

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

**APPLICATIONS NO. A/NE-LK/138 and 139**

|                            |   |  |
|----------------------------|---|--|
| <b><u>Applicants</u></b>   | : Mr. TSANG Simon Dick Fai<br>Mr. TSANG Wing Hong<br>All represented by Mr. HUI Kwan Yee                  | (Application No. A/NE-LK/138)<br>(Application No. A/NE-LK/139) |
| <b><u>Sites</u></b>        | : Lot 1518 S.A ss.1<br>Lot 1518 RP<br>All in D.D. 39, Ma Tseuk Leng Village, Sha Tau Kok, New Territories | (Application No. A/NE-LK/138)<br>(Application No. A/NE-LK/139) |
| <b><u>Site Areas</u></b>   | : 120 m <sup>2</sup> (about)<br>122.75 m <sup>2</sup> (about)   | (Application No. A/NE-LK/138)<br>(Application No. A/NE-LK/139) |
| <b><u>Lease</u></b>        | : Block Government Lease (demised for agricultural use)   |  |
| <b><u>Plan</u></b>         | : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11                                  |  |
| <b><u>Zoning</u></b>       | : "Agriculture" ("AGR")   |  |
| <b><u>Applications</u></b> | : Proposed House (New Territories Exempted House (NTEH) – Small House)                                    |  |

**1. The Proposals**

1.1 The applicants, who claimed to be indigenous villagers of Ma Tseuk Leng village in Sha Tau Kok Heung<sup>1</sup>, seek planning permissions to build a NTEH (Small House) on each of the application sites (the Sites) in Ma Tseuk Leng village, Sha Tau Kok (**Plans A-1 and A-2a**). The Sites fall within an area zoned "AGR" on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, 'House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)' in "AGR" zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Sites are currently vacant, flat and overgrown with grass.

1.2 Details of each of the two proposed NTEHs (Small Houses) are as follows:

|                   |                         |
|-------------------|-------------------------|
| Total Floor Area  | : 195.09 m <sup>2</sup> |
| Number of Storeys | : 3                     |
| Building Height   | : 8.23 m                |
| Roofed Over Area  | : 65.03 m <sup>2</sup>  |

<sup>1</sup> As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants claimed to be the indigenous villagers of Ma Tseuk Leng Village of Sha Tau Kok Heung. Their eligibility for Small House grants have yet to be ascertained.

- 1.3 Layouts of the two proposed Small Houses (including septic tanks) under applications No. A/NE-LK/138 and 139 are shown on **Drawings A-1 and A-2** respectively.
- 1.4 The Sites are the subject of two previously approved applications No. A/NE-LK/83 and 84 for Small House development submitted by the same applicants as the current applications No. A/NE-LK/138 and 139 respectively. The applications were approved on 9.5.2014 by the Rural and New Town Planning Committee (the Committee) and the validity of the planning permissions were extended once until 9.5.2020 under the applications No. A/NE-LK/83-1 and 84-1. Both planning permissions lapsed on 10.5.2020. Compared with the previous applications, there is no change to the major development parameters and the proposed Small House footprints under the current applications.
- 1.5 In support of the applications, the applicants have submitted the Application Forms with attachments (**Appendices Ia and Ib**) which were received by the Board on 12.7.2021.

## **2. Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in the Application Forms at **Appendices Ia and Ib**. They can be summarised as follows:

- (a) the Sites are currently a vacant land which is suitable for the proposed Small House developments;
- (b) the applicants claimed that there are no alternative sites available for their Small House developments;
- (c) the Sites are the subject of a previously approved planning applications No. A/NE-LK/83 and 84 submitted by the same applicants. The applicants forgot to make an applications for an extension of time for commencement of the Small House developments, and hence fresh planning applications are required. Compared with the previous applications, there is no change to the major development parameters and the proposed Small House footprints; and
- (d) there are other similar applications approved in the vicinity of the Sites.

