

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

**APPLICATION NO. A/NE-LYT/677**

- Applicant** : I-Feng Nursing Center represented by Kea Kwun (International) Consultants Limited
- Site** : Lots 821 S.A, 822 S.B, 823 S.B and 824 RP in D.D. 83 and adjoining Government Land, Lung Yeuk Tau, Fanling, New Territories
- Site Area** : 817m<sup>2</sup> (about) (including about 205m<sup>2</sup> of Government land)
- Land Status** : (i) Block Government Lease (demised for agricultural use)  
Modification of Tenancy No. 38253  
Erection of temporary structures on Lot No. 822 S.B in D.D. 83  
(ii) Government Land
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Residential (Group C)” (“R(C)”)  
- *restricted to a maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m) over 1 storey carport (except to Social Welfare Facility), or the plot ratio, site coverage and height of the building which was in existence on the date of the first publication in the Gazette of the notice of the interim development permission area plan, whichever is the greater.*
- Application** : Social Welfare Facility (Residential Care Home for Persons with Disabilities)

**1. The Proposal**

- 1.1 The applicant seeks planning permission for social welfare facility (residential care home for persons with disabilities) (RCHD) at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “R(C)” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘Social Welfare Facility’ within “R(C)” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the subject RCHD comprises two 1-2 storeys structures with a total floor area of 278.17m<sup>2</sup> providing 38 beds for the persons with disabilities and another 2 beds for staff. A 2-storey structure (i.e. Block 1) is used for living room, bedroom, activity rooms, kitchen, toilets and store rooms; and another single-storey structure is used as staff quarters (i.e. Block 2) (**Drawing A-1**). The Site is accessible from Sha Tau Kok Road – Lung Yeuk Tau Section. One lay-by each for rebus and private car/taxi are provided within the Site and the uncovered area is mainly used as

sitting out area. The layout plan, floor plan, proposals for fire services installation and water supplies for fire-fighting and drainage proposal of the residential care home are at **Drawings A-1 to A-4** respectively.

- 1.3 The application is the subject of a previous application (No. A /NE-LYT/627) submitted by the same applicant for the same use which was approved with condition by the Rural and New Town Planning Committee (the Committee) on 11.8.2017. The development parameters and layout are the same as previous application. The planning permission of planning application No. A/NE-LYT/627 was subsequently revoked on 11.2.2018 due to non-compliance with approval conditions on submission and implementation of proposals for drainage, sewerage, fire service installations and water supplies for fire-fighting, and run-in/out. The Site is currently used for applied use without valid planning permission.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 3.9.2018 (Appendix I)
  - (b) Supplementary Information received on 6.9.2018 (Appendix Ia)
  - (c) Supplementary Information received on 10.9.2018 (Appendix Ib)
  - (d) Further Information received on 9.10.2018 (Appendix Ic)
  - (e) Further Information received on 19.10.2018 (Appendix Id)
  - (f) Further Information received on 22.10.2018 (Appendix Ie)
  - (g) Further Information received on 23.10.2018 (Appendix If)

## 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, Supplementary Information and Further Information at **Appendices I, Ia to If** respectively. They can be summarised as follows:

- (a) the RCHD under application is to provide nursing service and individual care for physically and mentally disabled persons. As there is a shortage of places of RCHD, the approval of the application could provide more places to serve persons in need and shorten the waiting time for such service;
- (b) with the enactment of the relevant ordinance, licensing of the RCHD is required. Planning permission is required in order to fully comply with the licensing requirements;
- (c) the Site is suitable for RCHD use because of convenient location and provision of garden, and the RCHD under application is supported by locals;
- (d) the RCHD under application is the subject of a previously approved application;
- (e) the applicant has paid efforts to comply with the approval conditions under the previously approved application. Proposals for sewerage, drainage, run-in/out and fire services installation have been submitted under the current application to ensure no adverse impact arising from the development;
- (f) the applicant has already engaged an Authorized Person as project consultant to follow-up with the building and planning related matters upon the planning approval; and
- (g) a certificate of exemption (CoE) was granted by the Social Welfare Department for

operation of the RCHD.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consents from the concerned land owners. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land within the Site, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines TPB PG-No. 31A is not applicable to the application.

