion of the lot No. 842<sup>(2)</sup> which is governed by a Building Licence, the applicant should ensure that the works having been effected/to be effected on the lot should always be in compliance with the terms and conditions of the Building Licence; and
- (f) if the planning applications are approved, the owner(s) of the subject lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The applications for STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STWs are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by his office.

### **Traffic**

#### **9.1.2 Comments of the Commissioner for Transport (C for T):**

he has no in-principle objection to the applications from traffic engineering point of view. The section of Hang Tau Road near the Sites and the access from Hang Tau Road to the Sites are not managed by his department. In this regard, the land status of the accesses leading to the Sites should be checked with the lands authority. The management and maintenance requirements of the same accesses should also be clarified with the relevant lands and maintenance authorities accordingly.

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<sup>(2)</sup> The Site of A/NE-KTS/463 covers part of lot 842 and the adjoining house within the lot is outside the Site.

## **Environment**

### 9.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) he understands from the applicants' submission that discharges from swimming pool are currently being directed to existing stormwater drainage system. Also, there will be no backwash process and no backwash effluent will be produced since the filter will not be reused and will be replaced when necessary. The applicants are reminded to comply with the requirements stipulated in Water Pollution Control Ordinance for any discharge arising from the operation of the swimming pool; and
- (b) given the applications are for temporary use, the applicants are advised to follow the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by Environmental Protection Department.

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

the Sites are in an area where no public sewerage connection is available.

## **Drainage**

### 9.1.5 Comments of the CE/MN, DSD:

- (a) he has no objection to the applications from the public drainage viewpoint; and
- (b) should the applications be approved, the following conditions should be included in the planning permission:
  - (i) the submission of a condition record of the existing drainage facilities; and
  - (ii) the existing drainage facilities shall be properly managed and maintained at all time and rectified if found inadequate/ineffective during the planning approval period.



### **Landscape**

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

- (a) he has no objection to the applications from landscape planning perspective;
- (b) compared the aerial photo of 2014 to the latest aerial photo of 2017, there is no significant change in the rural landscape characters where the Sites are located. The surrounding area comprises of houses, open storages, temporary structures and scattered tree groups. The applied uses are considered not incompatible with the landscape setting in proximity;
- (c) according to the site visit conducted on 27.11.2018, the existing trees and plantation are in good condition. The existing landscape setting can provide buffer / enhance the landscape quality and further adverse landscape impact arising from the same uses is not anticipated; and
- (d) should the applications be approved, a condition should be included to request the applicants to maintain the landscape planting within the Sites in healthy condition at all time during the approval period.

### **Building Matters**

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

he has no comment on the applications under the Buildings Ordinance. The Building Authority (BA) has acknowledged the completions of the building works in the approved plans dated 31.1.2013 on 10.10.2013.

### **Agriculture**

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

noted that the Sites have been occupied for the same applied uses approved by the Board since 2012. As the Sites are within an enclosed private backyard and the potential for agricultural rehabilitation is low, he has no strong view against the applications from agriculture point of view.

**Fire Safety**

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

he has no in-principle objection to the applications subject to fire service installations and water supplies for fire fighting being provided to the satisfaction of his department.

**Water Supply**

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

- (a) he has no objection to the applications; and
- (b) for provision of water supply to the development, the applicants may need to extend their inside services to the nearest suitable government water mains for connection. The applicants shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to his department's standards.

**District Officer's Comments**

9.1.11 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals from 23.11.2018 to 11.12.2018. All consultees, including the Chairman of Sheung Shui District Rural Committee (SSDRC), the North District Council (NDC) member of the subject constituency, the Indigenous Inhabitant Representatives (IIRs) and the Resident Representative (RR) of Hang Tau, have no comment on the applications.

9.2 The following Government departments have no comment on the applications:

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Commissioner of Police (C of P);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Project Manager/North, Civil Engineering and Development Department (PM(N), CEDD).

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

On 20.11.2018, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 11.12.2018, a total of 4 public comments from 2 individuals (2 comments on each application) were received. The commenters (**Appendices IVa to IVd**) indicate no comment on the applications.