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

The applicants are the “current land owners” of their respective lots. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

## 5. Previous Applications

- 5.1 The Sites are the subject of two previously approved applications No. A/NE-LK/83 and 84 for Small House development submitted by the same applicants as the current applications No. A/NE-LK/138 and 139 respectively. The applications were approved on 9.5.2014 by the Committee mainly on the grounds that the applications generally complied with the Interim Criteria in that the footprint of the proposed Small Houses fell mostly within the 'VE' and there was a general shortage of land within the "Village Type Development" ("V") zone at the time of consideration; the proposed developments were not incompatible with the surrounding area; and significant adverse impact were not anticipated. The validity of the planning permissions were extended once until 9.5.2020 under the applications No. A/NE-LK/83-1 and 84-1. Both planning permissions lapsed on 10.5.2020. Compared with the previous applications, there is no change to the major development parameters and the proposed Small House footprints under the current applications.
- 5.2 Details of the previous applications are summarized at **Appendix III** and the locations are shown on **Plans A-1 and A-2a**.

## 6. Similar Applications

- 6.1 There are 46 similar applications for Small House development within/partly within the "AGR" zone in the vicinity of the Site (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 33 of them were considered before the cautious approach being adopted by the Board. 30 were approved mainly on the considerations that the applications generally complied with the Interim Criteria. For the 3 rejected applications, application No. A/NE-LK/78 was rejected in 2013 mainly on the ground of adverse impact on the nearby stream. The other two applications No. A/NE-LK/92 and 93 straddling "AGR" and "Green Belt" ("GB") zones were rejected in 2014 mainly on the grounds that the proposed developments did not comply with the Interim Criteria and relevant Town Planning Board Guidelines for development within "GB" zone in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape.
- 6.3 After the adoption of the more cautious approach by the Board, 13 applications were considered. 5 applications No. A/NE-LK/106, 107, 109, 111 and 112 were approved by the Committee between December 2016 and April 2018 mainly for the reason of being the subject of previously approved applications submitted by the same applicants. 8 applications No. A/NE-LK/114<sup>2</sup>, 115, 116, 117, 121, 122, 134 and 135 were rejected by the Committee or the Board on review between November 2018 and July 2021 mainly on similar grounds that the application did not comply with the Interim Criteria in that land was still available within the "V" zone for Small House development; and the proposed development would cause drainage and landscape impacts on the surrounding areas.
- 6.4 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1a**.

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<sup>2</sup> The appeal hearing was heard by the Town Planning Appeal Board on 30.9.2020 and was dismissed on 9.8.2021.

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

7.1 The Sites are:

- (a) currently vacant, flat and overgrown with grass;
- (b) abutting the “V” zone of Ma Tseuk Leng; and
- (c) accessible via a footpath.

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where village houses, temporary structures and active/ fallow agricultural land are found;
- (b) to the immediate south and south-west are sites under approved Small House Grant applications / existing village houses within the “V” zone of Ma Tseuk Leng while to the immediate north and north-west are sites involving previously approved planning applications with approved Small House Grant applications;
- (c) to the immediate north-east are the boundary of village ‘environs’ (‘VE’) of Ma Tseuk Leng, a footpath and a watercourse; and
- (d) to the east are fallow agricultural land and sites under Small House Grant applications.

**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 applications have been assessed against the assessment criteria in **Appendix II**. The assessment is summarised in the following table:

|    | <u>Criteria</u>                           | <u>Yes</u> | <u>No</u> | <u>Remarks</u>   |
|----|---|------------|-----------|--|
| 1. | Within “V” zone?                          |            |           |  |
|    | - The Sites                               |            |           | - The Sites and footprints of the proposed Small Houses fall within an area zoned “AGR”. |
|    | No. A/NE-LK/138                           | -          | 100%      |  |
|    | No. A/NE-LK/139                           | -          | 100%      |  |
|    | - Footprints of the proposed Small Houses |            |           |  |
|    | No. A/NE-LK/138                           | -          | 100%      |  |
|    | No. A/NE-LK/139                           | -          | 100%      |  |

