

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KLH/608

- Applicant** : Mr. WAI Tze Pong represented by Spence Robinson Limited
- Site** : Lots 643B S.A RP, 643B S.B, 643B RP, 644 S.A, 644 S.B and 644 RP in D.D. 9, Yuen Leng Village, Tai Po, New Territories
- Site Area** : About 1,220.4m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Five Houses (New Territories Exempted Houses) (NTEHs)

1. The Proposal

- 1.1 The applicant, seeks planning permission to build five houses (NTEHs) on the application site (the Site) falling within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

- 1.2 Details of the proposed five NTEHs are as follows:

Total Gross Floor Area (GFA)	: 974.85m ² (Units 1, 2 and 3: 194.952 m ² each; Units 4 and 5: 194.805 m ² each)
Plot Ratio	: 0.833
Number of Storeys	: 3
Building Height	: 8.23 m
Roofed Over Area of Each House	: not more than 64.99 m ²
Number of Residential Units	: 5
Number of Car Parking Spaces	: 5 private car parking spaces and 1 loading/unloading space

- 1.3 The Site is accessible via local track leading to Tai Wo Service Road East. Each proposed house will accommodate one residential unit. For Units 1, 2

and 3, there will be living rooms, bedroom, kitchen and bathrooms on the G/F and 1/F and a greenhouse/garden covered by openable glass panels on the 2/F. For Units 4 and 5, there will be living rooms, bedrooms, kitchen and bathrooms on the G/F, 1/F and 2/F. The uncovered area of the Site will be used for circulation, car parking and landscaping.

- 1.4 A Sewerage Impact Assessment (SIA) (**Appendix I**) is submitted proposing connection of the Site to an existing public sewer. The applicant has also submitted a Noise Impact Assessment (NIA) (**Appendix Ib**) proposing mitigation measures against railway and road traffic noise, such as orienting the proposed houses to avoid direct facing to the noise sources, a 2m to 3m tall fencing wall surrounding the Site, and fixed glazing and acoustic fins at suitable locations. Master Layout Plan, floor plans, section plans, Emergency Vehicular Access (EVA) exemption diagram, proposed sewerage connection and proposed noise mitigation measures are shown on **Drawings A-1 to A-10** respectively.
- 1.5 The Site is subject of two previous applications (No. A/NE-KLH/556 and 583) each for five NTEHs submitted by the same applicant. Compared with the latest previous application (No. A/NE-KLH/583), major development parameters under current application have slightly changed, including an increase in total GFA (from 974.319m² to 974.85m²) and plot ratio (from 0.798 to 0.833), and a slight decrease in roofed over area (from not more than 65.03 to 64.99). Details of the previous applications are set out in paragraph 5 below.
- 1.6 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with attachments received on (**Appendix I**)
29.4.2022
 - (b) Further Information (FI) received on 24.8.2022 (**Appendix Ia**)
- 1.7 The Rural and New Town Planning Committee (the Committee) agreed to defer a decision on the application as requested by the applicant on 24.6.2022.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the application form at **Appendix I** as summarized below:

- (a) the change in use from agriculture to low-density residential development is in line with the current policy to encourage better utilization of land for more residential development; NTEH is a Column 2 use under the “AGR” zone. The proposed development is also in line with permissible use within “AGR” zone;
- (b) the proposed low-rise NTEHs, with an area of not more than 700 sq.ft. (about 64.99m²) each, and of three storeys in height are compatible with their neighbourhood in terms of height, scale and disposition;

