

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/112

- Applicant** : Mr. MO Kwai Hong represented by Glister Engineering Consultants Company
- Site** : Lots 1523 S.C and 1523 RP in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories
- Site Area** : 273 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zonings** : “Agriculture” (“AGR”) (86.1% of the Site) and
“Village Type Development” (“V”) (13.9% of the Site)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who is an indigenous villager¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls within an area mostly zoned “AGR” with a minor portion zoned “V” on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, ‘House (NTEH only)’ is always permitted within the “V” zone while ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ is a Column 2 use within “AGR” zone, which requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) 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

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant is an indigenous villager of Ma Tseuk Leng of Sha Tau Kok Heung and is eligible to apply for Small House concessionary grant.

- 1.3 The applicant indicates that the uncovered area of the Site would be used as garden and spaces for septic tank and sewer for the proposed Small House. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the Application Form with attachments and supplementary information (**Appendices I and Ia**) which were received by the Board on 14.2.2018 and 1.3.2018 respectively.
- 1.5 The Site is the subject of two previous planning applications (No. A/NE-LK/78 and 80) for development of a Small House in each of the applications. Application No. A/NE-LK/78 was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 1.3.2013 whereas application No. A/NE-LK/80 was approved by the Committee of the Board on 6.9.2013. The planning permission for the latest application lapsed on 7.9.2017.

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** and supplementary information in **Appendix Ia**. They can be summarised as follows:

- (a) the applicant is an indigenous villager and entitled for Small House grant under the Small House Policy;
- (b) the Site falls within the village 'environs' ('VE') of Ma Tseuk Leng Village;
- (c) the proposed development is compatible with the surrounding environment and land use;
- (d) the application is made on an urgent and bona fide need basis;
- (e) there are similar Small House applications approved in the vicinity of the Site;
- (f) compared with the previous approved application No. A/NE-LK/80, the layout of the proposed Small House and the septic tank has been amended to increase the distance from the nearby stream to over 3m. There is no adverse impact on the stream; and
- (g) after the approval of the previous application, the applicant was not aware of the need of applying for Extension of Time for commencement of development. Therefore, a fresh application is applied after the previous planning approval is lapsed.

3. Compliance with the "Owner's Consent/Notification" Requirements

According to the record of the Land Registry, the Site involves a total of two "current land owners". The applicant is the "current land owner" of Lot 1523 S.C. Consent has been obtained from the "current land owner" of Lot 1523 RP. 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 Applications

- 5.1 The Site is the subject of two previous planning applications (No. A/NE-LK/78 and 80) for development of a Small House in each of the applications submitted by the same applicant as the current application. Application No. A/NE-LK/78 was rejected by the Committee of the Board on 1.3.2013 mainly on the consideration that the proposed development was not in line with the planning intention of “AGR” zone and the proposed development may cause adverse impact on the natural stream in its immediate vicinity. Application No. A/NE-LK/80, in which the proposed septic tank located further away from the natural stream, was approved by the Committee of the Board on 6.9.2013 mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed Small House development was not incompatible with the surrounding rural and village environment; and the proposed development was not expected to have significant adverse impacts on the surrounding area.
- 5.2 Compared with the previous application (No. A/NE-LK/80), the site area of the proposed Small House has been increased from 182.8 m² to 273 m² (i.e. 90.2 m²) with inclusion of the entire Lot 1523 RP for the septic tank and connecting pipes (**Plan A-2a**). The other major development parameters including the disposition of the proposed Small House generally remain the same.
- 5.3 Details of the previous applications are summarised at **Appendix III** and its location is shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are 36 similar applications for Small House development within / partly within the “AGR” zones in the vicinity of the Site in the Luk Keng and Wo Hang area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Among these similar cases, 34 applications involving 30 sites were approved by the Committee between 2001 and 2018 (**Plan A-1**) mainly on the considerations that the applications generally 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 at the time of consideration; 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 impacts on the surrounding area; and the applications were the subjects of previous planning approvals.