|    | <b>Criteria</b>  | <b>Yes</b>                                  | <b>No</b>                       | <b>Remarks</b>   |
|----|--|---|---------------------------------|--|
| 2. | <p>Within 'VE'?</p> <ul style="list-style-type: none"> <li>- The Sites<br/>No. A/NE-LK/138<br/>No. A/NE-LK/139</li> <li>- Footprints of the proposed Small Houses<br/>No. A/NE-LK/138<br/>No. A/NE-LK/139</li> </ul> | <p>100%<br/>100%<br/><br/>100%<br/>100%</p> | <p>-<br/>-<br/><br/>-<br/>-</p> | <p>- DLO/N, LandsD advises that the footprints of the proposed Small Houses fall within the 'VE' of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.</p>   |
| 3. | <p>Sufficient land in "V" zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p>   |   | ✓                               | <p><u>Land Required</u></p> <p>- Land required to meet the Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster<sup>3</sup>: about 14.35 ha (equivalent to 575 Small House sites). The outstanding Small House applications for the village cluster is 57<sup>4</sup> while the 10-year Small House demand forecast for the same villages is 518.</p> |
|    | <p>Sufficient land in "V" zone to meet outstanding Small House application?</p>  | ✓   |                                 | <p><u>Land Available</u></p> <p>- Land available to meet the Small House demand within the "V" zone of the village cluster: about 2.25 ha (equivalent to 89 Small House sites) (<b>Plan A-2b</b>).</p>   |
| 4. | <p>Compatible with the planning intention of "AGR" zone?</p>   |   | ✓                               | <p>- Director of Agriculture, Fisheries and Conservation (DAFC) does not support the applications from agricultural point of view as the Sites possess potential for agricultural rehabilitation.</p>  |
| 5. | <p>Compatible with surrounding area/development?</p>   | ✓   |                                 | <p>- The proposed developments are not incompatible with the surrounding areas predominated by village houses, active/fallow agricultural land and some temporary structures (<b>Plan A-2a</b>).</p>   |

<sup>3</sup> Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

<sup>4</sup> Among the 57 outstanding Small House applications, 19 of them fall within the "V" zone and 38 straddle or outside the "V" zone. For those 38 applications straddling or outside the "V" zone, 6 of them have obtained valid planning approval from the Board.

|     | <b><u>Criteria</u></b>   | <b><u>Yes</u></b> | <b><u>No</u></b> | <b><u>Remarks</u></b>  |
|-----|--|-------------------|------------------|--|
| 6.  | Within Water Gathering Grounds (WGGs)?   |                   | ✓                | - Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the applications.   |
| 7.  | Encroachment onto planned road networks and public works boundaries?                   |                   | ✓                |  |
| 8.  | Need for provision of fire service installations and emergency vehicular access (EVA)? |                   | ✓                | - Director of Fire Services (D of FS) has no in-principle objection to the applications. The applicants are reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.   |
| 9.  | Traffic impact?  | ✓                 |                  | <p>- Commissioner for Transport (C for T) has reservation on the applications and advises that Small House development should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development are not expected to be significant, such type of development outside the "V" zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.</p> <p>- Notwithstanding the above, the applications involves construction of two Small Houses. She considers that the applications can be tolerated unless being rejected on other grounds.</p> |
| 10. | Drainage impact?   | ✓                 |                  | - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications and advises that an approval condition on the submission and implementation of drainage proposal is required for the applications.   |

|     | <u>Criteria</u>                 | <u>Yes</u> | <u>No</u> | <u>Remarks</u>  |
|-----|---------------------------------|------------|-----------|---|
| 11. | Sewage impact?                  |            | ✓         | - Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications are unlikely to cause major pollution.  |
| 12. | Landscaping impact?             |            | ✓         | - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning perspective. Significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. |
| 13. | Local objection conveyed by DO? |            | ✓         | - District Officer (North) (DO(N)) advises that all consultees have no comment on the applications.   |

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Detailed 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) Director of Agriculture, Fisheries and Conservation; and
- (h) District Officer (North), Home Affairs Department.

9.3 The following Government departments have no comment on / no objection to the applications:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department; and
- (c) Project Manager (North), Civil Engineering and Development Department.

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

On 20.7.2021, the applications were published for public inspection. During the statutory public inspection period, five public comments were received for each application. The Chairman of Sheung Shui District Rural Committee indicates no comment on the applications. Kadoorie Farm and Botanic Garden Corporation and three individuals object to the applications mainly on the grounds of being not in line with the planning intention of “AGR” zone; land is available within the “V” zone for Small House development; setting of an undesirable precedent for other similar applications within the “AGR” zone; uncertain

indigenous identity of the applicants; and the proposed development would cause adverse environmental impact and safety issues.

