

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/144

Applicant : Mr. CHEUNG Kwok Kin represented by Mr. HUI Kwan Yee

Site : Lot 1367 in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories

Site Area : 194.5 m² (about)

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11

Zoning : “Agriculture” (“AGR”)

Application : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims himself an indigenous villager of Ma Tseuk Leng¹, seeks planning permission to build an NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls 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)’ is a Column 2 use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

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

1.3 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicates that the uncovered area of the proposed Small House is for circulation purpose.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Ma Tseuk Leng in Sha Tau Kok Heung. His eligibility for Small House grant has yet to be ascertained.

- 1.4 The Site is the subject of a previously rejected planning application No. A/NE-LK/134 for Small House development submitted by the same applicant of the current application. Compared with the previous application, the major development parameters remain unchanged.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form with attachments received on 3.5.2022 (Appendix I)
 - (b) Further Information (FI) received on 9.6.2022 (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI submission at **Appendices I and Ia** and can be summarised below:

- (a) the applicant is an indigenous villager and the Site is the only land owned by him for Small House development;
- (b) the proposed NTEH's footprint falls within the village 'environs' ('VE') of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong;
- (c) the Site is surrounded by existing village houses and there are similar applications for Small House development approved by the Board in the vicinity of the Site. The approval of the application would not set an undesirable precedent for similar applications;
- (d) the proposed Small House development is compatible with the surrounding rural environment and land uses; and
- (e) there are no adverse departmental comments received under the previous planning application No. A/NE-LK/134.

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

The applicant is the sole "current land owner" of the lot. Detailed information would be deposited at the meeting for Members' inspection.

4. Assessment Criteria

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

5. Previous Application

- 5.1 The Site is the subject of a previous planning application No. A/NE-LK/134 for Small House development submitted by the same applicant. That application was rejected by the Committee on 18.12.2020 mainly on considerations which land was still available within the "V" zone of Ma Tseuk Leng for Small House development.

- 5.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6. Similar Applications

- 6.1 There are 49 similar applications involving 37 sites for Small House development within/partly within the “AGR” zone in the vicinity of the Site in the Luk Keng and Wo Hang area since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 35 were considered before the cautious approach being adopted by the Board in August 2015. 32 were approved mainly on considerations that the applications generally complied with the Interim Criteria. Three applications (No. A/NE-LK/78, 92 and 93) straddling “AGR” and “Green Belt” (“GB”) zones were rejected mainly on the grounds that the proposed Small Houses did not comply with the Interim Criteria and TPB PG-No. 10 on application 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 since August 2015, 14 applications were considered. Seven applications (No. A/NE-LK/106, 107, 109, 111, 112, 138 and 139) were approved by the Committee between December 2016 and September 2021 mainly for the reason of being the subject of previously approved applications submitted by the same applicants. The remaining seven applications (No. A/NE-LK/114 to 117, 121, 122 and 135) were rejected by the Board on review or by the Committee between November 2018 and July 2021 mainly on similar grounds that the application did not comply with the Interim Criteria in that the proposed development would cause drainage and landscape impacts on the surrounding areas; and land was still available within the “V” zone of Ma Tseuk Leng for Small House development. An appeal regarding the rejected application No. A/NE-LK/114 located to the northeast of the Site (**Plan A-2a**) was dismissed by the Town Planning Appeal Board on 9.8.2021.
- 6.4 Details of the similar applications are summarised at **Appendix IV**.

7. The Site and its 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 Site is:
- (a) vacant, fenced off and covered with overgrown grasses;
 - (b) located in close proximity to the village cluster of Ma Tseuk Leng San Uk Ha; and
 - (c) accessible via a local road connecting to Sha Tau Kok Road – Wo Hang (**Plan A-2a**).
- 7.2 The surrounding areas have the following characteristics:
- (a) to the immediate north are two village houses, while to the further north are one of the sites of an approved Small House application no. A/NE-LK/79, vacant land and some storage uses;

- (b) to the east are active/fallow agricultural land, and to the further northeast is the village cluster of Ma Tseuk Leng San Uk Ha within the “V” zone;
- (c) to the immediate south is one of the sites of an approved Small House application no. A/NE-LK/79, over which are fallow agricultural land, vacant land and Sha Tau Kok Road – Wo Hang; and
- (d) to the west across the local road are two village houses, fallow agricultural land and vacant land.

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 application has been assessed against the assessment criteria at **Appendix II**. The assessment is summarised in the following table:

