

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/765

- Applicant** : Mr. WONG Wai Kou Joseph represented by Mr. LEE Wai Leung
- Site** : Lot 1778 S.A in D.D. 76, Ma Mei Ha Leng Tsui, Fanling, New Territories
- Site Area** : About 284 m²
- Land Status** : 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, an indigenous villager of Kwai Tau Leng of Fanling Heung¹, seeks planning permission to build a NTEH (Small House) at the application site (the Site) in Ma Mei Ha Leng Tsui, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the draft Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/18. 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 the “AGR” zone is a Column 2 use 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 a septic tank) is shown on **Drawing A-1**. According to the applicant, the uncovered area of the Site would be used as a garden of the proposed Small House.

1.4 The Site is the subject of a previous application (No. A/NE-LYT/581) for Small House development submitted by the same applicant, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2015. The planning

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant of the proposed Small House is an indigenous villager of Kwai Tau Leng of Fanling Heung.

permission lapsed in 2019. Compared with the previous application, major development parameters, including the site area and the general layout of the proposed Small House, remain unchanged.

- 1.5 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**) which was received on 14.6.2022.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form with attachments at **Appendix I** as summarised below:

- (a) the Site is the subject of a previous planning application (No. A/NE-LYT/581) approved by the Board;
- (b) the applicant is away from Hong Kong in the midst of pandemic and is unable to handle the application personally; and
- (c) since the planning permission has lapsed, a fresh planning application is therefore submitted for consideration.

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

The applicant is the sole “current land owner”. 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

- 5.1 The Site is the subject of a previous application (No. A/NE-LYT/581) for the Small House development submitted by the same applicant as the current application. The application was approved by the Committee on 6.11.2015 on consideration that it was in line with the Interim Criteria as the footprint of the Small House fell entirely within the village ‘environs’ (‘VE’) and there was a general shortage of land within the “Village Type Development” (‘V’) zone of the same village in meeting the Small House demand. The applicant has complied with the relevant approval conditions in relation to the submission of drainage and landscape proposals before the expiry of the planning permission in November 2019. As advised by DLO/N, the Small House application was approved in 2017 pending the execution of the building licence.
- 5.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plan A-2a**.

6. Similar Applications

- 6.1 There are 57 similar applications for Small House development within/partly within the “AGR” zone in the vicinity of the Site in Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000. Among them, 30 applications were approved by the Committee between 2003 and 2014 (i.e. before the adoption of a more cautious approach by the Board) and the remaining 27 applications were approved between 2015 and 2022 (i.e. after the Board’s adoption of a more cautious approach) on consideration that they 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; not incompatible with the surrounding rural and village environment; no significant adverse impact on the surrounding area; and previous/similar applications were approved by the Committee.
- 6.2 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-2a**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

- 7.1 The Site is:
- (a) vacant land largely covered with grass/trees and partly formed/paved;
 - (b) located to the west of the village proper of Ma Mei Ha Leng Tsui; and
 - (c) accessible from Sha Tau Kok Road – Ma Mei Ha via a local track.
- 7.2 The surrounding areas have the following characteristics:
- (a) predominantly rural character where village houses and active/fallow agricultural land are found;
 - (b) to the north are fallow agricultural land and vacant land covering the sites of approved Small House developments, and further north are some existing Small Houses;
 - (c) to the east is vacant land covering the sites of some approved Small House applications;
 - (d) to the south are vacant land and some existing village houses; and
 - (e) to the west is mainly active/fallow agricultural 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 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 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 entirely within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. |
| 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 Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 4.53 ha (equivalent to 181 Small House sites). The outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster are 49 ² while the 10-year Small House demand forecast for the same village cluster is 132. |
| | 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 Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 0.79 ha (equivalent to 31 Small House sites) (Plan A-2b). |

² Among the 49 outstanding Small House applications, 7 of them fall within the “V” zone and 42 straddle or outside the “V” zone. For those 42 applications straddling or being outside the “V” zone, 21 of them have already obtained valid planning approval from the Board.

