

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LK/149 and 150

<u>Applicants</u>	: Mr. TSANG Chung Yin Mr. TSANG Yin Fai	(Application No. A/NE-LK/149) (Application No. A/NE-LK/150)
	all represented by Glister Engineering Consultants Company	
<u>Sites</u>	: Lot 1402 S.A in D.D. 39 Lot 1402 S.B in D.D. 39	(Application No. A/NE-LK/149) (Application No. A/NE-LK/150)
	all in Ma Tseuk Leng Village, Sha Tau Kok, New Territories	
<u>Site Areas</u>	: 152m ² 150m ²	(Application No. A/NE-LK/149) (Application No. A/NE-LK/150)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)	
<u>Plan</u>	: Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11	
<u>Zoning</u>	“Agriculture” (“AGR”)	
<u>Applications</u>	: Proposed House (New Territories Exempted House (NTEH) - Small House)	

1. The Proposals

1.1 The applicants, who are the indigenous villagers of Ma Tseuk Leng Village¹, are seeking planning permission to build a NTEH (Small House) on each of the application sites (the Sites) in Ma Tseuk Leng Village (**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)’ is a Column 2 use in the “AGR” zone requiring planning permission from the Town Planning Board (the Board). The Sites are currently vacant and covered with vegetation.

1.2 Details of each of the two proposed NTEHs (Small House) is as follows:

Total Floor Area	: 195.09m ²
Number of Storeys	: 3

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants are the indigenous villagers of Ma Tseuk Leng Village. Their eligibilities for Small House grants have been ascertained.

Building Height : 8.23m
Roofed Over Area : 65.03m²

- 1.3 Layouts of the proposed Small Houses (including septic tanks) are shown in **Drawing A-1** and **Drawing A-2** respectively. The applicants indicate that the uncovered areas of the Sites would be used for garden areas.
- 1.4 Each of the Sites is the subject of a previous application (No. A/NE-LK/86 and 85 respectively) submitted by the same applicant for the same use (**Plans A-1 and A-2a**), approved by the Rural and New Town Planning Committee (the Committee) on 17.10.2014. Details of the previous applications are set out in paragraph 5.1 below. Compared with the previous applications, the major development parameters and the layout of the Small Houses are generally the same as the current ones.
- 1.5 In support of the applications, the applicants have submitted Application Forms with attachments (**Appendices Ia and Ib**), which were received on 26.4.2023.

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**, and summarized as follows:

- (a) the applicants are indigenous villagers and are each entitled to a Small House grant in accordance with the Small House policy;
- (b) the Sites fall within the village ‘environs’ (‘VE’) of Ma Tseuk Leng Village. The proposed Small House developments are compatible with the surrounding environment and land uses; and
- (c) there are similar applications approved in the vicinity.

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

The applicants are the sole “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 Each of the Sites is the subject of a previously approved application (No. A/NE-LK/86 and 85 respectively) as mentioned in paragraph 1.4 above. They were approved mainly on sympathetic considerations that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within

the ‘VE’ of Ma Tseuk Leng and there was insufficient land within the “Village Type Development” (“V”) zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau at the time of consideration. Subsequently, extension of time for commencement of the approved development for each of the Sites were approved in September 2018 and August 2020 respectively. The above planning permissions lapsed on 18.10.2022.

- 5.2 Details of the previous applications are summarized at **Appendix III** and their locations are shown in **Plans A-1 and A-2a**.

