

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/670

- Applicant** : Mr. LAU Wan Sang with LI Kwok Lung as the Power of Attorney and represented by Glister Engineering Consultants Company
- Site** : Lot 1533 S.A in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Area** : 158 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1 The Proposal

- 1.1 The applicant, who claimed to be an indigenous villager¹, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Kan Tau Tsuen, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH (Small House) development are as follows:

Total Floor Area	:	195.09 m ²
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m ²

Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicates that the uncovered area of the Site would be used as garden area of the proposed Small House.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Lin Ma Hang Village of Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained.

1.3 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 30.5.2018.

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 in **Appendix I**. They can be summarized as follows:

- (a) the applicant has an urgent and bona fide need on the proposed development;
- (b) the applicant is the registered owner of the Site;
- (c) the applicant is an indigenous villager and is entitled to a Small House grant in the accordance with the current Small House Policy of Lands Department;
- (d) the Site falls within the village “Environs”;
- (e) the proposed development is compatible with surrounding environment and land use; and
- (f) there are some similar cases approved in the vicinity of the Site.

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

The applicant is the sole “current land owner” of the lot. Detailed information would be deposited at the meeting for Members’ inspection.

4 Assessment Criteria

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**.

5 Previous Application

There is no previous application of the Site.

6 Similar Applications

- 6.1 There are 88 similar applications for Small House development within / partly within the “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of 79 applications involving 63 sites were approved with conditions by the Committee of the Board between March 2001 and July 2018 mainly on the considerations that the applications complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone of the same village in meeting the Small

House demand; the proposed Small House developments were not incompatible with the surrounding rural and village environment; the proposed developments were not expected to have significant adverse traffic, drainage, environmental and/or landscape impacts on the surrounding area; and similar applications were approved by the Committee. Some of the approval cases are in the vicinity of the Sites (**Plan A-2a**).

- 6.3 The other nine applications involving eight sites were rejected by the Committee or the Board on review between September 2003 and December 2017 mainly on the considerations that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell mainly/entirely outside the “V” zone and the “VE” of a recognized village; the proposed developments were not in line with the planning intention of the “AGR” zone; land was still available within the “V” zone; and approval of the applications would set undesirable precedents for similar applications.
- 6.4 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7 The Site and its Surrounding Area (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photo on Plan A-4)

7.1 The Site is:

- (a) located to the west of the “V” zone of Kan Tau Tsuen;
- (b) vacant, flat and covered with wild grass; and
- (c) not accessible by any road or proper access track.

7.2 The surrounding areas have the following characteristics:

- (a) rural landscape character dominated by active/fallow agricultural land and village houses;
- (b) to the immediate east are sites of planning applications for Small House developments approved by the Committee between 2002 and 2003 and further east are village houses in “V” zone and the village proper of Kan Tau Tsuen (**Plan A-2a**);
- (c) to the north and west are areas used for vehicle parking, active/fallow agricultural land and vacant/unused land (**Plan A-2a**).
- (d) to the south are fallow agricultural land and the sites of outstanding Small House applications (**Plan A-2b**).

8 Planning Intention

The planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area 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 application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	- The Site and the footprint of the proposed Small House falls entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	48.8% 84.1%	51.2% 15.9%	- DLO/N, LandsD advises that the majority of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen.
3.	Sufficient land in “V” zone to satisfy outstanding Small House application and 10-year Small House demand?		✓	- Land required to meet the Small House demand in Kan Tau Tsuen: about 4.3 ha (equivalent to 172 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 76 while the 10-year Small House demand forecast for the same village is 96 ² . - Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 2.28 ha (equivalent to 91 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) stated that agricultural activities in the vicinity of the Site are active. Agricultural infrastructures such as road access and water source are available. As the Site processes potential for agricultural rehabilitation, the application is not supported from agriculture point of view.

² Among the 76 outstanding Small House applications, 17 of them fall within the “V” zone and 59 straddle or outside the “V” zone. For those 59 applications straddling or being outside the “V” zone, 35 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding rural setting and environment dominated by agricultural land and village houses (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the application and advises that Small House development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. - Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view. - An approval condition on the submission and implementation of landscape proposal is recommended for the application.
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of Fanling District Rural Committee (FDRC) has no comment on the application while the Indigenous Inhabitant Representative and the Resident Representative of Kan Tau Tsuen support the application mainly on the grounds that the Site is adjacent to the “V” zone and the proposed development will not affect the nearby residents. Sewage works have already been sorted out. Sympathetic consideration can be given to the application.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Details of comments from Government departments are at **Appendix IV**.