- (c) the existing temporary sheds on site will be replaced by the proposed residential development which will enhance the overall image of the area;
- (d) the traffic load generated from the proposed development is insignificant. The Site is fronting a public road of over 4.5m wide. The pavement of the public road is about 2m wide which is convenient for pedestrian access. There are also public transport facilities in the vicinity of the Site;
- (e) five private car parking spaces and one loading/unloading space will be provided within the Site. Access can be made directly from the public road. Manoeuvring space is provided so that the queuing back of vehicles is not necessary;
- (f) no soakaway system is needed as government sewerage is available. Therefore, environmental impact is minimized. The current uses in the vicinity of the Site are generally residential. Noise, dust and other environmental mitigation measures will be in place during construction stage to reduce environmental impacts and to meet current regulations;
- (g) the Site is within Water Gathering Grounds (WGG). As the sewage generated from the proposed development will be discharged to public sewer which has sufficient capacity, no sewerage impact is anticipated. In addition, no point pollutant source is anticipated, as the proposed development is for residential use. To handle the non-point pollutant sources such as chemical (oil) leakage from the vehicle, u-channel/bund wall along the site boundary and filtration and oil interceptor for the stormwater discharge are proposed. No material increase in pollution effect to the WGG is anticipated;
- (h) street hydrant is within 20m of the Site. As the number of houses within 30m circle of neighbourhood does not exceed nine, no EVA is required. A minimum separation of 1.5m will be provided between each house;
- (i) two lychee trees, three longan trees, one star fruit tree and one jack fruit tree, which are not valuable trees, will be felled. The existing well will be preserved for future landscape irrigation. Full topographic and tree survey will be conducted at the detailed design stage. A landscape plan will be provided for the Site for approval by relevant government department; and
- (j) utilities available includes electricity, water supply and government drainage. There are public stormwater and sewerage manholes along the fronting public road for future connection. Refuse collection facility is also available within walking distance in the vicinity of the Site.

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

The applicant is one of the two “current land owners”. He has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining the consent of the other current land owner. Detailed information would be deposited at the meeting for Members’

inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria is at **Appendix II**.

5. Previous Applications

- 5.1 The Site is the subject of two previous applications (No. A/NE-KLH/556 and 583) both for development of 5 NTEHs submitted by the same applicant of current application. Application No. A/NE-KLH/556 was rejected by the Committee on 2.11.2018 mainly for reasons of being not in line with the planning intention of the “AGR” zone; not complying with the Interim Criteria in that the proposed development would cause adverse impact on the water quality in upper indirect WGG for not being able to be connected to existing/planned sewerage system; and subject to adverse noise impact generated by the East Rail Line (ERL).
- 5.2 The latest previous application No. A/NE-KLH/583 was rejected by the Committee on 5.2.2021 for similar reasons above except that despite the proposed development being able to be connected to the public sewer, the applicant failed to demonstrate that there is no material increase in pollution effect to WGG arising from the proposed development. Compared with the latest previous application, major development parameters under current application have slightly changed, including an increase in total GFA (from 974.319m² to 974.85m²) and plot ratio (from 0.798 to 0.833), and a slight decrease in roofed over area (from not more than 65.03 to 64.99).
- 5.3 Details of the previous applications are summarized at **Appendix III** and the location is shown on **Plans A-1** and **A-2**.

6. Similar Applications

- 6.1 There are 18 similar applications for NTEH/Small House developments in close proximity to the Site (including 11 wholly within “AGR” zone and 7 straddling on both “AGR” and “V” zones) (**Plan A-2**). Among which, nine were approved and nine were rejected.
- 6.2 All of the nine approved applications (No. A/NE-KLH/245, 304, 339, 368, 378, 379, 403, 410 and 459) were for Small House development which were considered before the Board’s formal adoption of a more cautious approach in approving applications for Small House development in August 2015. They were approved mainly on consideration that the proposed Small House footprint fell mostly within the village ‘environs’ (‘VE’); there was a general shortage of land in meeting the demand for Small House development in the “V” zone at the time of consideration; the proposed development was able to be connected

to the planned sewerage system; and/or the application site was the subject of a previously approved application.

- 6.3 Except for application No. A/NE-KLH/404, the other eight rejected similar applications were for Small House developments. The eight cases (No. A/NE-KLH/300, 312, 430, 439, 443, 483, 544 and 546) were rejected mainly on the grounds of not being able to be connected to existing or planned sewerage system in the area. Applications No. A/NE-544 and 546 were also rejected for the reasons of not being in line with the planning intention of “AGR” zone and land was still available within the “V” zone at the time of consideration. Application No. A/NE-KLH/404 involving development of six NTEHs was rejected by the Committee on 16.6.2010 mainly on the grounds of being not in line with the planning intention of the “AGR” zone; adverse landscape and water quality impacts; being subject to noise impact generated by ERL; and setting of undesirable precedent.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-3 and photos on Plan A-4)