## **11. Planning Considerations and Assessments**

- 11.1 The applications are for temporary private swimming pool and private garden uses for a period of 3 years for the residents of their adjoining houses (NTEH - Small Houses) approved under applications No. A/NE-KTS/114 and 112 respectively. The swimming pools and gardens are on the Sites and in use. The Sites are private land owned by the applicants, who are also the owners of the adjoining houses. The Sites fall within “AGR” zone. Although the applied uses are not in line with the planning intention of the “AGR” zone, temporary planning permission for swimming pool for 3 years within each site has been granted twice since 2012. DAFC has no strong view on the applications from agriculture point of view as the Sites are within enclosed private backyards and the potential for agricultural rehabilitation is low.
- 11.2 The swimming pools with area of 38m<sup>2</sup> and 36.8m<sup>2</sup> in the Sites are small in scale and landscape treatments are provided in the private gardens. The applied developments are considered not incompatible with the surrounding land uses, which are predominantly rural in nature mainly with village houses, domestic structures, active/fallow agricultural land and unused land in the vicinity (**Plan A-2**). The temporary open-air swimming pools and gardens would unlikely cause adverse traffic, environmental, drainage and landscape impacts on the surrounding areas and the concerned Government departments including C for T, DEP, CE/MN, DSD and CTP/UD&L, PlanD have no adverse comment on or objection to the applications.
- 11.3 Each of the Sites has been granted 2 previous planning permissions for similar temporary private swimming pool and private garden uses since 2012. As explained in paragraph 5, these applications were approved based on similar considerations: applied uses being not incompatible with the surrounding rural land uses and for exclusive use of residents of adjoining house; and unlikely to have significant adverse impacts on the surrounding areas. Moreover, the Committee recently approved a similar application (No. A/NE-KTS/459) in the vicinity on 21.12.2018 (**Plan A-2**). Approval of the current applications is in line with the previous decisions of the Committee.
- 11.4 Four public comments are received and indicate no comment.

## **12. Planning Department's Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comments mentioned in paragraphs 9.1.11 and 10, the Planning Department considers that the temporary private swimming pool and private garden for a permitted house (NTEH – Small House) under the two applications could be tolerated for a period of 3 years.
- 12.2 Should the Committee decide to approve the applications, it is suggested that the permissions shall be valid on a temporary basis for a period of 3 years up to 4.1.2022. The following approval conditions and advisory clauses are also suggested for Members' reference:

### Approval conditions

- (a) the existing drainage facilities shall be properly managed and maintained at all time and rectified if found inadequate/ineffective during the planning approval period;
- (b) the landscape planting within the application site should be maintained in healthy condition at all times during the planning approval period;
- (c) the submission of a condition record of the existing drainage facilities on site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 4.4.2019;
- (d) the submission of proposal of fire service installations and water supplies for fire fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.7.2019;
- (e) in relation to (d) above, the implementation of proposal of fire service installations and water supplies for fire fighting within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.10.2019;
- (f) if any of the above planning conditions (a) and (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (g) if any of the above planning conditions (c), (d) and (e) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and

- (h) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Appendix V**.

- 12.3 Alternatively, should the Committee decide to reject the applications, the following reason for rejection is suggested for Members' reference:

the uses under application are not in line with the planning intention of the "Agriculture" zone in the Kwu Tung South area which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

**13. Decision Sought**

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant permissions.
- 13.2 Should the Committee decide to approve the applications, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permissions, and the period of which the permissions should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

**14. Attachments**

<b>Appendix Ia</b>	Application Form received on 12.11.2018 (Application No. A/NE-KTS/463)
<b>Appendix Ib</b>	Supplementary Information (Application No. A/NE-KTS/463)
<b>Appendix Ic</b>	FI dated 12.12.2018 (Application No. A/NE-KTS/463)
<b>Appendix Id</b>	Application Form received on 12.11.2018 (Application No. A/NE-KTS/464)

<b>Appendix Ie</b>	Supplementary Information
<b>Appendix If</b>	(Application No. A/NE-KTS/464)
	FI dated 12.12.2018
	(Application No. A/NE-KTS/464)
<b>Appendix II</b>	Previous Applications
<b>Appendix III</b>	Similar Applications
<b>Appendices IVa to IVd</b>	Public Comments
<b>Appendix V</b>	Advisory Clauses
<b>Drawings A-1 to A-2</b>	Layout Plans submitted by the applicants
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT**  
**JANUARY 2019**