

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/459

<u>Applicant</u>	Mr. LAU Wai Yin represented by Goodluck Consultants & Co.
<u>Site</u>	Lot 839 RP in D.D. 100, Hang Tau, Kwu Tung South, Sheung Shui, New Territories
<u>Site Area</u>	170.92 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	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 Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary private swimming pool and private garden for a period of 3 years for the residents in the adjoining existing house⁽¹⁾ at the adjoining Lot 839 S.A (**Plan A-2**). The Site falls within an area zoned “AGR” on the Approved Kwu Tung South 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 Site is currently used for the applied uses without valid planning permission. The Site is the subject of 2 previous applications No.

⁽¹⁾ The house (NTEH - Small House) falls within the same “AGR” zone and was approved by the Rural and New Town Planning Committee (the Committee) under application No. A/NE-KTS/190 on 19.11.2004, and Certificate of Compliance was issued by Lands Department on 2.6.2011.

A/NE-KTS/307 and 363 both for private swimming pool at the Site. The last application for renewal of planning approval granted under Application No. A/NE-KTS/307 was approved with conditions by the Committee in 2014 and lapsed in 2017. The applicant had complied with all the approval conditions.

- 1.3 According to the applicant's submission, the applied swimming pool and garden have been in existence in the Site since 2013. The development parameters under the current application are largely the same as the previous approved application (No. A/NE-KTS/363) as follows:

Development parameters	Previous application No. A/NE-KTS/363 (a)	Current application (b)	Difference (b) – (a)
Site Area	219m ²	170.92 m ²	- 48 m ² ⁽²⁾
Area of swimming pool	44.1m ²	44.1 m ²	0
Area of garden	-	123.68 m ²	
Area of pump room	3.14 m ²	3.14 m ²	0
Height of pump room	1.5m (single storey)	1.6m (single storey)	+ 0.1m ⁽³⁾

- 1.4 The layout plan of the private swimming pool and private garden is at **Drawing A-1**. According to the applicant's submission, the swimming pool water would be drained through the existing stormwater drainage system.

- 1.5 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on **(Appendix I)** 24.10.2018
- (b) Further Information (FI) dated 7.11.2018 **(Appendix Ia)**
- (c) FI dated 27.11.2018 **(Appendix Ib)**
- (d) FI dated 28.11.2018 **(Appendix Ic)**
- (e) FI dated 4.12.2018 **(Appendix Id)**
- (f) FI dated 5.12.2018 **(Appendix Ie)**
- (g) FI dated 13.12.2018 **(Appendix If)**

⁽²⁾ According to the applicant's submission, the application site of the previous approved applications was divided into 3 smaller lots (i.e. 839 RP, 839 S.B and 839 S.C). Hence, the site area of current application, Lot 839 RP, is smaller than that of the previous applications.

⁽³⁾ According to the applicant's submission, the height of the pump room was built according to safety and working situations, the working space required inside the pump room, and size of machines installed.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I** and the FI at **Appendices Ic to Id**. They are summarized as follows:

- (a) Two previous planning approvals for the same use in the Site under applications No. A/NE-KTS/307 and 363 were granted. As the applicant missed the deadline for renewal of the previous application, he has to apply for a new approval.
- (b) The swimming pool and garden are for the leisure use of the residents of the existing Small House at the adjoining Lot 839 S.A in D.D. 100, which was approved under application No. A/NE-KTS/190.
- (c) The applicant 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 pool does not need connection to any foul water drainage system.
- (d) The Site has 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 applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The current use on the Site would be subject to planning enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of 2 previous applications (No. A/NE-KTS/307 and 363). Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-2b**.
- 5.2 Planning application No. A/NE-KTS/307 for a proposed temporary private swimming pool for a period of 3 years for a permitted house (NTEH - Small House) was approved with conditions by the Committee on 15.4.2011 mainly on the grounds that the proposed development was for the leisure use of the residents of the existing Small House at the adjoining lot; it would not adversely affect the village character of the area nor cause adverse impact to the surrounding areas; the site was with low potential for agricultural rehabilitation; and the concerned departments had no adverse comment on the application.

The applicant has complied with all the approval conditions relating to drainage facilities, water supplies for fire fighting and fire service installations (FSI), and landscape proposal.