- 7.1 The Site is:
- (a) located to the west of Yuen Leng Village and is entirely outside the relevant ‘VE’;
 - (b) paved, fenced off and is occupied by three temporary shelters and two temporary structures for storage and domestic uses;
 - (c) within the upper indirect WGG; and
 - (d) accessible via local track leading to Tai Wo Service Road East.
- 7.2 The surrounding areas are predominantly rural in character occupied by village houses, active plant nurseries and gardening activities, active/fallow agricultural land and vacant land. The villager proper of Yuen Leng is located about 30m to the east. The ERL and Fanling Highway are located about 20m and 50m to the west respectively.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) the subject lots are all held under block government lease demised for agricultural use. The proposed development will contravene the agricultural use under lease conditions. LandsD generally would only consider NTEH development for (i) existing lease of 'building' lot with no specifically prohibiting NTEH and no increase in the number of NTEH; or (ii) land grant under the New Territories Small House Policy. In this regard, he objects to the application;
- (b) the Site is abutting a public pavement which is formed and maintained by District Officer (Tai Po), Home Affairs Department (DO(TP), HAD) and there is no right of vehicular access under lease over such pavement on Government land; and
- (c) should the planning application be approved, a land exchange would be required for the proposed residential development. If the application for land exchange is approved by LandsD in the capacity as landlord at his sole discretion, it will be subject to such terms and conditions including the payment of premium. In general, lease modification/land exchange for low rise residential development contains, inter alia, a standard clause precluding the erection of NTEH. There is no guarantee that approval to such land exchange will be given.

Environment

- 9.1.2 Comments of the Director of Environmental Protection (DEP):

Noise

- (a) his detailed comments on the NIA submitted by the applicant are at **Appendix V**; However, the NIA submitted by the applicant has yet to demonstrate the proposed development would be in compliance with the Noise Control Ordinance (Cap. 400) and HKPSG requirements from noise perspective. In this regard, she cannot lend support to the application; and

Water Quality and Sewerage

- (b) he has no comment on the SIA and the sewerage connection proposal.

Water Supply

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

- (a) objects to the application;
- (b) the Site is located within upper indirect WGG; and
- (c) housing development is considered posing a high risk of pollution to the WGG due to sewage discharge as well as intentional and unintentional contamination from domestic activities. Although the applicant has proposed connecting the Site with existing public sewers, there is no sufficient information to prove and demonstrate that there is no material increase in pollution effect resulting from the proposed development.

Agriculture

9.1.4 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site is currently occupied by some structures. There are active agricultural activities in the vicinity, and the agricultural infrastructure such as road access and water source is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Drainage

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

- (a) should the application be approved, an approval condition on submission and implementation of drainage proposal is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent areas;
- (b) there are DSD's public stormwater drains in this area. The applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is

required to maintain the drainage systems properly and rectify/modify the nearby existing/original drainage systems if they are found to be inadequate or ineffective to accommodate the additional runoff arisen from the development of the Site. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure or ineffectiveness of the modified drainage systems caused by their works;

- (c) there is existing public sewers in the vicinity of the Site. The construction and maintenance responsibility of the proposed sewerage should be specified in the SIA; and
- (d) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought.

Landscape

9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) no objection to the application from landscape planning perspective;
- (b) the Site is situated in an area of settled valley landscape character comprising village houses, car parks and scattered tree groups. The proposed development is considered not incompatible with its surrounding environment;
- (c) according to the Master Layout Plan submitted by the applicant, 12 existing trees are identified within the site, in which seven are proposed to be felled. The remaining five existing trees, including two protected species, i.e. *Aquilaria sinensis* (土沉香), are proposed to be preserved. Significant adverse impact on the landscape resources within the Site arising from the proposed development is not anticipated;
- (d) the applicant is advised to provide bollards or concrete barriers to protect the existing trees (T1, T2, T3 and T11) located near the car parking area;
- (e) since the existing protected trees will be retained and the effect of additional landscaping on enhancing the quality of public realm is not apparent, should the application be approved, it is considered not necessary to impose a landscape condition; and
- (f) the approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant shall seek approval for any proposed tree works from relevant departments prior to commencement of the works.

Traffic

9.1.7 Comments of the Commissioner for Transport (C for T):

- there is insufficient information including the dimension of the vehicular access and swept path analysis for vehicles to maneuver to/from car parking spaces C2, C3 and C4 submitted by the applicant to address TD's comments.

Fire Safety

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

- no in-principle objection subject to '*New Territories Exempted Houses – A Guide to Fire Safety Requirements*', which is administered by LandsD, being complied with. Detailed fire safety requirements will be formulated upon receipt of formal application via LandsD.

