

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE- LYT/809

<u>Applicants</u>	: Messrs TANG Kevin and TANG Man Fai represented by Mr HUI Kwan Yee
<u>Site</u>	: Lots 639 S.A and 639 S.B in D.D. 83, Kwan Tei, Fanling, New Territories
<u>Site Area</u>	: 361.2m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19
<u>Zonings</u>	: “Village Type Development” (“V”) (about 192.1m ² or 54.5% of the site) “Agriculture” (“AGR”) (about 160.3m ² or 45.5% of the site)
<u>Application</u>	: Proposed Two Houses (New Territories Exempted Houses (NTEHs) - Small Houses)

1. The Proposal

- 1.1 The applicants, who claim themselves as indigenous villagers of Kat O of Sha Tau Kok Heung¹, seek planning permission to build two proposed NTEHs (Small Houses) on the Site in Kwan Tei, Fanling. The Site falls within an area partly zoned “V” and partly zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, while ‘House (NTEH only)’ is always permitted within the “V” zone, such use within the “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of each of the two proposed NTEHs (Small Houses) are as follows:

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

The applicants indicate that the uncovered area of the Site would be used for garden. The layouts of the proposed Small Houses are shown on **Drawings A-1 to A-2**.

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants have to provide further information to substantiate that their indigenous villager status before the execution of the Building Licences.

- 1.3 The Site is the subject of a previously approved application submitted by the same applicants under the current application for the same use. Details of the previous application are set out in paragraph 5.1 below. Compared with the previous application, the major development parameters and layouts of the Small Houses are the same as the current one.
- 1.4 In support of the application, the applicants have submitted the Application Form with attachments received on 20.9.2023 (**Appendix I**).

2. Justifications from the Applicants

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

- the Site is the subject of a previously planning application (No. A/NE-LYT/527) approved in 2014. LandsD has not finished processing the Small House applications before the expiry of the previous planning permission in 2021, so fresh application is required.

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 Application

- 5.1 The Site is the subject of a previously approved application (No. A/NE-LYT/527) submitted by the same applicants as the current application for the same use. It was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 13.6.2014 mainly on sympathetic considerations of being in line with the Interim Criteria in that more than 50% of the proposed Small House footprints fell within the “V” zone of Kwan Tei Village and there was insufficient land within the “V” zone of the same village to meet the Small House demand at the time of consideration; there were approved Small House applications nearby; and concerned government departments had no objection to the application. Planning permission lapsed on 14.6.2021². Compared

² According to DLO/N of LandsD, the Small House grant applications were approved on 6.10.2017. Offer letters were issued on 8.9.2019 and were accepted by the applicants but building licences have yet to be executed. However, the previously approved application No. A/NE-LYT/572 has lapsed before the promulgation of Town Planning Board Guidelines No.35D Extension of Time for Commencement of Development (TPB PG-No. 35D) which is not applicable to this application.

with the previous application, the major development parameters and footprints of the proposed Small Houses under the current application are the same.

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

6. Similar Applications

- 6.1 There have been 17 similar applications for Small House development within/partly within the “AGR” zone in the 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.
- 6.2 Among them, 5 applications (No. A/NE-LYT/390, 499, 510, 517 and 553) were approved by the Committee between 2009 and 2014 before the Board’s formal adoption of a more cautious approach since August 2015³. 10 applications (No. A/NE-LYT/587, 588, 599, 603, 632, 682, 721, 722, 790 and 791) were approved by the Committee between February 2016 and February 2023, after the Board’s formal adaption of the aforementioned more cautious approach, mainly on sympathetic considerations that more than 50% of the proposed Small House footprint fell within the “V” zone or village ‘environs’ (‘VE’) of Kwan Tei Village, the application sites were in close proximity to the existing village proper of Kwan Tei Village and there were approved Small House applications nearby forming a new cluster in the locality and the scope of extending the village to the “AGR” zone to the further east was limited; and/or the sites were the subject of previous approvals.
- 6.3 Two applications (No. A/NE-LYT/399 and 400) were rejected by the Committee in 2009 mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of a recognized village; the use under applications was not in line with the planning intention of the “AGR” zone; and approval of the applications would set an undesirable precedent for similar applications in the area.
- 6.4 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2a**.