- 5.3 Application No. A/NE-KTS/363 for renewal of the planning approval under A/NE-KTS/307 for a period of 3 years was approved with conditions on 4.4.2014 mainly on similar grounds. The applicant has complied with all the approval conditions. The planning permission lapsed on 16.4.2017.

6. Similar Applications

- 6.1 There are 4 similar applications involving 2 sites 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 Applications No. A/NE-KTS/318 and 393 involving almost the same site were approved on 30.3.2012 and 17.4.2015 respectively. Application No. A/NE-KTS/318 for proposed temporary private swimming pool, private garden and private car parking spaces was approved on the considerations that the temporary uses were intended for the exclusive use of the residents of the adjoining permitted Small House; the site was formed and surrounded by domestic structures, it was not incompatible with the surrounding rural land uses; it is unlikely to have significant adverse impacts on the surrounding areas; and concerned Government departments had no adverse comment on the application. The planning permission lapsed on 31.3.2015. Application No. A/NE-KTS/393 for temporary private swimming pool was approved on the similar considerations. The planning permission lapsed on 18.4.2018. A fresh planning application No. A/NE-KTS/464 for temporary private swimming pool and private garden on the site is scheduled for consideration by the Committee on 4.1.2019.
- 6.3 Applications No. A/NE-KTS/319 and 391 involving another site for proposed temporary private swimming pool and private garden were approved on 30.3.2012 and 27.3.2015 respectively on similar grounds as the aforesaid two similar applications. Application No. A/NE-KTS/391 lapsed on 31.3.2018. A fresh planning application No. A/NE-KTS/463 for the same uses is scheduled for consideration by the Committee on 4.1.2019.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4)

7.1 The Site is:

- (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 and currently occupied by a swimming pool with a pump room and a garden 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 immediate southwest is an existing Small House approved under Application No. A/NE-KTS/190, which is owned by the applicant; to the further southwest are vacant land and open storage of construction materials;
- (b) to the immediate south-east are 2 village houses. Their swimming pool and garden are the subject of 2 similar planning applications No. A/NE-KTS/463 and 464; to the further south-east are domestic structures, villages houses, car park and active/fallow agricultural land;
- (c) to the north are a cluster of village houses known as Grand Garden and vacant land within the “V” zone of Hang Tau Village; and
- (d) to the west are car park and village houses.

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) the Site comprises a private lot namely lot No. 839 RP in D.D. 100. The lot is an Old Schedule Lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his

own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement;

- (b) the adjoining house on lot No. 839 S.A in D.D. 100 is covered by a Building Licence granted under the New Territories Small House Policy for erection of a NTEH. Certificate of Exemption and Certificate of Compliance for the NTEH were issued on 19.12.2008 and 2.6.2011 respectively. According to land search records, the applicant is the current registered owner of the subject lot and lot No. 839 S.A in D.D. 100;
- (c) it is noted that:
 - (i) the numbers and the total built-over area of the aforesaid structures do not tally with the one mentioned in the planning application;
 - (ii) the as-built electricity package substation (ESS)⁽⁴⁾ on lots No. 835 RP and 839 S.C both in D.D. 100 (**Plan A-2**) was erected without any approval of his office; and
 - (iii) the existing structures on lots No. 839 RP (the Site) and 835 S.B both in D.D. 100 (**Plan A-2**) within/adjoining the Site were erected without approval of his office. The aforesaid structures are not acceptable under the Leases concerned and his office reserves the right to take necessary lease enforcement actions against the aforesaid structures;
- (d) if the planning application is approved, the owner of the subject lot concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it 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 application from traffic

⁽⁴⁾ The ESS is outside the Site.

engineering point of view. The section of Hang Tau Road near the Site and the access from Hang Tau Road to the Site are not managed by his department. In this regard, the land status of the accesses leading to the Site 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.

Environment

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

- (a) he understands from the applicant's submission that discharge from swimming pool is 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 applicant is 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 application is for temporary use, the applicant is advised to follow the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by Environmental Protection Department.

