

TOWN PLANNING BOARD

TPB Paper No. 11021

**For Consideration by
the Town Planning Board on 26.9.2025**

**REVIEW OF APPLICATION NO. A/NE-LYT/847
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House (New Territories Exempted House - Small House) in
“Agriculture” Zone**

Lot 1587 S.B ss.2 in D.D. 76, Kan Tau Tsuen, Fanling, New Territories

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in “Agriculture” (“AGR”) zone**

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1. Background

- 1.1 On 15.4.2025, the applicant, Mr. LAU Kam Fat represented by Miss. TANG Sau Fong, sought planning permission to build a proposed NTEH (Small House) at the application site (the Site) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within the “AGR” zone on the approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19 (**Plan R-1**).
- 1.2 On 6.6.2025, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development was not in line with the planning intention of the “AGR” zone which was 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 was no strong planning justification in the submission for a departure from the planning intention; and
 - (b) land was still available within the “Village Type Development” (“V”) zone of Kan Tau Tsuen which was primarily intended for Small House development. It was 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.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-LYT/847 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 6.6.2025 (Annex B)
 - (c) Secretary of the Board’s letter dated 20.6.2025 (Annex C)

2. Application for Review

On 10.7.2025, the applicant applied under section 17(1) of the Ordinance for review of RNTPC’s decision to reject the application (**Annex D**).

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed at **Annex D** as summarised below:

- (a) it is unreasonable for the Board to reject the current application for the reason of not being in line with the planning intention of the “AGR” zone and having no strong planning justification for a departure from the planning intention as there were approved similar applications for Small House development within “AGR” zones in Lung Yeuk Tau, Ta Kwu Ling, Ping Kong, Man Uk Pin, Lam Tsuen, Kwu Tung South and Ho Chung areas after the Board’s formal adoption of more cautious approach since August 2015;
- (b) the Site is the subject of a previous application (No. A/NE-LYT/200) for the same proposed development, which was approved with conditions by RNTPC on 2.6.2000. The approval of the previous application reveals that the Board considers the Site zoned “AGR” suitable for Small House development;
- (c) there are existing Small Houses or approved Small House developments in the vicinity of the Site (**Plan R-2a**). To the immediate north is an existing Small House. To the east are a site covered by a building licence (BL) (i.e. Lot 1587 S.B ss.1 in D.D. 76) and another site with planning approval (No. A/NE-LYT/787) for the development of four Small Houses. To the west are four completed Small House developments (i.e. Lots 1585 S.D, 1585 S.E, 1585 S.F and 1585 S.G in D.D. 76) and sites covered by BL (i.e. Lot 1587 S.B ss.5 in D.D. 76) or planning approval (No. A/NE-LYT/808 and 831). Noting that the Site is bounded by existing Small Houses or sites covered by BLs to the north, east and west, it should be considered as ‘infill site’ for Small House development, instead of agricultural activities; and
- (d) the current application, which is identical to the previously approved application, should be not be considered as a ‘fresh application’ and it was re-submitted solely due to the expiry of the planning permission after the prolonged processing of Small House grant application. As there is no major change in the planning circumstances, the Board should grant the permission to the applicant for further processing of Small House grant under another regime.

4. **The Section 16 Application**

The Site and its Surrounding Areas (Plans R-1 to R-4)

- 4.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change of the situation of the Site and the surrounding areas since then.
- 4.2 The Site is:
 - (a) currently occupied by active farmland with some plants;
 - (b) located at the southeastern fringe of Kan Tau Tsuen and to the

immediate south of an existing Small House; and

(c) without vehicular access.

- 4.3 The surrounding areas are of rural character predominated by village houses/domestic structures, active/fallow farmlands, unused lands covered by scatter tree groups or vegetated areas and vacant lands. To the immediate north is an existing Small House, whilst two approved Small House developments (applications No. A/NE-LYT/202¹ and 238) are found to the immediate east and west respectively². To the immediate south is a cluster of Small House developments under approved applications No. A/NE-LYT/604 to 616³. To the further southeast of the Site is the Tan Shan River.