**4. Background**

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) states that the Site is not subject to any active enforcement action.

**5. Previous Application**

5.1 The Site is the subject of a previous planning application No. A/NE-LYT/627 submitted by the same applicant for proposed Social Welfare Facility (Residential Care Home for Persons with Disabilities) at the same site. The application was approved by the Committee on 11.8.2017 on the grounds that the residential nature of the residential care homes for persons with disabilities with 38 beds within the Site was not incompatible with the surrounding area primarily for domestic use in temporary or permanently structures; it was not anticipated that the applied use would cause significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding area; and there were no adverse comment from relevant Government departments against the application. However, the planning permission was subsequently revoked on 11.2.2018 due to non-compliance with approval conditions on submission and implementation of proposals for drainage, sewerage, fire service installations and water supplies for fire-fighting, and run-in/out.

5.2 Details of the previous application are at **Appendix II** and its location is shown on **Plan A-1**.

**6. Similar Application**

There is no similar application within the same “R(C)” zone in the Lung Yeuk Tau and Kwan Tei South area.

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

7.1 The Site is:

- (a) paved, fenced off and occupied by two structures used for the applied use without valid planning permission; and

- (b) accessible by Shau Tau Kok Road – Lung Yeuk Tau Section.

7.2 The surrounding areas have the following characteristics:

- (a) to the northeast, east and southeast are vacant land, permanent/temporary structures for domestic and storage uses. Further east are vacant land and a warehouse;
- (b) to the west and southwest are vacant land, open storage of containers/recycle materials, permanent/temporary structures for domestic/warehouse purposes; and
- (c) to the north across Sha Tau Kok Road-Lung Yeuk Tau is a military facility of San Wai Barracks.

## **8. Planning Intention**

The planning intention of the “R(C)” zone in the Lung Yeuk Tau and Kwan Tei South area is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board.

## **9. Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots and adjoining Government land. The lots under application are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access. Modification of Tenancy (MOT) No. 38253 was issued for erection of temporary structures on Lot 822 S.B in D.D. 83 within the Site;
- (b) a portion of the Government land within the Site is being illegally occupied. Moreover, there are unauthorised structures erected on Lots 821 S.A, 822 S.B and 823 S.B in D.D. 83 and the Government land within the Site without prior approval from his office. The total built-over area of the aforesaid structure is larger than the one mentioned in the planning application. The aforesaid structures are not acceptable under the Leases concerned. His office reserves the rights to take necessary lease enforcement and land control actions against the unauthorised structure and the illegal occupation of Government land;
- (c) regarding the proposed run-in/out of the Site on Government land, the applicant may apply to his office for a Short Term Tenancy (STT). The maintenance responsibility of the affected Government land will rest on the applicant; and

- (d) should planning approval be granted, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) and STT. The applications for STW/STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their commencement date will be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his office.

### **Social Welfare Aspect and Licensing**

#### 9.1.2 Comments of the Director of Social Welfare (DSW):

- (a) the private RCHD at the Site has been in service since October 2011. As the subject RCHD has yet to meet the licensing requirement fully, he has issued a Certificate of Exemption (CoE) to the RCHD under application with conditions of improvements for full compliance with the licensing requirements, including seeking planning permission and confirmation from relevant authorities for its compliance with relevant legislations and land lease conditions to use the subject premises for operating the RCHD. The CoE was last extended for 5 months on 1.9.2018;
- (b) the subject RCHD has submitted an application for the Financial Assistance Scheme (FAS) for carrying out fire safety and building safety rectification works, and has already engaged an Authorized Person as project consultant to work on the details for the funding application; and
- (c) the RCHD's application for the FAS has been temporarily suspended since 3.8.2018 due to the revocation of the previous planning application No. A/NE-LYT/627 and the rejection of STW application by the LandsD. A planning permission is one of the conditions for the licensing of the subject RCHD.