6. Similar Applications

- 6.1 There have been 24 similar applications for Small House development in the vicinity of the Sites within / partly within the same “AGR” zone since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 For the 17 approved applications, 16 applications (No. A/NE-LK/25, 30, 57, 58, 59, 64, 65, 66, 67, 79, 88, 89, 90, 91, 94 and 95) were approved with conditions by the Committee between December 2000 and January 2015 (i.e. before the formal adoption of a more cautious approach since August 2015²) mainly on the grounds that more than 50% of the proposed Small House footprints fell within the ‘VE’; there was a general shortage of land within the “V” zone in meeting the Small House demand at the time of consideration; and the proposed Small House developments were not incompatible with the surrounding rural landscape character and would unlikely generate significant adverse impacts on the surrounding areas.
- 6.3 One application (A/NE-LK/109) was approved by the Committee on 10.11.2017 mainly on sympathetic consideration that the Site was the subject of a previously approved planning application (No. A/NE-LK/30) submitted by the same applicant for the same use.
- 6.4 For the seven rejected applications, two (No. A/NE-LK/92 and 93) were rejected by the Committee on 17.10.2014 (i.e. before the formal adoption of a more cautious approach since August 2015) mainly on the grounds that the application was not in line with the planning intention of the “AGR” zone and the proposed Small House did not comply 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; and the approval of the application would set an undesirable precedent for similar applications in the area.
- 6.5 The remaining five (No. A/NE-LK/114, 122, 134, 135 and 144) were rejected by the Committee between February 2019 and June 2022 after the formal adoption of a more cautious approach since August 2015, mainly on the grounds that the application was not in line with the planning intention of the “AGR” zone; and land was still available within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau where land was primarily intended for Small House Development.
- 6.6 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2a**.

² Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

7. **The Sites and Its Surrounding Areas** (Plans A-1 to A-4)

7.1 The Sites are:

- (a) vacant and covered with vegetation; and
- (b) accessible via local village access leading to the Sites from Sha Tau Kok Road – Wo Hang.

7.2 The surrounding areas are predominantly settled valley landscape character comprising village houses, tree clusters and vegetated areas.

8. **Planning Intention**

8.1 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 summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Sites - Footprints of the proposed Small Houses		100% 100%	The Sites and footprints of both proposed Small Houses fall entirely within “AGR” zone.
2.	Within ‘VE’? - The Sites - Footprints of the proposed Small Houses.	100% 100%		District Lands Office/North, Lands Department (DLO/N, LandsD) advises that the Sites and the footprints of both proposed Small Houses fall entirely within the ‘VE’ of Ma Tseuk Leng.

	<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 applications plus 10-year Small House demand)?		✓	<u>Land Required</u> Land required to meet the Small House demand in Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster ³ : about 13.8 ha ⁴ (equivalent to 551 Small House sites). The number of outstanding Small House applications for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster is 33 ⁵ while the 10-year Small House demand forecast for the same village cluster is 518.
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		<u>Land Available</u> Land available to meet the Small House demand within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster: about 1.7 ha ⁶ (equivalent to 69 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) does not support the applications from agricultural point perspective as the Sites possess potential for agricultural rehabilitation. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water sources are also available. The Sites can be used for agricultural activities such as greenhouses and plant nurseries, etc.
5.	Compatible with surrounding area/ development?	✓		The proposed Small Houses are not incompatible with the surrounding areas predominated by village houses.
6.	Within Water Gathering Grounds (WGGs)?		✓	Chief Engineer/Construction, Water Supplies (CE/C, WSD) has no objection to the applications.

³ As advised by DLO/N, LandsD, the Sites fall within the coverage of Ma Tseuk Leng Village under Small House grant applications.

⁴ The land required to meet Small House demand in Ma Tseuk Leng & San Uk Ha Villages is 4.15 ha (equivalent to 166 Small Houses sites) while that of Shek Kiu Tau is 9.63 ha (equivalent to 385 Small House sites).

⁵ Among the 33 outstanding Small House applications, 14 of them fall within the “V” zone and 19 straddle or outside the “V” zone. For those 19 applications straddling or being outside the “V” zone, 2 of them have obtained valid planning approval from the Board.

⁶ Ma Tseuk Leng and San Uk Ha shares the same ‘VE’ while Shek Kiu Tau has its own ‘VE’ without overlapping with one another. As the three villages are located within the same “V” zone, the total number of outstanding Small House applications for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster (i.e. 33) is adopted for assessment against the land availability within the “V” zone (i.e. 1.7 ha or equivalent to 69 Small Houses sites).