Planning Intention

- 4.4 There has been no change in the planning intention of the “AGR” zone as mentioned in paragraph 8 of **Annex A**, which is primarily to retain and safeguard good quality agriculture 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.

Assessment Criteria

- 4.5 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. The latest set of Interim Criteria promulgated on 7.9.2007 is at **Appendix II** of **Annex A**.

Previous Application

- 4.6 The Site is the subject of a previous application (No. A/NE-LYT/200) for proposed Small House development submitted by a different applicant. The application was approved with conditions by RNTPC on 19.5.2000 mainly on sympathetic considerations that the proposed development was considered not incompatible with the surrounding rural landscape character; the Site was located close to the village cluster of Kan Tau Tsuen; it would unlikely generate significant adverse impacts on the surroundings; and there was a general shortage of land within “V” zone in meeting the Small House demand at the time of consideration. The validity of the planning permission was up to 19.5.2003. Whilst the relevant BL was issued by LandsD on 15.11.2001, the proposed Small House development has not materialised. Subsequently, the BL was revoked on 9.3.2012. Compared with the previous application, the major development parameters and footprint of the proposed Small House in the current application are generally the same.

¹ Application No. A/NE-LYT/202 for proposed Small House development was approved with conditions by RNTPC on 19.5.2000 (i.e. before the promulgation of the Interim Criteria on 24.11.2000) (**Plan R-2a**).

² According to the record, Small House grant applications for both sites were approved by the Lands Department (LandsD) and each site is covered by a valid BL.

³ According to the record, all the applicants have already accepted the formal basic term offer under their respective Small House grant applications, and BLs were recently granted to the application sites of No. A/NE-LYT/609 to 611.

- 4.7 Details of the previous application are summarised at **Appendix III** of **Annex A** and its location is shown on **Plan R-2a**.

Similar Applications

- 4.8 When the s.16 application was considered by RNTPC on 6.6.2025, there were 55 similar applications⁴ for Small House development within/partly within the same “AGR” zone in the vicinity of the Site since the first promulgation of the Interim Criteria. There has been no change in the number of similar applications since then.
- 4.9 Among the 52 approved applications, 23 applications (No. A/NE-LYT/238, 242, 367, 407, 473 to 476, 478 to 486, 494, 513 to 515, 545 and 557) were approved with conditions by RNTPC between July 2002 and January 2015, prior to the formal adoption of a more cautious approach in considering Small House application by the Board in August 2015⁵. Since then, 29 applications (No. A/NE-LYT/583, 592, 600, 604 to 616, 629, 630, 644, 665 to 667, 715, 716, 727, 769, 787, 808 and 831) were approved by RNTPC, with or without conditions, between December 2015 and July 2024, mainly on sympathetic considerations that the site was the subject of previous approvals which was submitted by the same applicant; and/or there were Small House applications approved in the vicinity at different stages of development nearby which was forming new village clusters in the locality.
- 4.10 For the three rejected applications, two (No. A/NE-LYT/417 and 440) were rejected by RNTPC and the Board on review in 2010 and 2011 respectively, mainly on the grounds of not complying with the Interim Criteria in that the footprint of the proposed Small House largely or entirely fell outside the ‘VE’ and ‘V’ zone of Kan Tau Tsuen; and land was still available within the ‘V’ zone of Kan Tau Tsuen for Small House development.
- 4.11 The remaining application No. A/NE-LYT/821 was rejected by the Board on review in 2024 on the grounds that land was still available within the ‘V’ zone for Small House development; and there were no specific circumstances to justify the application for sympathetic consideration as the application site, despite being the subject of a previously approved application, could not be regarded as an infill site among existing NTEHs/Small Houses and the processing of the Small House grant application was not at an advance stage. The applicant lodged an appeal against the Board’s decision under section 17(B) of the Ordinance. The appeal is scheduled to be heard by the Town Planning Appeal Board on 16.10.2025.
- 4.12 Details of the above similar applications are summarised at **Appendix IV** of **Annex A** and their locations are shown on **Plan R-2a**.

⁴ Excluding application No. A/NE-LYT/202 to the immediate west of the Site (**Plan R-2a**), which was approved before promulgation of the Interim Criteria on 24.11.2000.