Drainage

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

- (a) he has no objection in-principle to the application from public drainage point of view; and
- (b) should the application 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

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

- (a) he has no objection to the application 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 Site is located. The surrounding area comprises of houses, open storages, temporary structures and scattered tree groups. The applied use is considered not incompatible with the landscape setting in proximity;
- (c) according to the site visit conducted on 14.11.2018, the existing trees and vegetation are in good condition. The existing landscape setting can provide buffer / enhance the landscape quality and further adverse landscape impact arising from the same use is not anticipated; and
- (d) should the application be approved, a condition should be included to request the applicant to maintain the landscape planting within the Site in healthy condition at all time during the approval period.

Building Matter

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

he has no in-principle objection under the Buildings Ordinance to the uses as per the building plans approved by the Building Authority on 31.1.2013 for the swimming pool. The works of the swimming pool were completed and acknowledged by his department on 10.10.2013.

Agriculture

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

noted that the Site has been occupied for the same applied use approved by the Board since 2011. As the Site is surrounded by domestic structures and the potential for agricultural rehabilitation is low, he has no strong view against the application from agriculture point of view.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to FSI and water supplies for fire fighting being provided to the satisfaction of his department; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

Water Supply

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

- (a) he has no objection to the application;
- (b) there are existing water mains inside the subject lot. The applicant is required to either divert or protect the water mains found on the Site; and
- (c) the advisory comments are at **Appendix V**.

District Officer's Comments

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

- (a) he has consulted the locals from 14.11.2018 to 27.11.2018;
- (b) 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 application; and
- (c) the Chairman of Sheung Shui District Rural Committee (SSDRC) objects to the application mainly on the grounds that SSDRC does not know the details of the applied development and wishes the applicant to consult SSDRC.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Commissioner of Police (C of P); and

- (d) Project Manager/North, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comment Received During Statutory Publication Period

On 6.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.11.2018, one comment (**Appendix IV**) submitted by a member of the general public was received. The commenter has no comment.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary private swimming pool and private garden uses for a period of 3 years for the residents of the adjoining house (NTEH - Small House) approved under application No. A/NE-KTS/190. The swimming pool and garden are on the Site and in use. The Site is private land owned by the applicant, who is also the owner of the existing house. The Site falls within “AGR” zone. Although the applied uses are not in line with the planning intention of the “AGR” zone, temporary planning permissions for swimming pool for 3 years within the Site have been granted twice since 2011. DAFC has no strong view on the application from agriculture point of view as the Site has been occupied for the same applied uses, is surrounded by domestic structures and the potential for agricultural rehabilitation is low.
- 11.2 The swimming pool with an area of 44.1m² is small in scale and landscape treatment is provided in the private garden. The applied development is 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 pool and garden 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 application.
- 11.3 The Site is the subject of 2 previous applications (No. A/NE-KTS/307 and 363) for temporary private swimming pool use approved with conditions in 2011 and 2014 respectively. As explained in paragraph 5, these applications were approved based on similar considerations: for leisure use of the residents of the adjoining existing Small House; no adverse impact to the village character of the area and the surrounding areas; with low potential for agricultural rehabilitation; and no adverse comment from concerned departments on the application. All approval conditions of the last approved application (No. A/NE-KTS/363) have been complied with. Moreover, there are 4 similar applications (Nos. A/NE-KTS/318, 319, 391 and 393) for similar uses within the same “AGR” zone (**Plan A-1**) which were all approved by the Committee

in 2012 and 2015. Approval of the current application is in line with the previous decisions of the Committee.

- 11.4 There is one local objection as conveyed by DO(N) objecting to the application mainly on the grounds that the applicant should consult SSDRC. In this regard, the statutory and administrative public consultation procedures have been conducted for the application. One public comment is received and indicates no comment.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the local views and public comment mentioned in paragraphs 9.1.10 and 10, the Planning Department considers that the temporary private swimming pool and private garden for a permitted house (NTEH – Small House) could be tolerated for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years up to 21.12.2021. 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 21.3.2019;
- (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 21.6.2019;
- (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 21.9.2019;

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

14. Attachments

Appendix I	Application Form with Attachments received on 24.10.2018
Appendix Ia	FI dated 7.11.2018
Appendix Ib	FI dated 27.11.2018
Appendix Ic	FI dated 28.11.2018
Appendix Id	FI dated 4.12.2018
Appendix Ie	FI dated 5.12.2018
Appendix If	FI dated 13.12.2018
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Public comment
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2018**