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|---|-------------------|------------------|--|
| 1. | Within “V” zone? - The Site - Footprint of the proposed Small House | - - | 100% 100% | - The Site and footprint of the proposed Small House fall entirely within the “AGR” zone. |
| 2. | Within “VE”? - The Site - Footprint of the proposed Small House | 100% 100% | - - | - DLO/N, LandsD advises that the footprint of the proposed Small House falls within the “VE” of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong. |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|---|------------|-----------|---|
| 3. | Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)? | | ✓ | <u>Land Required</u> - Land required to meet the Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 14.01 ha (equivalent to 563 Small House sites). The outstanding Small House applications for the village cluster is 45 ³ while the 10-year Small House demand forecast for the same villages is 518. |
| | Sufficient land in “V” zone to meet outstanding Small House application? | ✓ | | <u>Land Available</u> - Land available to meet the Small House demand within the “V” zone of the village cluster: about 2.27 ha (equivalent to 90 Small House sites) (Plan A-2b). |
| 4. | Compatible with the planning intention of “AGR” zone? | | ✓ | - Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently abandoned. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access is available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. Since the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view. |
| 5. | Compatible with surrounding area/ development? | ✓ | | - The proposed development is not incompatible with the surrounding areas predominated by fallow/active agricultural land, tree groups and village houses (Plan A-2a). |
| 6. | Within Water Gathering Grounds (WGGs)? | | ✓ | - Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application. |
| 7. | Encroachment onto planned road networks and public works boundaries? | | ✓ | |

² 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.

³ Among the 45 outstanding Small House applications, 20 of them fall within the “V” zone and 25 straddle or outside the “V” zone. For those 25 applications straddling or outside the “V” zone, 8 of them have obtained valid planning approval from the Board.

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|--|-------------------|------------------|---|
| 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 application. The applicant is reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. |
| 9. | Traffic impact? | ✓ | | - Commissioner for Transport (C for T) considers that the application only involving development of one Small House can be tolerated on traffic grounds. |
| 10. | Drainage impact? | ✓ | | - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required for the application. |
| 11. | Sewage impact? | | ✓ | - Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution. |
| 12. | Landscaping impact? | | ✓ | - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning perspective. Significant adverse landscape impact arising from the developments is not anticipated. |
| 13. | Local objection conveyed by DO? | | ✓ | - District Officer (North) (DO(N)) advises that the Resident Representative (RR) of Ma Tseuk Leng Ha supports the application on the consideration that the indigenous villager is entitled to build a three-storey Small House and no traffic impact is envisaged. The Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Council member of the subject Constituency have no comment on the application. The Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng Ha objects the application on the grounds that the proposed development would cause adverse drainage and traffic impact. |

- 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) DLO/N, LandsD;
- (b) C for T;
- (c) DEP;
- (d) CE/C, WSD;
- (e) CTP/UD&L, PlanD;
- (f) CE/MN, DSD;
- (g) D of FS;
- (h) DAFC; and
- (i) DO(N), HAD.

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

On 10.5.2022, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Kadoorie Farm and Botanic Garden Corporation and two individuals object to the application 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; and congested living environment would cause traffic and environmental impacts to the surrounding areas as well as pose fire and health risks to the local villagers.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House on the Site zoned “AGR” on the OZP. 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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 The Site is situated in an area of rural landscape character characterised by fallow/active agricultural land, tree groups and village houses. The proposed Small House development is not entirely incompatible with the surrounding environment (**Plan A-3**). CTP/UD&L, PlanD has no objection to the application as significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. C for T considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed development involves construction of one Small House only, the application 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 application.
- 11.3 Regarding the Interim Criteria (**Appendix II**), according to DLO/N, LandsD, the number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 45 while the 10-year Small House demand forecast for the same village cluster is 518. Based on PlanD’s latest estimates, about 2.27 ha (equivalent to 90 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). 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 563 Small Houses, it is sufficient to

accommodate the 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 infrastructures and services.

- 11.4 The Site is the subject of a previously rejected planning application (No. A/NE-LK/134) for a Small House submitted by the same applicant as detailed in paragraph 5.1 above. There has been no major changes in planning circumstances after the last application No. A/NE-LK/134 being rejected.
- 11.5 There are 22 similar applications for Small House development in the vicinity of the Site (**Plan A-2a**). Of them, 17 applications within “AGR” zone were approved by the Committee between 2000 and 2015 (i.e. before the adoption of a more cautious approach by the Board) mainly on the grounds of compliance with the Interim Criteria. After the adoption of more cautious approach, only one application (No. A/NE-LK/109) to the southwest of the Site was approved by the Committee in 2017 for reason of being the subject of a previously approved application (No. A/NE-LK/30). The remaining four applications (No. A/NE-LK/114 to 117) located to the north and east of the Site within “AGR” zone were rejected by the Committee or the Board on review between November 2018 and February 2019 for reasons mentioned in paragraph 6.3. It is considered that the planning circumstances of the current application are similar to those four rejected applications (No. A/NE-LK/114 to 117).
- 11.6 Regarding the adverse public comments against the application mentioned in paragraph 10 above, government departments’ 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 above, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “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 where land 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.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 24.6.2026, 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 condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition

- the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

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), if any, 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 3.5.2022 |
| Appendix Ia | FI received on 9.6.2022 |
| Appendix II | Relevant Interim Criteria for Consideration of Application for NTEH/ Small House in New Territories |
| Appendix III | Previous Application |
| Appendix IV | Similar Applications |
| Appendix V | Detailed Comments from Relevant Government Departments |
| Appendix VI | Public Comments |
| Appendix VII | Recommended Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Plan A-1 | Location Plan |
| Plan A-2a | Site Plan |
| Plan A-2b | 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 |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

**PLANNING DEPARTMENT
JUNE 2022**