

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-LYT/713**

- Applicant** : Mr. TANG Kut Sau represented by Glister Engineering Consultants Company
- Site** : Lot 913 in D.D. 46, Sha Tau Kok Road – Ma Mei Ha, New Territories
- Site Area** : 150.8 m<sup>2</sup> (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** : “Green Belt” (“GB”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

- 1.1 The applicant, who claimed to be an indigenous villager<sup>1</sup>, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Mei Mei Ha, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “GB” 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 “GB” zone is a Column 2 use requiring 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 <sup>2</sup> |
| Number of Storeys | : | 3                     |
| Building Height   | : | 8.23 m <sup>2</sup>   |
| Roofed Over Area  | : | 65.03 m <sup>2</sup>  |
- 1.3 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 for garden.
- 1.4 The Site is the subject of a previous planning application No. A/NE-LYT/559 for the same use submitted by the same applicant as the current application. The application was rejected by the Rural and New Town Planning Committee (the Committee) on 27.2.2015. Compared with the previous application, except for a slight change in the disposition of the balcony, the major development parameters, including the site area and the general

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<sup>1</sup> As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), no Small House application from the applicant has been received at the Site. His eligibility for Small House grant cannot be ascertained at this stage.

layout of the proposed Small House remain unchanged (**Plan A-2a**).

1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 27.8.2019.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) there is an imminent need for submitting the Small House application;
- (b) the applicant is the registered owner of the Site;
- (c) the applicant is an indigenous villager and therefore is entitled to have a Small House grant in accordance with the current Small House Policy;
- (d) the Site falls within the Village 'Environs' ('VE');
- (e) the proposed development is compatible with the surrounding environment and land use; and
- (f) there are similar approved applications in the vicinity of the Site.

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

The applicant is the "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. Town Planning Board Guidelines**

The Site falls within "GB" zone. The Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for 'Application for Development within "GB" zone under section 16 of the Town Planning Ordinance' is relevant to the consideration of these applications. The relevant assessment criteria are summarized as below:

- (a) there is a general presumption against development in the "GB" zone;
- (b) applications for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access

arrangements may be approved if the application site is in close proximity to existing villages and in keeping with the surrounding uses, and where the development is to meet the demand from indigenous villagers;

- (d) the design and layout of any proposed development should be compatible with the surrounding areas. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

## **6. Previous Application**

- 6.1 The Site is the subject of a previous planning application (No. A/NE-LYT/559) for the same use submitted by the same applicant. The application was rejected by the Committee on 27.2.2015 mainly on the considerations that the proposed development is not in line with the planning intention of the “GB” zone; land is still available within the “Village Type Development” (“V”) zone of Ma Mei Ha for Small House development; and setting of an undesirable precedent for similar applications within the “GB” zone. Compared with the previous application, except for a slight change in the disposition of the balcony, the major development parameters, including the site area and the general layout of the proposed Small House remain unchanged (**Plans A-1 and A-2a**).
- 6.2 Details of the previous application are summarized at **Appendix III** and its locations shown on **Plan A-1**.

## **7. Similar Applications**

- 7.1 There are 11 similar applications for Small House developments partly within the “GB” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000 (**Plan A-1**).
- 7.2 Of them, six applications (No. A/NE-LYT/224, 453, 458 to 461) were approved with conditions by the Committee between August 2001 and January 2012 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on the considerations that the applications generally met the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ of Ma Mei Ha and there was a general shortage of land in meeting the demand for Small House development at the time of consideration. For applications No. A/NE-LYT/453, 458 to 461, since only a very minor portion of the Sites fell within “GB” zone and no extensive clearance of natural vegetation is required, those applications generally complied with the TPB PG-No. 10.
- 7.3 The remaining five applications (No. A/NE-LYT/617, 622, 623, 633 and 634) were approved between April 2017 and September 2017 (i.e. after a more cautious approach is

adopted by the Board) (**Plan A-2a**) mainly on sympathetic consideration that they were the subject of previously approved applications.