- (a) District Lands Officer/North, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Director of Fire Services;
- (g) Chief Engineer/Construction, Water Supplies Department;
- (h) Director of Agriculture, Fisheries and Conservation; and
- (i) District Officer (North), Home Affairs Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department; and

- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

10 Public Comments Received During Statutory Publication Period

On 8.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received. Chairmen of Sheung Shui District Rural Committee and FDRC indicate no comment on the application. The Hong Kong Bird Watching Society and an individual object to the application mainly on the grounds that the application is not in line with the planning intention of the “AGR” zone; approval of the application will set an undesirable precedent to the future development, encourage the creation of further village clusters and the prevalence of random developments with septic tanks; land is still available within the “V” zone; and high potential for agricultural rehabilitation of the Site.

11 Planning Considerations and Assessments

- 11.1 The proposed Small House development is not in line with the planning intention of the “AGR” zone which is intended 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. DAFC does not support the applications from the agriculture point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 76 while the 10-year Small House demand forecast for the same village is 96. According to the latest estimate by PlanD, about 2.28 ha (equivalent to 91 Small House sites) of land are available in the “V” zone of Kan Tau Tsuen for Small House development (**Plan A-2b**). DLO/N, LandsD advises that majority portion of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen.
- 11.3 The Site is situated to the west of the “V” zone of Kan Tau Tsuen, which is vacant, flat and covered with wild grass and not accessible by any road or proper access track (**Plans A-3 and A-4**). To the east are village houses in “V” zone and the village proper of Kan Tau Tsuen. The proposed Small House is not incompatible with the surrounding rural landscape character dominated by active/fallow agricultural land, village houses and vacant/unused land. Significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view. C for T has reservation on the application and considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, it could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment or no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 2.28 ha or equivalent to 91 Small House sites) is still available within the “V” zone to meeting the outstanding 76 Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications

for Small House development in recent years. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. As such, it is 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 infrastructure and services. Nevertheless, it should be noted that the proposed Small House is in close proximity to the “V” zone of Kan Tau Tsuen and there are existing and approved Small Houses forming new village clusters in the locality (**Plans A-2a and A-2b**). Relevant Government departments, except DAFC, have no objection to/no adverse comment on the application.

- 11.5 There are 88 similar applications for Small House development in the vicinity of the Site and 79 of them were approved by the Committee between 2001 and July 2018 (**Plan A-1**) mainly on considerations that they complied with the Interim Criteria; the proposed Small Houses were not incompatible with the surrounding rural environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area. The other nine similar applications were rejected by the Committee or the Board on review between 2003 and 2017 mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria as the proposed Small House footprint fell mainly/entirely outside the “V” zone and the ‘VE’ of a recognized village. There has not been major change in planning circumstances of the area since the approval/rejection of these similar applications. The circumstances of the subject application is similar to applications No. A/NE-LYT/650 to 652 in close proximity to the Site (**Plan A-2a**) approved on 1.6.2018.
- 11.6 Regarding the adverse public comments objecting to the application mainly on the grounds that the application is not in line with the planning intention of the “AGR” zone; approval of the application will set an undesirable precedent to the future development, encourage the creation of further village clusters and the prevalence of random developments with septic tanks; land is still available within the “V” zone; and high potential for agricultural rehabilitation of the Site, Government departments’ comments and planning assessments above are relevant.

12 Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 20.7.2022, 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:
- (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;
 - (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
 - (c) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed development is not in line with the planning intention of the "AGR" zone in the Lung Yeuk Tau and Kwan Tei 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; and
 - (b) land is still available within the "V" zone of Kan Tau Tsuen which is primarily intended for Small House development. It is 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.

13 Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the 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.
- 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 30.5.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the "AGR" Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the "V" zone of Kan Tau Tsuen for Small House Development

Plan A-3
Plan A-4

Aerial Photo
Site Photo

PLANNING DEPARTMENT
JULY 2018