- 6.2 The other two applications No. A/NE-LK/ 92 and 93 were rejected by the Committee in 2014 for reasons that proposed Small Houses were not in line with the planning intentions of “AGR” and “Green Belt” (“GB”) zones; the proposed development might have adverse impact on a natural stream in the vicinity; the applications did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone in that the proposed developments would involve vegetation clearance and hence affect these existing natural landscape; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the applications would set undesirable precedents for similar applications in the area.
- 6.3 Details of these applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, A-3, and A-4)

- 7.1 The Site is:
- (a) currently vacant, flat and overgrown with grass;
 - (b) located within the ‘VE’ of Ma Tseuk Leng, Ma Tsuek Leng San Uk Ha and Wo Tong Kong (**Plans A-2a and A-2b**); and
 - (c) not served by any vehicular access.
- 7.2 The surrounding area has the following characteristics:
- (a) a rural landscape character dominated by mainly tree groups, village houses, temporary domestic structures, fallow / active agricultural land and vacant land;
 - (b) to the east is a natural stream course with footpath and to the further north and east are some fallow and active agricultural land with scattered tree groups and temporary structures for domestic purposes; and
 - (c) to the northwest and south are the village clusters of Ma Tseuk Leng and Ma Tseuk Leng San Uk Ha within the “V” zone (**Plans A-1 and A-2a**).

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone in Luk Keng and Wo Hang 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.
- 8.2 The planning intention of the “V” zone in Luk Keng and Wo Hang area is primarily to designate both existing recognized 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.

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:

	Criteria	Yes	No	Remarks
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	13.9% -	86.1% 100%	The Site falls within an area mostly zoned “AGR” with a minor portion zoned “V”. The footprint of the proposed Small House falls entirely within “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	87.8% 100%	12.2% -	DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 13.9 ha (equivalent to 557 Small House sites) ³ . The outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster are 62 while the 10-year Small House demand forecast for the same villages is 495. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.42 ha (equivalent to 96 Small House sites) (Plan A-2b)
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from agriculture point of view as the Site is an abandoned land overgrown with vegetation. Agricultural activities in the vicinity are active and agricultural infrastructures such as footpath and water supply are available. The Site possesses high

² Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

³ Among the 62 outstanding Small House applications, there are 9 Small House applications straddling or outside the “V” zone that have already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>potential for agricultural rehabilitation.</p> <p>- Moreover, she has reservation on the application from nature conservation point of view as the proposed development including site formation works may cause potential adverse impact on the natural to semi-natural stream with trees growing in its riparian areas to the immediate northeast of the Site.</p>
5.	Compatible with surrounding area/ development?	✓		The proposed Small House is not incompatible with the surrounding rural setting and environment dominated by village houses, tree groups and active / fallow agricultural land.
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)?		✓	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?	✓		<p>- 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 an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.</p> <p>- Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that an approval condition on the submission and implementation of drainage proposal is required. - The Site is in the vicinity of an existing stream course. The proposed development should not create adverse drainage impacts both during and after construction. Proposed flooding mitigation measures if necessary shall be provided.
11.	Sewage impact?		✓	Director of Environmental Protection (DEP) advises that in view of the Site is outside WGG and the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	<ul style="list-style-type: none"> - 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. - Compared to the previous approved application No. A/NE-LK/80, the site layout is amended to increase the buffer between the Small House and the stream. No landscape resource will be affected. - If the application is approved, the approval condition on submission and implementation of landscape proposal is recommended.
13.	Local objection conveyed by DO?		✓	District Officer (North) (DO(N)) advises that the Chairman of Sha Tau Kok District Rural Committee, the incumbent North District Council (NDC) member of subject constituency, the Indigenous Inhabitant Representative of Ma Tseuk Leng Sheung Village and the Resident Representative of Ma Tseuk Leng Sheung Village have no comment on 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 V**.

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

9.3 The following Government departments have no comment on / no objection to 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 23.2.2018 the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received (**Appendix VI**). A NDC member supports the application as it can provide convenience to the villagers and the Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation objects to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone of Ma Tseuk Leng for Small House development; and the proposed development would have adverse impact on the natural stream in the immediate vicinity of the Site.