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|--|------------|-----------|--|
| 4. | Compatible with the planning intention of “AGR” zone? | | ✓ | - The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently vacant. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view. |
| 5. | Compatible with surrounding area/ development? | ✓ | | - The Site is located to the west of Ma Mei Ha Leng Tsui and the proposed Small House is not incompatible with the surrounding rural setting and environment dominated by village houses, cluster of trees and vegetated areas (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)? | | ✓ | - The Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘NTEH – A Guide to Fire Safety Requirements’ published by LandsD. |
| 9. | Traffic impact? | ✓ | | - The Commissioner for Transport (C for T) has reservation on the application 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 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. |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|----------------------------------|------------|-----------|--|
| | | | | - Notwithstanding the above, the application involves construction of one Small House. It is considered that the application can be tolerated unless it is rejected on other grounds. |
| 10. | Drainage impact? | ✓ | | - The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the implementation of the drainage proposal accepted under the previous application is required. |
| 11. | Sewerage impact? | | ✓ | - The 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? | | ✓ | <ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning point of view. - The Site is situated in an area of rural landscape character surrounded by village houses, cluster of trees and vegetated areas. The proposed use is considered not incompatible with the surrounding environment. Significant adverse impact on existing landscape resources arising from the development is not anticipated. - Should the application be approved, the approval condition for the implementation of the landscape proposal accepted under the previous application should be included. |
| 13. | Local objections conveyed by DO? | ✓ | | - District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of Lung Shan Area Committee has no comment on the application. The Chairman, the First Vice-Chairman and the Vice-Chairman of Fanling District Rural Committee (FDRC) object to the application mainly on the grounds of adverse traffic impact, risk of flooding and environmental pollution and affecting |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|--|-----------------|------------|-----------|---|
| | | | | the living quality of villagers. The North District Council Member of the subject constituency and the Indigenous Inhabitant Representative and Resident Representative of Leng Tsui did not reply. |

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Details of 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) D of FS;
- (g) DAFC;
- (h) DO(N), HAD; and
- (i) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

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

On 21.6.2022, 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. The Chairman, the First Vice-Chairman and the Vice-Chairman of FDRC object to the application mainly on grounds of adverse traffic impact, risk of flooding, environmental pollution and affecting the living quality of villagers.

11. Planning Consideration and Assessments

- 11.1 The application is for a proposed Small House at the Site zoned “AGR” on the OZP. The proposed Small House development is considered not in line with the planning intention of the “AGR” zone as set out in paragraph 8 above. DAFC does not support the application from agricultural point of view, as the Site possesses potential for agricultural rehabilitation.
- 11.2 The Site, located to the west of the existing village cluster of Ma Mei Ha Leng Tsui, is currently vacant, largely covered with grass/trees, and partly formed/paved. The proposed Small House development is not incompatible with the surrounding environment, which is predominantly rural in character occupied by the existing village houses, fallow/active agricultural land, vacant land and tree clusters. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. C for T has reservation on the application and considers that the 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 CE/MN, DSD, D of FS and CE/C, WSD, have no adverse comment on or no objection to the application.

- 11.3 Regarding the Interim Criteria, DLO/N of LandsD advises that the number of outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster is 49 while the 10-year Small House demand forecast for the same village cluster is 132. Based on the latest estimate by PlanD, about 0.79 ha of land (equivalent to 31 Small House sites) is available within the concerned “V” zone for Small House development, and such available land (i.e. 0.79 ha or equivalent to 31 Small House sites) within the “V” zone is insufficient to meet the 49 outstanding Small House applications. As such, the application generally complies with the Interim Criteria as the footprint of the Small House falls entirely within the ‘VE’ and there is a general shortage of land within the “V” zone in meeting the Small House demand. Besides, the Site is the subject of a previously approved application submitted by the same applicant for the same use. Compared with the previous application, the major development parameters and footprint of the proposed Small House are generally the same. It should be noted that advised by DLO/N, LandsD, the Small House grant application has been approved pending the execution of building licence. In this regard, sympathetic consideration might be given to the application.
- 11.4 There are 57 similar applications for Small House development in the vicinity of the Site. Among them, 27 applications were approved by the Committee between 2015 and 2022 after the Board’s adoption of a more cautious approach mainly on consideration that the applications generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small Houses fell within the ‘VE’ and there was a shortage of land within the “V” zone of the same village. The planning circumstances of the current application are similar to these approved applications.
- 11.5 Regarding the local objections as conveyed by DO(N), HAD and the public comments as detailed in paragraphs 9.1 and 10 above respectively, 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 objections and public comments in paragraphs 9.1 and 10 above respectively, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 12.8.2026, 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 conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the implementation of the drainage proposal accepted under application no. A/NE-LYT/581 to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the implementation of the landscape proposal accepted under application no. A/NE-LYT/581 to the satisfaction of the Director of Planning 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 application, 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. It is also intended 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 application and decide whether to grant or refuse to grant the permission.

13.2 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.

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

| | |
|----------------------------|--|
| Appendix I | Application form with attachments received on 14.6.2022 |
| 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 | Proposed 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 Leng Tsui and Leng Pei Tsuen for Small House development |
| Plan A-3 | Aerial photo |
| Plans A-4a & 4b | Site photos |

**PLANNING DEPARTMENT
AUGUST 2022**