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

- (a) Chief Engineer/Harbour Area Treatment Scheme, DSD (CE/HATS, DSD);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (d) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD);
- (e) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (f) DO(TP), HAD.

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

During the statutory public inspection period, seven public comment were received from Yuen Leng villagers, individuals and MTR Corporation Limited (MTRCL). While MTRCL raises concerns that the proposed development could be sensitive to railway noise impact and provides technical comments on the NIA submitted by the applicant, six public comments from Yuen Leng villagers and individuals raise objection to the application mainly for reasons that the Site is subject of previously rejected applications; land is still available within the "V" zone; the applicant is not an indigenous villager of Yuen Leng Village; and adverse environmental, road safety, fire safety, ecological, sewerage, public hygiene and public utilities impacts.

11. Planning Considerations and Assessments

- 11.1 The application is for five proposed NTEHs at the Site zoned “AGR” on the OZP. 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. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 The Site comprises private lots held under block government lease demised for agricultural use and falls entirely outside the ‘VE’ of Yuen Leng Village. DLO/TP, LandsD objects to the application as LandsD generally would only consider NTEH development for (i) existing lease of ‘building’ lot; or (ii) under the New Territories Small House Policy.
- 11.3 The Site is paved, fenced off and is occupied by three temporary shelters and two structures. The proposed development is not incompatible with its surrounding area predominated by village houses, car parks and scattered tree groups. There are 12 existing trees within the Site, among which seven are proposed to be felled. The remaining five existing trees, including two protected species, i.e. *Aquilaria sinensis*, are proposed to be preserved. CTP/UD&L, PlanD has no objection on the application from landscape planning perspective as significant adverse impact on landscape resources is not anticipated.
- 11.4 The Site falls within the upper indirect WGG. A SIA has been submitted by the applicant proposing connection of the Site with existing public sewer. DEP has no adverse comment on the SIA. However, CE/C of WSD objects to the application and considers that housing development is posing high risk of pollution to the WGG due to sewage discharge and potential contamination from domestic activity. There is insufficient information in the submission to prove that there is no material increase in pollution effect resulting from the proposed development.
- 11.5 The Site is located near ERL and Fanling Highway. DEP considers that the NIA submitted by the applicant has yet to demonstrate the proposed development would be in compliance with the Noise Control Ordinance (Cap. 400) and HKPSG requirements from noise perspective. The applicant also fails to provide sufficient information on dimension of vehicular access and swept path analysis to address C for T’s comments. Other relevant government departments have no objection to or adverse comment on the application from technical aspects.
- 11.6 The Site is the subject of two previously rejected applications for reasons summarized in paragraph 5 above. Compared with the latest previous application, there are only slight differences in GFA, plot ratio and roofed over area. There has been no major changes in planning circumstances since the rejection of the last previous application.

- 11.7 There are 18 similar applications for NTEH/Small House development in close proximity to the Site. Except for application No. A/NE-KLH/404, all other similar applications were for Small House developments. Application No. A/NE-KLH/404 involving development of six NTEHs was rejected by the Committee mainly for reasons set out in paragraph 6.3 above. The planning circumstances for rejection of this application are largely applicable to the current one.
- 11.8 Regarding the public comments as detailed in paragraph 10 above, comments of government departments and the planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, 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 "Agriculture" 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;
 - (b) the Site falls within the upper indirect water gathering grounds (WGG) and the applicant fails to demonstrate that the proposed development would cause no material increase in pollution effect to the WGG; and
 - (c) the proposed development would be subject to adverse noise impact generated by the East Rail Line nearby, and the applicant fails to demonstrate that the impact could be addressed.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 14.10.2026, 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 approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the submission of a revised Noise Impact Assessment and the implementation of the noise mitigation measures identified therein for the proposed development to the satisfaction of the Director of Environmental

Protection or of the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form with attachments received on 29.4.2022
Appendix Ia	FI received on 24.8.2022
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from EPD on the NIA
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Master Layout Plan
Drawings A-2 to A-4	Floor Plans
Drawing A-5	Section Plan
Drawing A-6	EVA Exemption Diagram
Drawing A-7	Sewerage Connection Plan
Drawings A-8 to A-10	Noise Mitigation Measures
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
OCTOBER 2022**