7.4 Details of these applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

**8. The Site and Its Surrounding Areas (Plans A-1, A-2a and A-2b, and aerial photo on Plan A-3 and site photos on Plans A-4a to A-4b)**

8.1 The Site is:

- (a) a piece of flat and vacant land with wild grass;
- (b) located to the west of village proper of Ma Mei Ha; and
- (c) accessible via Sha Tau Kok Road – Ma Mei Ha.

8.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where fallow agricultural land and wild grass are found to the north, south and west, and village houses are found to the east and northeast;
- (b) to the immediate north is wild grass and to its further north is the “V” zone of Ma Mei Ha;
- (c) to the immediate east is the site of planning application No. A/NE-LYT/224 for a Small House development approved by the Committee in 2001, and further east are village houses in “V” zone Ma Mei Ha; and
- (d) to the immediate south and west are clustered tree groups and fallow agricultural land.

**9. Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within “GB” zone.

**10. Comments from Relevant Government Departments**

10.1 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	-	100%	- The Site and the footprint of the proposed Small House fall entirely within the “GB” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	proposed Small House			
2.	Within 'VE'? - The Site  - Footprint of the proposed Small House	100%  100%	-  -	- DLO/N, LandsD advises that the Site and the footprint of the proposed Small House fall within the 'VE' of Ma Mei Ha.
3.	Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<u>Land Required</u> - Land required to meet the Small House demand in Ma Mei Ha: about 2.55 ha (equivalent to 102 Small House sites). The outstanding Small House applications for Ma Mei Ha are 20 <sup>2</sup> while the 10-year Small House demand forecast for the same village is 82.
	Sufficient land in "V" zone to meet outstanding Small House application?	✓		<u>Land Available</u> - Land available to meet the Small House demand within the "V" zone of Ma Mei Ha: about 1.47 ha (equivalent to 58 Small House sites) ( <b>Plan A-2b</b> ).
4.	Compatible with the planning intention of "GB" zone?		✓	- There is a general presumption against development within the "GB" zone.  - The Site is covered by grass and tree seedlings of common species, there is a mature tree ( <i>Cinnamomum camphora</i> 樟樹) located to the southwest of the Site and the tree crown maybe affected by the proposed Small House development.  - Should the application be approved, the applicant should be advised to avoid affecting the mature tree as far as practicable and pruning of the tree should be kept to minimum.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small House is not incompatible with the surrounding rural setting and environment

<sup>2</sup> Among the 20 outstanding Small House applications, 14 of them fall within the "V" zone and 6 straddle or outside the "V" zone. For those 6 applications straddling or being outside the "V" zone, 2 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				dominated by village houses and wild grass.
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 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 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?	✓		<ul style="list-style-type: none"> <li>- The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&amp;L, PlanD) has reservation on the application from the landscape planning point of view.</li> <li>- The Site is mostly covered by wild grass and situated within the “GB” zone that serves as green buffer to the adjacent “V” zone. Approval of this application may set an undesirable precedent of extending Small House development into “GB” zone, which would defeat the purpose of defining the limits of urban and sub-urban areas by natural features, and to contain urban sprawl as well as to provide passive recreational outlets.</li> <li>- In view of limited space within the Site for meaningful landscape treatment, and there is no major public frontage along the site boundary, should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.</li> </ul>
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that she has consulted the locals. The Resident representative (RR) and the Indigenous Inhabitant Representative (IIR) of Ma Mei Ha support the application provided that the proposed development will not cause inconvenience to residents nearby and there is provision of sewer. The Chairman of Fanling District Rural Committee has no comment on the application.

10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 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.

10.3 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.

## **11. Public Comments Received During Statutory Publication Period**

On 3.9.2019, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining comments from Kadoorie Farm and Botanic Garden Corporation, The Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual object to the application mainly on the grounds that the current application is the subject of a previously rejected application in 2015; the proposed development is not in line with the planning intention of “GB” zone; land is still available within the “V” zone of Ma Mei Ha for Small House development; the approval of the application would set an undesirable precedent for similar applications within the “GB” zone and would further legitimize the misuse of the “GB” zone.