### **Traffic**

#### 9.1.3 Comments of the Commissioner for Transport (C for T):

after reviewing the further information submitted by the applicant (**Appendix Ie**), she has no comment on the application from the traffic engineering point of view.

#### 9.1.4 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) the section of Sha Tau Kok Road – Lung Yeuk Tau adjacent to the Site is under HyD's maintenance purview. However, part of the area between the footpath of the road and the Site is on unallocated Government land (UGL) which is outside HyD's maintenance purview. If vehicle access to the Site is approved, the applicant is required to sort out the maintenance responsibility of the above area with DLO/N; and
- (b) should the application be approved, the applicant is required to construct a proper run-in/out according to HyD's standards and reinstate the run-in/out to its original state upon expiry of the approval. He has no comment on the

run-in/out proposal submitted by the applicant (**Appendix If**). To construct the run-in/out, the applicant is required to apply for an excavation permit from his office.

### **Environment**

9.1.5 Comments of the Director of Environmental Protection (DEP):

- (a) in view of the nature and scale of the social welfare facility, it will unlikely cause major pollution; and
- (b) there is an existing public sewer in the vicinity of the Site, which should have sufficient capacity to accommodate sewage arising from the RCHD under the subject application. Therefore, the applicant should convey all wastewater generated from the premises to public sewer, and should not continue the use of the existing septic tank and soakaway system.

### **Drainage and Sewerage**

9.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from the public drainage viewpoint;
- (b) should the application be approved, conditions should be included to request the applicant to submit and implement drainage and sewerage proposals for the Site to ensure that it will not cause adverse drainage and sewerage impacts to the adjacent area; and
- (c) his detailed comments on the drainage and sewerage proposals are appended in **Appendix III**.

### **Building Matters**

9.1.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) there is no record of approval by the Building Authority for the buildings existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application;
- (b) in view of a certificate of exemption (CoE) was issued by SWD to the captioned premises requiring certain building safety requirements to be fulfilled, he would have no further comment under the Buildings Ordinance (BO) if the concerned building safety requirements are fulfilled; and
- (c) the applicant should be reminded that the granting of any planning approval should not be construed as an acceptance of any existing building works or unauthorised building works (UBW) on the Site under the BO. For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary.

### **Fire Safety**

#### 9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction;
- (b) emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD. The applicant shall observe the statutory height restriction in section 21 of Residential Care Homes (Persons with Disabilities) Regulation, Cap. 613A;
- (c) his detailed comments on the proposals for fire service installations and water supplies for firefighting would be given upon the approval of the application; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

### **Water Supply**

#### 9.1.9 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application;
- (b) there is an existing water mains inside the Site and will be affected (**Plan A-2**). The applicant is required to either divert or protect the water mains found on site; and
- (c) the general requirements on the proposal of diversion or protection of water mains are appended in **Appendix III**.

### **District Officer's Comments**

#### 9.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals on the application. The Indigenous Inhabitant Representative of Ma Liu Shui San Tsuen supports the application with a view that local may have concern if the RCHD serves mentally ill persons whilst the Chairman of Fanling District Rural Committee (FDRC), the incumbent North District Council (NDC) member of subject constituency and the Resident Representative of Ma Liu Shui San Tsuen have no comments on the application. The Chairman of FDRC relays strong objection on the application from the local residents with the views that the subject application would cause adverse traffic impact and environmental impact during construction.

#### 9.2 The following Government departments have no comment on / no objection to the application:

- (a) Chief Town Planner/Urban Design and Landscape, Planning Department;

- (b) Commissioner of Police;
- (c) Director of Electrical and Mechanical Services;
- (d) Director of Food and Environmental Hygiene; and
- (e) Project Manager (North), North Development Office, Civil Engineering and Development Department.

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

On 11.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received (**Appendix IV**). Two NDC members support the application as it helps to meet the demand for the residential care home service for persons with disabilities in the district. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application.

