

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/647

<u>Applicants</u>	Messrs. LEUNG Tsz Ho and LEUNG Tsz Lun represented by Mr. TAI Ngan Chiu
<u>Site</u>	Lots 913 S.B ss.1 and 913 S.B RP in D.D. 8, Ma Po Mei, Tai Po, New Territories
<u>Site Area</u>	About 445.2m ²
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<u>Plan</u>	Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed Two Houses (New Territories Exempted Houses (NTEHs) - Small Houses)

1. The Proposal

1.1 The applicants, who claim themselves as indigenous villagers of Ma Po Mei¹, seek planning permission to build two NTEHs (Small Houses) on the application site (the Site) (**Plan A-1**). 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)’ use within the “AGR” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of each of the proposed Small House developments are as follows:

Total floor area	:	195.09m ²
Number of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

1.3 Layout of the proposed Small Houses and the proposed septic tanks are shown on **Drawing A-1**.

¹ The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the eligibility of Small House grant has yet to be ascertained.

1.4 The Site/part of the Site is the subject of several previous applications (No. A/NE-LT/105, 106, 204 and 368). Except for Application No. A/NE-LT/204 approved by the Rural and New Town Planning Committee (the Committee) in 1999, all other applications were rejected. The details of previous applications are given in paragraph 5 below.

1.5 In support of the application, the applicants have submitted an application form dated 30.7.2018 with the attachment (**Appendix I**) and further information dated 10.8.2018 providing justifications for provision of septic tank (*accepted and exempted from publication and recounting requirements*) (**Appendix Ia**).

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the application as stated in Part 9 of the application form at **Appendices I** and **Ia** are summarized as follows:

- (a) the applicants have no other land available within the “Village Type Development” (“V”) zone to apply for construction of Small Houses;
- (b) as the invert level of existing manhole is higher than the site formation level of the Site, septic tanks are proposed for the proposed developments; and
- (c) the septic tanks are located more than 15m from the river course, which is in compliance with the Environmental Protection Department’s requirements on provision of septic tank.

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

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

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for 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. On 23.8.2002, criterion (i) which requires that the application site, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. **Previous Applications**

5.1 The Site/part of the Site is the subject of several previous applications (No. A/NE-LT/105, 106, 204 and 368). As shown on **Plan A-2a**, House 1 at Lot 913 S.B ss.1 is the subject of two previous applications (No. A/NE-LT/105

and 204), whilst House 2 at Lot 913 S.B RP is the subject of three previous applications (No. A/NE-LT/106, 204 and 368).

- 5.2 Applications No. A/NE-LT/105 and 106, each for the development of a Small House, were rejected by the Board on review on 23.1.1998 (before the promulgation of the Interim Criteria) for the reasons of being not in line with the planning intention of the “AGR” zone; land being still available within the “V” zone of concerned villages for Small House development at the time of consideration; having adverse drainage impacts on the surrounding areas; and setting of undesirable precedent.
- 5.3 Subsequently, Application No. A/NE-LT/204 for the development of two Small Houses, which generally covered the same sites of Applications No. A/NE-LT/105 and 106, was approved by the Committee on 13.8.1999 (before the promulgation of the Interim Criteria) on the consideration that the Site fell within the village ‘environs’ (‘VE’) of Ma Po Mei; the proposed Small Houses were compatible with the surrounding area; the proposed developments would not have adverse drainage impact due to the completion of works on Lam Tsuen River Embankment; and there was a general shortage of land to meet the Small House demand in the “V” zone concerned at the time of consideration. Nonetheless, the planning permission lapsed on 14.8.2002.
- 5.4 Application No. A/NE-LT/368, covering the same site of House 2, for a Small House development submitted by one of the applicants under the current application, was rejected by the Committee on 2.2.2007 on the grounds of being not in line with the planning intention of the “AGR” zone; and not complying with the Interim Criteria in that the proposed development was not able to be connected to existing or planned sewerage system in the area.
- 5.5 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 22 similar applications for Small House development in the vicinity of the Site and within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000 (**Plans A-1** and **A-2a**). Fourteen of them were approved with conditions and eight were rejected.
- 6.2 Regarding the 14 approved applications, Application No. A/NE-LT/268 was approved before the incorporation of criterion (i) on sewerage connection requirement into the Interim Criteria in August 2002. Another nine applications (No. A/NE-LT/274, 312, 387, 406, 432 to 434, 465 and 497) were approved with conditions by the Committee between 2001 and 2014 for reasons that the proposed developments were in compliance with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses fell within the ‘VE’; there was a general shortage of land to meet the Small House demand in the “V” zone of the concerned villages at the time of consideration; and the proposed developments were able to be connected to the planned sewerage system.