## **12. Planning Considerations and Assessments**

- 12.1 The application is for a proposed Small House development at the Site which falls entirely within an area zoned “GB” on the OZP. The proposed development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within “GB” zone. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.
- 12.2 Based on DLO/N, LandsD’s record, the total number of outstanding Small House applications for Ma Mei Ha is 20 while the 10-year Small House demand forecast for the same village is 82. According to the latest estimate by PlanD, about 1.47 ha (equivalent to 58 Small House sites) of land are available in the “V” zone of Ma Mei Ha for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the Site of the proposed Small House falls within the ‘VE’ of Ma Mei Ha.
- 12.3 The Site is situated in an area of rural landscape character dominated by village houses and tree groups. DAFC has no comment from agricultural point of view but advises that the planning intention of the “GB” zone should be taken into account in considering the



application. CTP/UD&L, PlanD has reservation on the application from the landscape planning perspective as the Site is entirely situated within the “GB” zone that serves as green buffer to the adjacent “V” zone (**Plan A-3**). Approval of this application may set an undesirable precedent of extending Small House development into “GB” zone, which would defeat the purpose of defining the limits of urban and sub-urban areas by natural features, and to contain urban sprawl as well as to provide passive recreational outlets. The application does not comply with the TPB PG-No. 10 for application within “GB” zone in that the proposed development would affect the existing natural landscape. C for T considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development only involves the construction of one Small House, the application could be tolerated. Other Government departments consulted, including DEP, CE/MN of DSD and FSD, have no comment on or no objection to the application.

- 12.4 Regarding the Interim Criteria (**Appendix II**), the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Mei Ha. While land available within the “V” zone of Ma Mei Ha is insufficient to fully meet the future demand of 102 Small Houses, such available land (about 1.47 ha or equivalent to 58 Small House sites) is capable to meet the 20 outstanding 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.
- 12.5 The Site is the subject of a previous planning application (No. A/NE-LYT/559) for development of Small House submitted by the same applicant. That application was rejected by the Committee in 2015 mainly on the considerations that the proposed development is not in line with the planning intention of the “GB” zone; land is still available within the “V” zone of Ma Mei Ha for Small House development; and the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. Compared with the previous application, there has been no major change in planning circumstances.
- 12.6 There are 11 similar applications for Small House developments partly within the “GB” zone in the vicinity of the Site (**Plan A-2a**). Of them, six applications were approved with conditions by the Committee between August 2001 and January 2012 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on the considerations that the applications generally met the Interim Criteria and generally complied with the TPB PG-No. 10 in that no significant adverse landscape impact on the surrounding areas was anticipated. The remaining five applications were approved between April 2017 and September 2017 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on sympathetic consideration that they were the subject of previously approved applications. The planning circumstances of these similar approved applications are different from the current application.
- 12.7 Regarding four public comments objecting to the application as detailed in paragraph 11 above, Government departments’ comments and planning assessments above are relevant.

### **13. Planning Department's Views**

13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “GB” zone in the Lung Yeuk Tau and Kwan Tei South area which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention; and
- (b) land is still available within the “Village Type Development” (“V”) zone of Ma Mei Ha for Small House development. It is considered more appropriate to concentrate the proposed Small House within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 18.10.2023, 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**.

### **14. Decision Sought**

14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.

14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14.3 Alternatively, 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.

**15. Attachments**

<b>Appendix I</b>	Application Form with attachments received on 27.8.2019
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
<b>Appendix III</b>	Previous Application
<b>Appendix IV</b>	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) partly within the “GB” Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area
<b>Appendix V</b>	Detailed Comments from Relevant Government Departments
<b>Appendix VI</b>	Public Comments
<b>Appendix VII</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Estimated Amount of Land Available within the “V” zone of Ma Mei Ha for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
OCTOBER 2019**