

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LYT/758 and 759

Applicants : (i) Mr. CHAN Tsz Hong (Application No. A/NE-LYT/758)
(ii) Mr. TANG Ping Kwai (Application No. A/NE-LYT/759)
Both represented by Mr. YIP Tin Sang as power of attorney

Sites : (i) Lot 1770 S.A RP (Application No. A/NE-LYT/758)
(ii) Lot 1770 S.E (Application No. A/NE-LYT/759)
All in D.D. 76, Leng Pei Tsuen, Fanling, New Territories

Site Areas : (i) 142.4 m² (about) (Application No. A/NE-LYT/758)
(ii) 148.3 m² (about) (Application No. A/NE-LYT/759)

Lease : - Block Government Lease (demised for agricultural use)

Application No. A/NE-LYT/758

- The subject site is covered by Modification of Tenancy (MOT) Nos. 32475 and 32859 for dwelling and kitchen (and shade for MOT No. 32859 only) uses; and
- Letter of Approval No. L730 for chicken shed use

Plan : Draft Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan No. S/NE-LYT/18

Zoning “Agriculture” (“AGR”)

Applications : Proposed House (New Territories Exempted House (NTEH) - Small House) on each of the application sites

1. The Proposals

- 1.1 The applicants, who claim themselves as indigenous villagers of Leng Pei Tsuen and Hok Tau Wai¹, seek planning permission to build a NTEH (Small House) on each of the application sites (the Sites) which fall within “AGR” zone on the OZP (**Plans A-1 and A-2a**). 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 “AGR” zone requiring planning permission from the Town Planning Board (the Board).

¹ According to District Lands Officer/North, Lands Department, the applicants’ eligibility for Small House concessionary grants has yet to be ascertained.

1.2 Details of each 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 The applicants indicate that the uncovered area of the Sites would be used as garden. Layouts of the two proposed Small Houses under applications No. A/NE-LYT/758 and 759 (including septic tanks) are shown on **Drawings A-1** and **A-2** respectively.

1.4 In support of the applications, the applicants have submitted the following documents:

- (a) Application Forms with attachments received on (**Appendices Ia** and **Ib**) 7.1.2022; and
- (b) Supplementary Information (SI) received on (**Appendices Ic** and **Id**) 12.1.2022.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed in the Supplementary Information at **Appendices Ic** to **Id** and summarized as follows:

- (a) the applicants are indigenous villagers;
- (b) the Sites are within “AGR” zone and have been vacant for years; and
- (c) the Sites are the only available land owned by their families for Small House development.

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 Application

There is no previous application for the Sites.

6. Similar Applications

- 6.1 There are 48 similar applications for Small House development within / partly within the “AGR” zone in the close vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000. Of them, 23 applications were approved between 2006 and 2014 (i.e. before the adoption of a more cautious approach by the Board) and the remaining 25 applications (No. A/NE-LYT/579 to 581, 584, 585, 589, 648, 649, 653 to 661, 663, 673, 675, 676, 724, 728, 729 and 753) were approved between 2015 and 2021 after the adoption of a more cautious approach by the Board mainly on the 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’ and there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand.
- 6.2 Details of these applications are summarized at **Appendix III** and the locations of similar applications in the vicinity are shown on **Plan A-2a**.

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 occupied by dilapidated structures and covered by grass;
 - (b) accessible by a local track.
- 7.2 The surrounding areas are predominately rural in character intermixed with village houses, sites approved for Small Houses, vacant structures, active/fallow agricultural land, vacant land and tree groups. A life building centre is located to the south of the Sites within the “Government, Institution or Community” zone. To the further northeast are village proper of Leng Pei Tusen and Ma Mei Ha Leng Tsui.

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	-	100%	The Sites and the proposed Small House footprints fall entirely within “AGR” zone.
	- Footprints of the proposed Small	-	100%	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Houses			
2.	Within 'VE'?			
	- The Sites	100%	-	District Lands Office/North, Lands Department (DLO/N, LandsD) advises that the Sites fall within the 'VE' of Leng Pei Tsuen and Ma Mei Ha Leng Tsui.
	- Footprints of the proposed Small Houses	100%	-	
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 Leng Pei Tsuen and Ma Mei Ha Leng Tsui: about 4.55 ha (equivalent to 182 Small House sites). The outstanding Small House applications for Leng Pei Tsuen and Ma Mei Ha Leng Tsui are 50 ² while the 10-year Small House demand forecast for Leng Pei Tsuen and Ma Mei Ha Leng Tsui is 132.
	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 Leng Pei Tsuen and Ma Mei Ha Leng Tsui: about 0.8 ha (equivalent to 32 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of "AGR" zone?		✓	The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Sites are currently occupied by some temporary structures. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Sites can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Sites possess potential for agricultural rehabilitation, the applications are not supported from agricultural point of view.
5.	Compatible with surrounding area/development?	✓		The proposed Small Houses are not incompatible with the surrounding rural inland plain landscape character comprising village houses, farmlands, vegetated areas, clustered tree groups and woodland. Significant landscape impact by the proposed use is not anticipated (Plan A-2a).