- 6.3 After the Board's adoption of a more cautious approach in August 2015, Applications No. A/NE-LT/582 to 584 were approved with conditions by the Committee in 2016 on sympathetic consideration as the sites were the subject of previously approved applications (No. A/NE-LT/432 to 434). Another application (No. A/NE-LT/542) for the development of an NTEH was approved with conditions by the Committee in 2015 mainly on the grounds of having building entitlement.
- 6.4 The other eight applications (No. A/NE-LT/291, 294, 298, 360, 411, 412, 422 and 474) were rejected by the Committee/the Board upon review between 2003 and 2014 mainly for the reasons of being not able to be connected to the existing or planned sewerage system in the area and the applicants failed to demonstrate that the proposed development within the WGG would not cause adverse impact on the water quality in the area. Application No. A/NE-LT/474 was also rejected on the ground of causing adverse impact on landscape resources in the surrounding areas.
- 6.5 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2a**.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and Photos on Plans A-3 and A-4)

- 7.1 The Site is:
- (a) generally flat, partly covered with weeds and partly occupied by vacant agricultural structures;
 - (b) situated to the immediate east of Lam Tsuen River (an Ecologically Important Stream (EIS)) and sandwiched between existing village houses and some temporary structures; and
 - (c) directly accessible from a footpath leading to Lam Kam Road.
- 7.2 The surrounding areas are predominantly rural in character with a mix of village houses, temporary structures, plant nurseries, agricultural land and tree groups. Lam Kam Road is situated about 40m to the east of the Site. The village clusters of Ma Po Mei and Ping Long are situated to the northwest and southeast of the Site on the other side of Lam Tsuen River and Lam Kam Road respectively.

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 application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone ?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small Houses - Application site 	-	100%	- The Site and the footprint of the proposed Small Houses fall entirely within the “AGR” zone.
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - Footprint of the proposed Small Houses - Application site 	100%	-	<ul style="list-style-type: none"> - The Site and the footprint of the proposed Small Houses fall entirely within the ‘VE’ of Ma Po Mei (Plan A-2a). - DLO/TP, LandsD has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	<ul style="list-style-type: none"> - Land required to meet Small House demand in Ma Po Mei and Tai Mong Che: about 7.8 ha (or equivalent to 312 Small House sites). The outstanding Small House applications are 42² while the 10-year Small House demand forecast for the same village is 270. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.3 ha (or equivalent to 92 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) does not support the application from the agricultural development point of view as there are active agricultural activities in

² Among the 42 outstanding Small House applications, 13 of them within the “V” zone and 29 straddle or outside the “V” zone. For those applications straddling or being outside the “V” zone, six of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				the vicinity, agricultural infrastructure such as road access and water source is available, and the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/development?	✓		- The proposed Small Houses are not incompatible with the surrounding areas which are predominantly rural in character mainly occupied with village houses, agricultural land and tree groups.
6.	Within WGG?	✓		- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) objects to the application as the connection from the proposed Small Houses to the public sewerage system in the area is considered technically infeasible.
7.	Sewerage impact?	✓		- The Director of Environmental Protection (DEP) does not support the application as the applicants' proposed use of septic tank and soakaway system to treat wastewater is unacceptable within WGG and the connection of public sewer is considered technically infeasible unless the applicants can overcome the level difference. - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advises that the connection to existing sewerage networks might not be feasible.
8.	Encroachment onto planned road networks and public works boundaries?		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
10.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has general reservation on the application but considers the application only involving development of two Small Houses can be tolerated.
11.	Drainage impact?	✓		- CE/MN, DSD has no objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
12.	Landscape impact?		✓	- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning point of view as no existing tree is found within the Site and adverse impact to significant landscape resources is not anticipated. - Should the application be approved, an approval condition on the submission and implementation of landscape proposal is recommended.
13.	Geotechnical impact?		✓	
14.	Local objection received from DO?		✓	- The District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) advises that a section of existing footpath built by locals would be affected by the proposed development and the applicants/lot owners concerned are advised to maintain the accessibility of the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				footpath or provision of an alternative section of the footpath on the premises during and after the Small Houses construction.

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

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

9.3 The following Government departments have no objection to/no adverse comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department; and
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period (Appendix VI)

On 7.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from the Hong Kong Bird Watching Society and an individual objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; having adverse sewerage and ecological impacts; and setting of undesirable precedent.

11. Planning Considerations and Assessments

11.1 The Site falls entirely within the “AGR” zone (**Plan A-2a**). The proposed Small Houses are 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, and 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 agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as road access and water source is available, and the Site possesses potential for agricultural rehabilitation.

