

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/764

Applicant : Mr. TANG Jed Martin represented by Mr. YIP Tin Sang

Site : Lot 162 S.C. ss.3 in D.D. 46, Ma Mei Ha, Fanling, New Territories

Site Area : 195.4 m² (about)

Lease : Block Government Lease (demised for agricultural use)

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

Zoning : “Agriculture” (“AGR”)

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

1. The Proposal

1.1 The applicant, who claims himself as an indigenous villager of Ma Mei Ha¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) which falls within the “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 within 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 The uncovered area of the Sites would be used as a garden. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

1.4 In support of the application, the applicant has submitted the following documents:

(a) Application Form with attachments received on (**Appendix I**)

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

17.5.2022

- (b) Supplementary Information (SI) received on (Appendix Ia)
19.5.2022

2. Justifications from the Applicant

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

- (a) the applicant is an indigenous villager of Ma Mei Ha; and
- (b) the Site is located within “AGR” zone and has been vacant for years.

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

The applicant is the “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 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 Site.

6. Similar Applications

- 6.1 There are 20 similar applications involving 11 sites within the “AGR” zone to the north of the Site in the Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000. Except for applications No. A/NE-LYT/756 and 757, all other applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board in 2012 or 2017. Of them, 9 applications were approved by the Committee in January 2012 (i.e. before the adoption of a more cautious approach by the Board since August 2015) mainly on consideration 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 village ‘environs’ (‘VE’) of Ma Mei Ha and there was a general shortage of land in meeting the Small House demand at the time of consideration. The remaining 9 applications (No. A/NE-LYT/617 to 623, 633 and 634) were approved in April or September 2017 after the adoption of a more cautious approach by the Board mainly on sympathetic consideration as the application sites were subject to previously approved applications, notwithstanding that the land available within the “V” zone was capable of meeting the outstanding applications at the time of consideration.

- 6.2 The remaining two applications (No. A/NE-LYT/756 and 757) to the immediately north of the Site were rejected by the Committee on 4.3.2022 mainly on the grounds that land was still available in the “V” zone of Ma Mei Ha for Small House development.
- 6.3 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 Site and Its Surrounding Areas (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photo on Plan A-4)

7.1 The Site is:

- (a) overgrown with grass;
- (b) located to the west of the “V” zone of Ma Mei Ha; (**Plan A-1**); and
- (c) accessible by a local track leading to Sha Tau Kok Road – Ma Mei Ha (**Plan A-2a**).

7.2 The surrounding areas have the following characteristics:

- (a) a rural inland plain landscape character dominated by village houses, active/fallow agricultural land, vacant land and tree clusters;
- (b) to the immediate north is a vacant land; further north is a plant nursery. To the further north across Sha Tau Kok Road – Ma Mei Ha is mainly active/fallow agricultural land;
- (c) to the east and southeast across the local track is active/fallow agricultural land; to the further east is the village proper of Ma Mei Ha; and
- (d) to the immediate west and south are warehouses and fallow agricultural land 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 application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	Criteria	Yes	No	Remarks
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	The Site and footprint of the proposed Small House fall within an area zoned “AGR”.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	74.3% 100%	25.7% -	District Lands Office/North, Lands Department (DLO/N, LandsD) advises that more than 50% of the Site falls within the ‘VE’ of Ma Mei Ha.
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 Mei Ha: about 2.53 ha (equivalent to 101 Small House sites). The outstanding Small House applications for Ma Mei Ha are 19 ² while the 10-year Small House demand forecast for the same village is 82.
	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 Ma Mei Ha: about 1.34 ha (equivalent to 53 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 Site is abandoned. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available in the vicinity of the Site, which can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the development proposal falling within the "AGR" zone is not supported from agricultural perspective.
5.	Compatible with surrounding area/ development?	✓		The proposed Small House is not incompatible with the surrounding rural inland plain landscape character

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

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				comprising village houses, vacant land and clusters of tree groups (Plan A-2a).
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 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 Small House development should be confined within the "V" zone as far as possible but given that the proposed development involves only one Small House, the application could be tolerated.
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 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 landscape planning perspective. Significant adverse impact on existing landscape resources arising from the proposed use is not anticipated. The proposed development is considered not incompatible with the surrounding environment.

	Criteria	Yes	No	Remarks
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 Ma Mei Ha objects to the application mainly on the grounds that the applicant may not be an indigenous villager; and the proposed development would cause adverse drainage impact. The Chairman of Lung Shan Area Committee has no comment. Other consultees, including the Chairman of Fanling District Rural Committee (FDRC), the incumbent North District Councilor of N18 Constituency, the Indigenous Inhabitant Representative and RR of Leng Tsui did not reply.

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 24.5.2022, the application was published for public inspection. During the statutory public inspection period, 4 public comments were received. While the FDRC indicates no comment on the application, one comment from an individual raises objection to the application mainly on the grounds that the proposed development would cause environmental pollution; potential traffic congestion and fire risk. The remaining two comments from Kadoorie Farm and Botanic Garden and an individual express concerns about the deviation of the application from the planning intention of “AGR” zone and availability of land within the “V” zone for Small House development.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed Small House development at the Site falling within “AGR” zone on the OZP. The proposed Small House development is 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 Site possesses potential for agricultural rehabilitation,

DAFC does not support the application from the agricultural development point of view.

- 11.2 The Site, situated to the west of the “V” zone of Ma Mei Ha, is overgrown with grass. The proposed Small House is not incompatible with the surrounding rural inland plain landscape character dominated by village houses, active/fallow agricultural land, vacant land and tree clusters. Significant landscape impact on existing landscape resources arising from the application is not anticipated. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. 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 only one Small House, the application 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 application.
- 11.3 Regarding the Interim Criteria, the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Mei Ha. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Mei Ha is 19 while the 10-year Small House demand forecast for the same village is 82. According to PlanD’s latest estimate, about 1.34 ha (equivalent to 53 Small House sites) of land are available in the “V” zone of Ma Mei Ha for Small House development. While land available within the “V” zone is insufficient to fully meet the future Small House demand of 101 Small Houses, such available land (about 1.34 ha or equivalent to 53 Small House sites) is capable of meeting the 19 outstanding Small House applications (**Plan A-2b**). 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 development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.
- 11.4 As shown on **Plan A-2a**, 9 sites for Small House development to the north of the Site were approved in 2017 (No. A/NE-LYT/617 to 623, 633 and 634) after the adoption of a more cautious approach mainly on sympathetic consideration as these application sites were subject to previously approved applications. The remaining two applications (No. A/NE-LYT/756 and 757) to the immediately north of the Site were rejected in March 2022 mainly on the grounds that land was still available in the “V” zone of Ma Mei Ha for Small House development. It is considered that the planning circumstances of the current application are similar to the recent rejected applications.
- 11.5 Regarding the local and public comments in paragraphs 9.1 and 10 above respectively, 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 the DO(N) of HAD in paragraph 9.1 and public comments mentioned in paragraph 10, 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 Mei Ha 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 15.7.2026, 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 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**.

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 17.5.2022
Appendix Ia	SI received on 19.5.2022
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
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 Mei Ha for Small House Development

Plan A-3

Plan A-4

Aerial Photo

Site Photo

PLANNING DEPARTMENT

JULY 2022