² Among the 50 outstanding Small House applications, 7 of them fall within the "V" zone and 43 straddle or outside the "V" zone. For those 43 applications straddling or being outside the "V" zone, 31 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within Water Gathering Grounds (WGGs)?		✓	
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?	✓		<ul style="list-style-type: none"> - 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 developments 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. - Notwithstanding the above, the applications only involve construction of two Small Houses. She considers that the applications can be tolerated unless being rejected on other grounds.
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.
11.	Sewage impact?		✓	The Director of Environmental Protection (DEP) advises that in view of small scale of the proposed developments, the applications alone are unlikely to cause major pollution.

	Criteria	Yes	No	Remarks
12.	Landscaping impact?		✓	The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from landscape planning perspective. Significant landscape impact by the proposed use is not anticipated. The proposed developments are considered not incompatible with the surrounding environment.
13.	Local objection conveyed by DO?	✓		District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals. The Resident Representative (RR) of Leng Tsui objects to the applications on the grounds that the applicants are not indigenous villagers; the proposed developments would cause potential hygiene problem, environmental pollution and flooding. The Chairman of Fanling District Rural Committee has no comment on the applications. The North District Council member of the subject constituency, the Chairman of Lung Shan Area Committee, the Indigenous Inhabitant Representative (IIR) of Leng Tsui did not respond.

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Detailed comments from government departments are at **Appendix IV**.

- (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
- (h) CE/C, WSD; and
- (i) DO(N), HAD.

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

On 14.1.2022, the applications were published for public inspection. During the statutory public inspection period, three public comments were received for each application. While the Fanling District Rural Committee indicates no comment on the applications, the remaining two comments from two individuals raise objection to both applications mainly on the grounds that the proposed developments would cause environmental pollution; potential traffic congestion and fire risk; and not in line with the vision of Northern Metropolis Development Strategy.

11. Planning Considerations and Assessments

- 11.1 The applications are for proposed Small House developments at the Sites falling wholly within “AGR” zone on the OZP. The proposed Small House developments are not in line with the planning intention of the “AGR” zone which is intended 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. As the Sites possess potential for agricultural rehabilitation, DAFC does not support the applications from the agricultural development point of view.
- 11.2 Regarding the Interim Criteria, the footprints of the proposed Small Houses fall entirely within the ‘VE’ of Leng Pei Tsuen and Ma Mei Ha Leng Tsui. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Leng Pei Tsuen and Ma Mei Ha Leng Tsui are 50 while the 10-year Small House demand forecast for the same villages are 132. According to PlanD’s latest estimate, about 0.8 ha (equivalent to 32 Small House sites) of land are available in the “V” zone of Leng Pei Tsuen and Ma Mei Ha Leng Tsui for Small House development, and such available land (i.e. about 0.8 ha or equivalent to 32 Small House sites) within “V” zone is insufficient to meet the 50 outstanding Small House applications. As such, the applications generally comply with the Interim Criteria as the proposed Small House footprints fall wholly within the ‘VE’ and there is a general shortage of land within the “V” zone in meeting the Small House demand. Besides, the Sites are surrounded by existing village houses and similar applications approved for Small Houses, the implementation of which are forming a new village cluster in the locality (**Plan A-2a**). It should be noted that, as advised by DLO/N of LandsD, each of the Sites is subject to a Small House grant application currently being processed by LandsD. In this regard, sympathetic consideration might be given to the applications.
- 11.3 The Sites, located to the southwest of the “V” zone of the Leng Pei Tsuen and Ma Mei Ha Leng Tsui, are occupied by dilapidated structures and covered by grass. The proposed Small Houses are not incompatible with the surrounding rural inland plain landscape character dominated by village houses, active/fallow agricultural land, vacant land and cluster of tree groups. Significant landscape impact on existing landscape resources arising from the applications is not anticipated. CTP/UD&L, PlanD has no objection to the applications from landscape planning perspective. 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 only two Small Houses, the applications could be tolerated. Other relevant government departments, including DEP, CE/MN of DSD, D of FS and CE/C, WSD, have no adverse comment on/no objection to the applications.
- 11.4 As shown on **Plan A-2a**, all the 48 similar applications for Small House development in close proximity to the Sites were approved by the Committee. Among them, 25 applications were approved between 2015 and 2021 after the adoption of a more cautious approach mainly on the 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’ and there was a general shortage of land within the “V” zone of the same village. The planning circumstances of the current applications are similar to these approved applications.
- 11.5 Regarding 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 local views conveyed by DO(N) of HAD and 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 each of the permissions shall be valid until 4.3.2026, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are 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 are attached at **Appendix VI**.

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

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. 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 to Ib	Application Forms with attachments received on 7.1.2022
Appendices Ic to Id	Replacement Pages for Application Forms received on 12.1.2022
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the "AGR" Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses

Drawings A-1 to A-2	Layout Plans
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the “V” zone of Leng Pei Tsuen and Ma Mei Ha Leng Tsui for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

PLANNING DEPARTMENT
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