⁵ Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting should be put on the number of outstanding Small House applications provided by LandsD.

5. Comments from Relevant Government Departments

5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and **Appendix V** of **Annex A**. Their advisory comments, if any, are at **Appendix VI** of **Annex A** and recapped at **Annex E**.

5.2 For the review application, relevant government departments have been further consulted and they maintained their previous comments on the application. The Director of Agriculture, Fisheries and Conservation (DAFC) maintains his previous adverse views on the s.16 application as set out in paragraph 9.1 (4) of **Annex A**, as recapitulated as follows:

DAFC does not support the application from agricultural perspective as the Site is being used for farming. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. (**Plan R-4**).

5.3 Comments of the District Lands Officer/North of Lands Department (DLO/N, LandsD) are updated in view of the review application:

Land Administration

5.3.1 Comments of DLO/N, LandsD:

previous comments are still valid except that the total number of outstanding Small House applications for Kan Tau Tsuen is 32 (33 at the time of consideration of s.16 application), while the 10-year Small House demand forecast is 130 (the same at the time of consideration of s.16 application).

5.3.2 In view of the latest comments of DLO/N, LandsD, the revised assessment of the land required and land available for Small House development (stated in paragraph 9.1(3) of **Annex A**) is as follows:

	Criteria	Yes	No	Remarks
3	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> Land required to meet Small House demand in Kan Tau Tsuen: about 4.05ha (equivalent to 162 Small House sites). The outstanding Small House applications are 32 ⁶ while the 10-year Small House demand forecast is 130.
	Sufficient land in “V” zone to meet outstanding Small	✓		

⁶ Among the 32 outstanding Small House applications, 14 fall within the “V” zone, and 18 partly fall within or fall outside the “V” zone. For those 18 applications, 10 of them have obtained valid planning approvals from the Board.

	House applications?			<u>Land Available</u> Land available to meet Small House demand within the “V” zone of Kan Tau Tsuen: about 1.69ha (equivalent to about 67 Small House sites) (Plan R-2b).
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6. **Public Comments Received During Statutory Publication Period**

- 6.1 On 18.7.2025, the review application was published for public inspection. During the statutory public inspection period, five public comments were received (**Annex F**). Four comments from the Chairman and the 1st Vice-chairman of Fanling District Rural Committee, the Chairman of Lung Shan Area Committee as well as an individual object to the application mainly on the grounds that the applicant is not an indigenous villager of Kan Tau Tsuen; the Site is an Old Schedule Agricultural Lot instead of a Building Lot for Small House development; and/or the applicant does not provide justifications for the review application. One comment from a member of the North District Council indicates no comment on the application.
- 6.2 At the s.16 application stage, five comments were received and set out in paragraph 10 of **Annex A**.

7. **Planning Considerations and Assessments**

- 7.1 The application is for a review of the RNTPC’s decision on 6.6.2025 to reject the s.16 application for proposed Small House development at the Site zoned “AGR” on the OZP with reasons stated in paragraph 2 above (**Plan R-1**). Since the consideration of the s.16 application by RNTPC, there has been no material change in planning circumstances. To support the review application, the applicant has submitted written representation providing justifications as set out in paragraph 3 above. Having considered the written representation, the planning considerations and assessments on the review application are detailed below.
- 7.2 In response to the applicant’s claim that it is unreasonable to reject the application for the reason of being not in line with the planning intention of the “AGR” zone, it should be noted that the Site zoned “AGR” is currently occupied by active farmland (**Plans R-1 and R-4**). The proposed Small House development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. In this regard, DAFC maintains his previous adverse view of not supporting the current review application from the agricultural perspective as the Site is being used for farming activities. There is no strong planning justification in the submission for a departure from the planning intention.