## **11. Planning Considerations and Assessments**

- 11.1 The Site falls within the “R(C)” zone which is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board. Whilst the development is not entirely in line with the planning intention of the “R(C)” zone, the applied development can nevertheless provide residential care home services to person with disabilities. The residential nature of the RCHD with 38 beds within the Site is not incompatible with the surrounding area primarily for domestic use in temporary or permanent structures.
- 11.2 As advised by DSW, the RCHD at the Site has been in service since October 2011. The applicant has yet to meet the licensing requirement fully and hence DSW has issued a CoE to the subject RCHD with conditions of improvements for full compliance with the licensing requirements, including seeking planning permission and confirmation from relevant authorities for its compliance with relevant legislations and land lease conditions to use the subject premises for operating the RCHD. The CoE was last extended for 5 months on 1.9.2018. The subject RCHD has submitted an application for the Financial Assistance Scheme for carrying out fire safety and building safety rectification works, and has already engaged an Authorized Person as project consultant to follow-up with the building and planning related matters upon the planning approval.
- 11.3 The RCHD under application, which is considered as a social welfare facility, is to provide service to people with physical and mental disabilities who are in need of residential care. In view of the scale and nature of the applied use, it is not anticipated that the applied use would cause significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding area. Relevant Government departments consulted including C for T, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no adverse comment on/ no objection to the application.
- 11.4 The RCHD under application is the subject of a previously approved application (No. A/NE-LYT/627) submitted by the same applicant. The application was approved with condition by the Committee on 11.8.2017 on the consideration that the residential nature of the RCHD was not incompatible with the surrounding area; it was not anticipated that the applied use would cause significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding area; and there were no adverse comment from relevant Government departments against the application. The

development parameters and layout under the current application are the same as the previous application. The previous planning permission was revoked on 11.2.2018 due to the non-compliance with approval conditions. For the subject application, the applicant has demonstrated efforts by submitting preliminary proposals for sewerage, drainage, run-in/out and fire services installations and engaged an Authorized Person as project consultant to follow-up with the relevant building and planning matters upon the planning approval. Should the Committee decide to approve the application, shorter compliance periods on the approval conditions are proposed to monitor the progress of compliance. Moreover, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application. There is no material change in the planning circumstances of the area since the approval of the last application.

- 11.5 Regarding the local objection conveyed by DO(N) that the subject application would cause adverse traffic impact and environmental impact during constructions, the departmental 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, no time clause for commencement for the development is proposed as the social welfare facility (residential care home for persons with disabilities) use under application is already in operation. The following conditions of approval with shorter compliance periods and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) the submission of drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 2.2.2019;
- (b) in relation to (a) above, the implementation of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 2.5.2019;
- (c) the submission of sewerage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 2.2.2019;
- (d) in relation to (c) above, the implementation of sewerage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 2.5.2019;
- (e) the submission of proposals for fire service installations and water supplies for fire-fighting within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.2.2019;
- (f) in relation to (e) above, the implementation of proposals for fire service

installations and water supplies for fire-fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.5.2019; and

- (g) the implementation of run-in/out proposal within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 2.5.2019; and
- (h) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

#### Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development under application is not in line with the planning intention of the "Residential (Group C)" zone which is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board. There is insufficient information in the submission to demonstrate why the applied use could not be accommodated in other alternative locations.

### **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**

<b>Appendix I</b>	Application Form with attachments received on 3.9.2018
<b>Appendix Ia</b>	Supplementary Information received on 6.9.2018
<b>Appendix Ib</b>	Supplementary Information received on 10.9.2018
<b>Appendix Ic</b>	Further Information received on 9.10.2018
<b>Appendix Id</b>	Further Information received on 19.10.2018
<b>Appendix Ie</b>	Further Information received on 22.10.2018
<b>Appendix If</b>	Further Information received on 23.10.2018
<b>Appendix II</b>	Previous s.16 Application
<b>Appendix III</b>	Detailed Comments of CE/MN, DSD and CE/C, WSD
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Recommended Advisory Clauses

<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Floor Plan
<b>Drawing A-3</b>	Proposals for Fire Service Installations and Water Supplies for Fire-fighting
<b>Drawing A-4</b>	Drainage Proposal
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4c</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2018**