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 developments should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed developments is 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, each application only involving the construction of one Small House can be tolerated unless it is 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.
11.	Sewage impact?		✓	Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
12.	Landscape impact?		✓	Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from landscape planning perspective. Significant adverse impact arising from the proposed developments is not anticipated.
13.	Local objection conveyed by DO?	✓		<p>District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals.</p> <p>The Indigenous Inhabitant Representative (IIR) and The Resident Representative (RR) of Ma Tseuk Leng Ha object to the application mainly on the grounds that the Sites are not within “V” zone and there are no supporting facilities for drainage and sewerage.</p> <p>The Chairman of Sha Tau Kok District Rural Committee and the incumbent North District Councilor of N16 Constituency have no comment on the applications.</p>

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) CTP/UD&L, PlanD;
- (e) CE/MN, DSD;
- (f) DAFC;
- (g) D of FS; and
- (h) DO(N), HAD.

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

On 5.5.2023, the applications were published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the applications. The Kadoorie Farm and Botanic Garden Corporation objects to the applications mainly on the grounds that the proposed use is not in line with the planning intention of AGR zone; and land is still available within “V” zone to meet the future Small House demand.

11. Planning Considerations and Assessments

- 11.1 These applications are for a proposed Small House on each of the Sites, which fall entirely within “AGR” zone on the OZP. The proposed developments are 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 applications from the agricultural development point of view as the Sites possess potential for agricultural rehabilitation. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. The Sites can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc.
- 11.2 The Sites are situated in an area of settled valleys landscape character comprising village houses, vegetation area and clusters of tree groups. The proposed Small Houses are not incompatible with the surrounding environment. CTP/UD&L of PlanD has no objection to the applications as significant adverse landscape impact arising from the proposed developments 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 each application involves one Small House only, the applications could be tolerated from traffic impact perspective. Other relevant government departments consulted, including DEP, CE/C of WSD, CE/MN of DSD and D of FS, have no objection to or no comment on the applications.
- 11.3 Regarding the Interim Criteria, according to DLO/N of LandsD, the number of outstanding Small Houses for Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster is 33 while the 10-year Small House demand forecast is 518. Based on PlanD’s latest estimate, about 1.7 ha (equivalent to 69 Small House sites) is available within the “V” zone concerned. While the amount of land available within the “V” zone of Ma Tseuk Leng & San Uk Ha and Shek Kiu Tau village cluster is insufficient to fully meet the future Small House demand, it is sufficient to accommodate the outstanding Small House applications (**Plan A-2b**). It should be noted that the Board has formally adopted a more cautious approach in approving applications for Small House development since August 2015. 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 development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. Nevertheless, each of the Sites (No. A/NE-LK/149 and 150) is the subject of a previously approved application (No. A/NE-LK/86 and 85 respectively) submitted by the same applicant for the same use. Compared with the previous applications, the major development parameters and footprints of the proposed Small Houses under the current applications are generally the same. Furthermore, as advised by DLO/N, the applications for Small House Grant for the Sites have been approved in late 2022 but yet to be executed. In this regard, sympathetic consideration might be given to the applications.
- 11.4 There are 24 similar applications for Small House developments in the vicinity of the Sites. Among them, six were considered after the Board’s formal adoption of a more cautious approach. One (No. A/NE-LK/109) was approved by the Committee on 10.11.2017 mainly on sympathetic consideration that the Site is the subject of a previous planning application submitted by the same applicant for the same use. The remaining five were rejected by the Committee between February 2019 and June 2022 mainly on the grounds that the application was not in line with the planning intention

of the “AGR” zone; and land still available within the “V” zone. The planning circumstances of the current applications are similar to that of the approved application.

- 11.5 Regarding the local objections conveyed by DO(N) of HAD in paragraph 9.1 and the public comments in paragraph 10, the 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, the Planning Department has no objection to the applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that the permissions shall be valid until 23.6.2027, and after the said date, the permissions 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 a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses for each of the applications are attached at **Appendix VII**.

- 12.3 Alternatively, should the Committee decide to reject the applications, the following reason for rejection is suggested for Members’ reference:
- 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.

13. Decision Sought

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant the permissions.
- 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 permissions, and the date when the validity of the permissions 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

Appendices Ia and Ib	Application Forms with Attachments received on 26.4.2023
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan of No. A/NE-LK/149
Drawing A-2	Proposed Layout Plan of No. A/NE-LK/150
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within the “V” zone of Ma Tseuk Leng Village & San Uk Ha and Shek Kiu Tau
Plan A-3	Aerial Photo
Plan A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2023**