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

- 11.1 The applications are for a proposed Small House development at each of the Sites zoned "AGR" on the OZP. The proposed Small House developments are not in line with the planning intention of the "AGR" zone which is intended 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 applications from the agriculture point of view as the Sites possess potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD's records, the total number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 57 while the 10-year Small House demand forecast for the same village cluster is 518. According to the latest estimate by PlanD, about 2.25 ha (equivalent to 89 Small House sites) of land are available in the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprints of the proposed Small Houses fall entirely within the 'VE' of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
- 11.3 The Sites are situated in an area of rural landscape character predominated by village houses, fallow/active agricultural land and tree groups. The proposed Small House developments are not entirely incompatible with the surrounding environment (**Plan A-3**). CTP/UD&L, PlanD has no objection to the applications as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. C for T considers that Small House developments should be confined within the "V" zone as far as possible but given that the proposed developments involve construction of two Small Houses, the applications could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on/no objection to the applications.
- 11.4 Regarding the Interim Criteria (**Appendix II**), while land available within the "V" zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is insufficient to fully meet the future Small House demand of 575 Small Houses, such available land (about 2.25 ha or equivalent to 89 Small House sites) is still available within the "V" zone to meet the 57 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 developments within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructure and services. Nevertheless, it is noted that the Sites are the subject of two previously approved applications No. A/NE-LK/83 and 84 for Small House development submitted by the same applicants as the current applications No. A/NE-LK/138 and 139 respectively and their Small House grants are either under processing or already at an advance stage as advised by DLO/N, LandsD. In this regard, sympathetic considerations might be given to the applications.



- 11.5 There are 15 similar applications for Small House development in the vicinity of the Sites (**Plan A-2a**). Before the adoption of the more cautious approach by the Board, 8 applications were approved by the Committee between July 2010 and January 2015 while 3 applications No. A/NE-LK/78, 92 and 93 were rejected between March 2013 and October 2014 mainly on the ground of adverse impact on the nearby stream/ the proposed developments did not comply with the Interim Criteria and relevant Town Planning Board Guidelines for development within “GB” zone. After the adoption of the more cautious approach by the Board, 2 applications No. A/NE-LK/121 and 122 were rejected in 2019 mainly on similar grounds that land was still available within the “V” zone for Small House development. The remaining 2 applications No. A/NE-LK/111 and 112 were approved by the Committee in 2018 mainly for the reason of being the subject of previously approved applications No. A/NE-LK/77 and 80 respectively submitted by the same applicants. It is considered that the circumstances of the current applications are similar to the approved applications No. A/NE-LK/111 and 112.
- 11.6 Regarding the public comment objecting to the applications on the grounds as detailed in paragraph 10 above, Government departments’ comments 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, the Planning Department has no objection to the applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that the permission shall be valid until 10.9.2025, 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 a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

### Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the applications, the following reasons for rejection are suggested for Members’ reference:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural

purposes. There is no strong planning justification in the submission for a departure from the planning intention; and

- (b) land is still available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

### **13. Decision Sought**

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

### **14. Attachments**

|                             |   |
|-----------------------------|---|
| <b>Appendices Ia and Ib</b> | Application Forms with attachments received on 12.7.2021  |
| <b>Appendix II</b>          | Relevant Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories   |
| <b>Appendix III</b>         | Previous Applications   |
| <b>Appendix IV</b>          | Similar s.16 Applications   |
| <b>Appendix V</b>           | Detailed Comments from Relevant Government Departments  |
| <b>Appendix VI</b>          | Public Comments   |
| <b>Appendix VII</b>         | Recommended Advisory Clauses  |
| <b>Drawings A-1 and A-2</b> | Layout Plans  |
| <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 Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development |
| <b>Plan A-3</b>             | Aerial Photo  |
| <b>Plan A-4</b>             | Site Photo  |

**PLANNING DEPARTMENT  
SEPTEMBER 2021**