- 11.2 According to DLO/TP, LandsD's record, the total number of outstanding Small House applications for Ma Po Mei and Tai Mong Che is 42 while the 10-year Small House demand forecast is 270. Based on the latest estimate by the Planning Department, about 2.3 ha (or equivalent to about 92 Small House sites) of land is available within the "V" zone concerned (**Plan A-2b**). As footprint of the proposed Small Houses fall entirely within the 'VE' of Ma Po Mei, DLO/TP of LandsD has no objection to the application.
- 11.3 The Site, located at the east of Ma Po Mei and immediate adjacent to Lam Tsuen River (**Plan A-2a**), is generally flat, partly covered with weeds and partly occupied by vacant agricultural structures (**Plan A-4**). The proposed development is not incompatible with the surrounding area which is predominantly rural in character with a mix of village houses, agricultural land and tree groups (**Plan A-3**). As there is no existing tree within the Site, CTP/UD&L of PlanD has no objection to the application as adverse impact to significant landscape resources is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. The applicants have proposed the use of septic tank and soakaway system to treat wastewater. DEP advises that use of septic tank is not acceptable. While existing public sewerage system is available in the vicinity, both DEP and CE/C of WSD do not support the application as the connection from the proposed Small Houses to the public sewerage system in the area is considered technically infeasible due to the level difference (**Plan A-2a**) and the proposed developments do not comply with the Interim Criteria. Besides, C for T has general reservation on the application but considers the application only involving the development of two Small Houses can be tolerated. Other relevant Government departments including CE/MN and CE/PM of DSD, CHE/NTE of HyD, H(GEO) of CEDD and D of FS have no objection to or adverse comment on the application.
- 11.5 Regarding the Interim Criteria (**Appendix II**), although more than 50% of the proposed Small House footprints fall within the 'VE' of Ma Po Mei (**Plan A-2a**), the proposed Small House developments do not comply with the Interim Criteria in that the applicants failed to demonstrate that the proposed developments located within WGG would be able to be connected to the existing/planned sewerage system and would not cause adverse impact on the water quality in the area. Furthermore, while land available within the "V" zone (about 2.3 ha or equivalent to about 92 Small House sites) is insufficient to fully meet the future Small House demand, it is capable to meet the 42 outstanding Small House applications (**Plan A-2b**). 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. In this regard, it is considered more

appropriate to concentrate the proposed Small House developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

- 11.6 The Site/part of the Site is the subject of four previous applications, and three of them were approved/rejected before the first promulgation of the Interim Criteria in 2000. The last previous application (No. A/NE-LT/368) submitted by one of the applicants of the current application was rejected by the Committee in 2007, mainly for the reason of not complying with the Interim Criteria in that the proposed development was not able to be connected to existing or planned sewerage system in the area. There has been no significant change in the planning circumstances since the last application was rejected.
- 11.7 There are nine similar applications covering four sites in close proximity to the Site (**Plan A-2a**). Two applications (No. A/NE-LT/294 and 298) were rejected by the Board upon review in 2003 mainly for the reason of being not able to be connected to public sewer as there was no plan to extend the public sewerage system in the area concerned at the time of consideration. Subsequently, Applications No. A/NE-LT/432 and 433 (covering the site of Applications No. A/NE-LT/294 and 298 submitted by the same applicants) as well as Application No. A/NE-LT/434 were approved by the Committee for the reasons of generally complying with the Interim Criteria in that more than 50% of the proposed Small House footprints fell within the ‘VE’; there was a general shortage of land to meet the Small House demand in the “V” zone of the concerned villages at the time of consideration; and the proposed developments were able to be connected to the planned sewerage system. Whilst the Board has adopted a more cautious approach in 2015, Applications No. A/NE-LT/582 to 584 were approved with conditions by the Committee in 2016 mainly on sympathetic consideration as the sites were the subject of previously approved applications (No. A/NE-LT/432 to 434). Regarding Application No. A/NE-LT/542 for the development of an NTEH, it was approved by the Committee in 2015 mainly on the grounds of having building entitlement. The planning circumstances of the current application are similar to those rejected cases as they are not able to be connected to the public sewerage system.
- 11.8 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; having adverse sewerage and ecological impacts; and setting of undesirable precedent, Government departments’ comments and the 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 does not support the application for the following reasons:
- (a) the proposed developments are 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. There is no strong planning justification in the submission for a departure from the planning intention; and

- (b) the proposed developments do not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that the applicants fail to demonstrate that the proposed developments located within water gathering grounds would be able to be connected to the existing or planned sewerage system and would not cause adverse impact on the water quality in the area; and
- (c) land is still available within the “V” zone of Ma Po Mei and Tai Mong Che which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small Houses within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 21.9.2022, 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 submission and implementation of a landscape proposal to the satisfaction of the Director of Planning 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;
- (c) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or the Town Planning Board.

Advisory Clauses

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

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 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 applicants.

14. Attachments

Appendix I	Application form and attachments received on 30.7.2018
Appendix Ia	Further Information received on 10.8.2018
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories (promulgated on 7.9.2007)
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicants
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**