11. Planning Considerations and Assessments

11.1 The Site falls within an area mostly zoned “AGR” with a minor portion zoned “V”. The proposed Small House development is not in line with the planning intention of the “AGR” zone which 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. DAFC does not support the application from the agriculture development point of view as the Site is an abandoned land overgrown with vegetation. Agricultural activities in the vicinity are active and agricultural infrastructures such as footpath and water supply are available. The Site possesses high potential for agricultural rehabilitation.

11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 62 while the 10-year Small House demand forecast for the same village cluster is 495. According to the latest estimate by PlanD, a total of about 2.42 ha (equivalent to 96 Small House sites) of land are available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). The footprint of the proposed Small House falls within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.

- 11.3 The Site is situated in an area of rural landscape character consisted of abandoned farmlands, tree clusters and villages, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a** and **A-3**). No significant adverse impact on the landscape resources arising from the proposed development is anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application. From nature conservation point of view, DAFC has reservation on the application as the proposed development including site formation works may cause potential adverse impact on the natural to semi-natural stream with trees growing in its riparian areas to the immediate northeast of the Site. However, it is noted that there is no tree on the Site and DEP opines that the development itself is unlikely to cause pollution to the nearby stream. The proposed septic tank and soakaway system is an acceptable means for collection, treatment and disposal of the sewage and the design and construction should follow the requirements of the ProPECC PN 5/93, in particular the requirement for clearance distance from streams. 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 only, it could be tolerated. Other Government departments consulted, including CE/MN of DSD and D of FS, have no adverse comment on 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 Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong (**Plan A-2a**). Whilst land available within the “V” zone is insufficient to fully meet the total future Small House demand (in total about 13.9 ha or equivalent to 557 Small House sites), it is noted that land (about 2.42 ha or equivalent to 96 Small House sites) is still available within the “V” zone to meet the outstanding 62 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 is noted that the Site is the subject of a previous planning application (No. A/NE-LK/80) submitted by the same applicant as the current application for development of a Small House. The application was approved by the Committee in September 2013 but its planning permission lapsed in September 2017. As advised by DLO/N of LandsD, the Small House grant application of the Site was approved in principle in July 2016 while the Building License has not yet been issued. In this regard, sympathetic consideration could be given to the current application.
- 11.5 There are 36 similar applications for Small House development in the vicinity of the Site and 34 of them involving 30 sites were approved by the Committee between 2001 and 2018 (**Plan A-1**) mainly on considerations that the applications generally 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 at the time of consideration; the proposed Small House developments were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area. Among the approved similar applications, applications No. A/NE-LK/106, 107, 109 and 111 were approved by the Committee between 2016 and 2018 mainly on the sympathetic consideration that these

applications were subject of previous approved applications. The circumstance of the current application is similar to those approved applications approved between 2016 and 2018.

- 11.6 The other two similar applications were rejected by the Committee in 2014 mainly on the grounds that that proposed Small Houses were not in line with the planning intentions of “AGR” and “GB” zones; the proposed development may have adverse impact on a natural stream in the vicinity; the applications did not comply with the Interim Criteria and TPB PG-No. 10 on application for development within “GB” zone; land was still available within the “V” zone of Ma Tseuk Leng for Small House development; and the approval of the applications would set undesirable precedents for similar applications in the area.
- 11.7 There is adverse public comment against the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; land is still available within the “V” zone of Ma Tseuk Leng for Small House development; and the proposed development would have adverse impact on the natural stream in the immediate vicinity of the Site. In this regard, 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 6.4.2022, 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:

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;
- (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 VII**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member’s reference:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone in the Luk Keng and Wo Hang 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 Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for 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 14.2.2018
Appendix Ia	Supplementary information received on 1.3.2018
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous s.16 Applications
Appendix IV	Similar s.16 Applications within / partly within the “AGR” Zones in the vicinity of the Site on the Luk Keng and Wo Hang OZP
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comment
Appendix VII	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 Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos