

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LYT/687 and 688

- Applicants** : Mr. PANG Kin Pui (Application No. A/NE-LYT/687)
Mr. PANG Chun Pui (Application No. A/NE-LYT/688)
all represented by Yicon Consultants Limited
- Sites** : Lots 1846 S.A ss.1 and 1846 S.B (Application No. A/NE-LYT/687)
Lots 1846 S.A ss.2, 1846 S.D and 1850 S.B (Application No. A/NE-LYT/688)
all in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Areas** : 156 m² (about) (Application No. A/NE-LYT/687)
120 m² (about) (Application No. A/NE-LYT/688)
- 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”)
- Applications** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposals

1.1 The applicants, who claimed to be indigenous villagers¹, seek planning permissions to build a proposed NTEH (Small House) on each of the application sites (the Sites) in Kan Tau Tsuen, Fanling (**Plans A-1a and A-2a**). The Sites fall 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)’ in “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of each of the two proposed NTEHs (Small Houses) 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 applicants claimed themselves to be indigenous villagers of Fanling Village of Fanling Heung. Their Small House applications have been approved in principle by LandsD in January 2017 and pending for execution.

Layouts of the two proposed Small Houses (including septic tanks) under applications No. A/NE-LYT/687 and 688 are shown on **Drawings A-1 and A-2** respectively. The applicants indicate that the uncovered areas of the Sites would be used as garden of their proposed Small Houses.

- 1.3 The Sites are part of the subject of two previously approved planning applications No. A/NE-LYT/389 and 410 for development of three Small Houses and eight Small Houses respectively. The planning permission of application No. A/NE-LYT/389 was lapsed on 28.3.2013 and application No. A/NE-LYT/410 was extended once to 13.8.2018. The applications were submitted by different applicants as the current application. The current applicants claimed that they are the brothers of the applicants of Houses No. 1 and 2 under previous application No. A/NE-LYT/410 on **Plan A-1b (Appendices Ic and Id)**. According to DLO/N, LandsD, the Small House applications at the Sites were approved in principle in January 2017 but yet to be executed. Compared with the last previous application No. A/NE-LYT/410, major development parameters including the layouts of the proposed Small Houses under the current applications remain unchanged (**Plan A-1b**).
- 1.4 In support of the applications, the applicants have submitted the following documents:
 - (a) Application forms with attachments received on (Appendices Ia and Ib)
27.2.2019
 - (b) Further Information received on 2.4.2019 (Appendices Ic and Id)

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms and Further Information at **Appendices Ia to Id** respectively. They can be summarized as follows:

- (a) the Sites were the subject of a previous planning permission for eight Small House developments (application No. A/NE-LYT/410). The planning permission was extended once to 13.8.2018. According to the Town Planning Board Guidelines, no more extension of time for the planning permission would be allowed by the Board. As such, fresh applications are submitted;
- (b) DLO/N, LandsD has issued the building licenses to the applicants²; and
- (c) the current applicants are brothers of the applicants of previous application No. A/NE-LYT/410.

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

The applicants are the “current land owners” of their respective lots. 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

² According to LandsD, the Small House applications have been approved in principle in January 2017 and pending for execution.

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 Sites are involved in part of the four previous planning applications (No. A/NE-LYT/167, 384, 389 and 410) (**Plan A-1b**). The former two applications were for parking use whereas the latter two for Small House developments.
- 5.2 Application No. A/NE-LYT/167 for temporary trailer park for a period of 12 months was rejected on review by the Board on 19.3.1999 mainly on the grounds of not in line with the planning intention of the “AGR” zone; incompatibility with the surrounding land uses; insufficient information to demonstrate that no adverse drainage impact on the surrounding areas; and setting of an undesirable precedent.
- 5.3 Application No. A/NE-LYT/384 for proposed temporary public vehicle park for private cars for a period of 2 years was rejected by the Committee on 17.4.2009 mainly on the grounds of not in line with the planning intention of the “AGR” zone; insufficient information to demonstrate that no adverse traffic impact on the surrounding areas; and setting of an undesirable precedent.
- 5.4 For the two previous applications involving Small House developments submitted by different applicants as the current applications. Application No. A/NE-LYT/389 was for the development of three Small Houses at a larger site was approved on 27.3.2009 mainly on the grounds that the application generally complied with the Interim Criteria in that most of the footprints of the proposed Small Houses fell within the village ‘environs’ (‘VE’) and there was a general shortage of land within the “Village Type Development” (“V”) zone at the time of consideration; the proposed developments were not incompatible with the surrounding area; and significant adverse landscape impact was not anticipated. The application was lapsed on 28.3.2013.
- 5.5 For application No. A/NE-LYT/410 involving eight Small Houses at a larger site, it was approved on 13.8.2010 mainly on the grounds that the application generally complied with the Interim Criteria. That planning permission was extended once to 13.8.2018 under the application No. A/NE-LYT/410-2. The planning permission lapsed on 14.8.2018. According to DLO/N, LandsD, seven of the proposed eight Houses (i.e. Houses No. 1-7) were approved in principle while one proposed House (House No. 8) was rejected in 2016. Only two of them (i.e. Houses No. 4-5) were executed in 2017 (**Plan A-1b**). The remaining five Small Houses including Houses No. 1 and 2 (i.e. the Sites) and Houses No. 3, 6 and 7 (i.e. Applications No. A/NE-LYT/679 to 681) were approved in principle in January 2017 and pending for execution. Compared with the last previous application No. A/NE-LYT/410, major development parameters including layouts of the proposed Small Houses under applications remain unchanged.
- 5.6 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-1b**.

6. Similar Applications

- 6.1 There are 91 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-1a**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 A total of 82 applications involving 65 sites were approved with conditions by the

Committee between March 2001 and December 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 impacts on the surrounding area; and previous/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 IV** and their locations are shown on **Plan A-1a**.

7. The Sites and Their Surrounding Areas (Plans A-1a, A-2a and A-2b, and aerial photo on Plan A-3 and site photos on Plan A-4)

7.1 The Sites are:

- (a) vacant, flat and covered with grass (**Plan A-4**);
- (b) located in close proximity to the village cluster of Kan Tau Tsuen; and
- (c) accessible via Sha Tau Kok Road – Ma Mei Ha.

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate north is fallow agricultural land and to its further north across Sha Tau Kok Road - Ma Mei Ha is the "V" zone of Leng Tsai Tsuen;
- (b) to the immediate west are fallow agricultural land and the access road of Sha Tau Kok Road – Ma Mei Ha;
- (c) to the immediate east are sites of planning applications No. A/NE-LYT/354 and A/NE-LYT/434 for Small House developments approved by the Committee in 2007 and 2011, and to its further east are village houses in "V" zone and the village proper of Kan Tau Tsuen (**Plan A-2a**); and
- (d) to the immediate south are the sites of planning applications No. A/NE-LYT/679 to 681 for Small House developments approved by the Committee in December 2018 and to the further south are village houses in "V" zone of Kan Tau Tsuen (**Plan A-2a**).

8. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area is intended 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 applications have 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 Sites - Footprints of the proposed Small Houses	- -	100% 100%	- The Sites and the footprints of the proposed Small Houses fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Sites (Application No. A/NE-LYT/687) (Application No. A/NE-LYT/688) - Footprints of the proposed Small Houses	91.8% 100% 100%	8.2% - -	- DLO/N, LandsD advises that the footprints of the proposed Small Houses fall within the ‘VE’ of Kan Tau Tsuen.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet the Small House demand in Kan Tau Tsuen: about 4.1 ha (equivalent to 164 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 68 ³ while the 10-year Small House demand forecast for the same village is 96.
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 2.04 ha (equivalent to 81 Small House sites) (Plan A-2b).

³ Among the 68 outstanding Small House applications, 11 of them fall within the “V” zone and 57 straddle or outside the “V” zone. For those 57 applications straddling or being outside the “V” zone, 34 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the agricultural activities are active in the vicinity and agricultural infrastructure such as road access and water source are available. As the Sites possess potential for agricultural rehabilitation, the applications are not supported from agriculture point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small Houses are 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 applications. The applicants are 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 applications and advises that Small House developments should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed developments are not expected to be significant, such type of developments 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 applications involve the construction of two Small Houses. She considers that the applications can be tolerated unless they are rejected on other grounds.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications and advises that an approval condition on the submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution.
12.	Landscaping impact?		✓	<p>The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning point of view.</p> <p>- The Sites are located in the rural landscape character (i.e. fringe of Kan Tau Tsuen), which consists of village houses, patches of hard paved areas for car parking, abandoned farmland and scattered trees. The Sites are partially hard paved with patches of vegetation; the proposed Small Houses are considered not incompatible with the surrounding environment. Significant adverse impact on existing landscape resources arising from the proposed developments is not anticipated.</p> <p>- In consideration of the limited space within the application boundaries, it is considered impractical to impose a landscape condition.</p>
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that he has consulted the locals. The Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Kan Tau Tsuen support the applications and advise that proper drainage is necessary. The Chairman of Fanling District Rural Committee has no comment on the applications.

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) 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 8.3.2019, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, two public comments on application No. A/NE-LYT/687 and one comment on application No. A/NE-LYT/688 were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the applications No. A/NE-LYT/687 and 688. An individual objects to the application No. A/NE-LYT/687 mainly on the ground that there is high potential for agricultural rehabilitation of the Site.

11. Planning Considerations and Assessments

11.1 The Sites fall entirely within an area zoned “AGR” on the OZP. The proposed Small House developments are 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 Sites possess potential for agricultural rehabilitation.

11.2 The applications are cross-village Small House applications. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 68 while the 10-year Small House demand forecast for the same village is 96. According to the latest estimate by PlanD, about 2.04 ha (equivalent to 81 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 the footprints of the proposed Small Houses fall within the ‘VE’ of Kan Tau Tsuen.

11.3 The Sites are situated to the northwest of the “V” zone of Kan Tau Tsuen, which is currently vacant, flat and covered with grass. The village proper of Kan Tau Tsuen is located to the southeast and there are approved Small House applications to the east and south of the Sites (**Plans A-2a and A-4**). The proposed Small Houses are not

incompatible with the surrounding rural setting comprising village houses, patches of hard paved areas and abandoned farmland. Significant adverse landscape impact arising from the proposed developments is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the applications from the landscape planning perspective. C for T has reservation on the applications and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed developments involve two Small Houses, they could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the applications.

- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprints of the proposed Small Houses fall within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet total future Small House demand of 164 Small Houses, it is noted that land (about 2.04 ha or equivalent to 81 Small House sites) is still available within the “V” zone to meeting the outstanding 68 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 developments 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 Sites are the subject of a previously approved planning application and the processing of the Small House grants is already at an advance stage. According to DLO/N, LandsD, the Small House applications at the Sites were approved in principle in January 2017 but yet to be executed. Besides, the Sites are bounded by approved Small Houses to their east and south, the implementation of which are forming a new village cluster in the locality (**Plans A-2a and Plan A-2b**). In this regard, sympathetic consideration might be given to the applicants.
- 11.5 It is noted that there are 11 similar applications for Small House developments in the vicinity of the Site (i.e. applications No. A/NE-LYT/216, 234, 245, 246, 299, 351, 354, 434 and 679 to 681) within the “VE” of Kan Tau Tsuen (**Plan A-2a**). All applications were approved between 2001 and 2018. Of them, three applications (No. A/NE-LYT/679 to 681) were approved by the Committee on 21.12.2018 (i.e. after the adoption of more cautious approach) mainly on the grounds that they were the subject of a previous planning approval and there was a new village cluster forming in the locality. The Sites under current applications are to the immediate north of these three approved cases (**Plan A-2a**). The circumstances of the current applications are similar to those three similar applications.
- 11.6 Regarding the adverse public comment objecting to the applications mainly on the ground that there is 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 applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that each of the

permissions shall be valid until 12.4.2023, 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; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services 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 applications, 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 applications and decide whether to grant or refuse to grant the permissions.

13.2 Should the Committee decide to approve the applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permissions, and the date when the validity of the permissions should expire.

13.3 Alternatively, should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

14. Attachments

Appendices Ia and Ib	Application Forms with attachments received on 27.2.2019
Appendices Ic and Id	Further Information received on 2.4.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories

Appendix III	Previous Applications
Appendix IV	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 V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawings A-1 and A-2	Layout Plans
Plan A-1a	Location Plan
Plan A-1b	Previous Applications 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	Aerial Photo
Plan A-4	Site Photos

PLANNING DEPARTMENT
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