- 7.3 Each planning application for Small House development would be considered on its individual merits, amongst others, that whether the Small House development fulfils the Interim Criteria. For the current application, criteria (a) and (d) of the Interim Criteria (**Appendix II of Annex A**) are particularly relevant to the planning assessment in response to the applicant's review grounds. Regarding the criterion (a), while the proposed Small House footprint falls entirely within the 'VE' of Kan Tau Tsuen (**Plan R-2a**), it should note that the Board has formally adopted a more cautious approach in considering applications for Small House development since August 2015, and more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, land available within the "V" zone of Kan Tau Tsuen (i.e. about 1.69ha of land or equivalent to about 67 Small Houses sites⁷) (**Plan R-2b**) is capable of meeting the outstanding 32 Small House applications (33 at the time of consideration of s.16 application). As there is no general shortage of land in meeting the outstanding Small House applications in the "V" zone, 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.
- 7.4 For criterion (d), sympathetic consideration might be given if there are specific circumstances to justify the cases, such as the site is an infill site among existing NTEHs/Small Houses and the processing of the Small House grant is already at an advance stage. In response to the applicant's claim that the Site should be considered as 'infill site', it should be noted that, except for the existing Small House to the immediate north, all the approved Small House developments in close proximity to the Site have not materialised yet and there is also no Small House under construction on-site, including the sites to the immediate east, west and south under Applications No. A/NE-LYT/202, 238 and 609 to 611, which are covered with BLs as mentioned in paragraph 4.3 above but are currently left vacant (**Plans R-2a** and **R-4**). For the four completed Small House developments under approved applications No. A/NE-LYT/494 and 513 to 515⁸ as mentioned by the applicant, they are located to the further west and distant from the Site (**Plan R-2a**). Hence, it is considered that the Site could not be regarded as an infill site among existing NTEHs/Small Houses in accordance with the Interim Criteria.
- 7.5 Besides, the applicant also claims that the current application, which is the same as the previously approved application, was re-submitted solely due to the expiry of the planning permission after the prolonged processing of Small House grant application. In this regard, it should be noted that the previous application granted in 2000 was submitted by a different applicant, and the approval has already lapsed. DLO/N, LandsD advises that his office has not received any Small House application submitted by the applicant at the Site. As such, the processing of Small House grant application could not be considered as an advance stage, and sympathetic consideration is not applicable to the current review application.
- 7.6 There are 55 similar applications for Small House developments in the vicinity

⁷ Same as the situation at the time of considering s.16 application.

⁸ The application sites of A/NE-LYT/494 and 513 to 515 are covered by BLs No. BL57/2017, BL116/2018, BL115/2018 and BL43/2017 respectively.

of the Site (**Plan R-2a**), of which 29 were approved by RNTPC between December 2015 and July 2024 after the Board's formal adaption of a more cautious approach mainly on sympathetic consideration that the sites were the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed a new village clusters in the locality. Regarding other similar applications as mentioned by the applicant in the written representation⁹, they were approved by RNTPC mainly on the consideration that there was general shortage of land for Small House developments within the concerned "V" zone under the more cautious approach; the site was the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed a new village clusters in the locality. The planning circumstances of the current application are different from those of the approved applications.

- 7.7 Regarding the public comments on the review application as mentioned in paragraph 6 above, the government departments' comments and the planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 above, having taken into account the public comments in paragraph 5 above and given that there is no material change in the planning circumstances since the consideration of the subject application by RNTPC, PlanD maintains its previous views of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the "AGR" zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. 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 infrastructure and services.
- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 26.9.2029, 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 advisory clauses at **Annex E** are also suggested for Members' reference.

⁹ Most of the similar applications quoted by the applicant are located in other villages within the same OZP or in other OZPs.

9. Decision Sought

- 9.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

10. Attachments

Plan R-1	Location Plan
Plan R-2a	Site Plan
Plan R-2b	Estimated Amount of Land Available for Small House Development within "V" zone
Plan R-3	Aerial Photo
Plan R-4	Site Photos
Annex A	RNTPC Paper No. A/NE-LYT/847
Annex B	Extract of Minutes of the RNTPC Meeting held on 6.6.2025
Annex C	Secretary of Town Planning Board's letter dated 20.6.2025
Annex D	Letter Received by Town Planning Board on 10.7.2025 from the Applicant Applying for a Review of the RNTPC's decision
Annex E	Recommended Advisory Clauses
Annex F	Public Comments

**PLANNING DEPARTMENT
SEPTEMBER 2025**