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

- 7.1 The Site is:
- (a) located to the southeast of the “V” zone of Kwan Tei and partly falling within the ‘VE’ of Kwan Tei Village; and
 - (b) currently flat and under active cultivation.
- 7.2 The surrounding areas are of rural landscape character dominated by village houses and active/fallow farmland. To the west of the Site is the village proper of Kwan Tei Village. To the north and east of the Site are fallow and active agricultural land with former Kwan Tei Public School at its further north (**Plan A-2a**).

³ Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting should be put on the number of outstanding Small House applications provided by LandsD.

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone in Lung Yeuk Tau and Kwan Tei South area 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.
- 8.2 The planning intention of the “V” zone in the Lung Yeuk Tau and Kwan Tei South area is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

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:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprints of the proposed Small Houses - Lot 639 S.A - Lot 639 S.B	54.5% 53.9% 65.6%	45.5% 46.1% 34.4%	The Site falls partly within “AGR” zone (45.5%) and partly within “V” zone (54.5%).
2.	Within ‘VE’? - The Site - Footprints of the proposed Small Houses	20.6%	79.4% 100%	DLO/N, LandsD advises that majority of the Site falls outside the ‘VE’ of Kwan Tei Village.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus		✓	<u>Land Required</u> Land required to meet the Small House demand in Kwan Tei Village: about 3.8 ha (equivalent to 153 Small House sites). The outstanding Small House

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	10-year Small House demand)?			applications for Kwan Tei Village is 43 ⁴ while the 10-year Small House demand forecast for the same village cluster is 110.
	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 Kwan Tei Village: about 2.5 ha (equivalent to about 100 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 application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. 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, greenhouses, plant nurseries, etc.
5.	Compatible with surrounding area/ development?	✓		The proposed Small Houses are not incompatible with the surrounding rural setting and environment dominated by village houses and active/fallow agricultural land (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 applicants are reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.

⁴ Among the 43 outstanding Small House applications, 25 fall within the “V” zone and 18 straddle or outside the “V” zone. For those 18 applications straddling or being outside the “V” zone, 9 of them have obtained valid planning approvals from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Traffic impact?	✓		Commissioner for Transport (C for T) 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 future. The cumulative adverse traffic impact could be substantial. Notwithstanding the above, the application involving construction of two Small Houses can be tolerated.
10.	Drainage impact?		✓	Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application.
11.	Sewage impact?		✓	Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the application 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 the landscape character and the existing landscape resources within the Site arising from the proposed use is not anticipated.
13.	Local objection conveyed by DO?		✓	District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals. One Indigenous Inhabitant Representative (IIR) of Kwan Tei supports the application while the Chairman of Fanling District Rural Committee and the Chairman of Lung Shan Area Committee have no comment. The incumbent North District Councilor of N18 Constituency, one IIR and the Resident Representative of Kwan Tei have not replied HAD.

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;
- (h) DO(N), HAD; and
- (i) Chief Highway Engineer/New Territories East, Highways Department (CE/NTE, HyD).

9.3 The following government departments have no objection to/no comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (b) Project Manager (New Territories East), Civil Engineering and Development Department.

10. Public Comment Received During Statutory Publication Period

On 29.9.2023, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment from the Chairman of Sheung Shui District Rural Committee was received indicating no comment on the application (**Appendix VI**).

11. Planning Considerations and Assessments

- 11.1 The application is for two proposed Small Houses at the Site which falls within an area partly zoned “AGR” and partly zoned “V” on the OZP. The proposed development is not in line with the planning intention of the “AGR” zone as set out in paragraph 8.1 above. DAFC does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. DAFC advises that the Sites can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.
- 11.2 The Site is located in an area of rural inland plain landscape character comprising village houses, farmland and clusters of tree groups. The village proper of Kwan Tei Village is located to the west and there are approved Small House applications in the vicinity of the Site. The proposed Small Houses are not incompatible with the surrounding areas. As significant adverse impact on the landscape character and the existing landscape resources within the Site arising from the proposed use is not anticipated, CTP/UD&L, PlanD has no objection to the application 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 application involves two Small Houses only, the application could be tolerated from traffic impact

perspective. Other relevant government departments consulted, including DEP, CE/C, WSD, CE/MN, DSD, CE/NTE, HyD and D of FS, have no objection to or no comment on the application.

- 11.3 Regarding the Interim Criteria (**Appendix II**), the proposed Small House footprints fall within the “V” zone of Kwan Tei Village. DLO/N of LandsD advises that the number of outstanding Small House applications for Kwan Tei Village is 43 while the 10-year Small House demand forecast is 110. Based on PlanD’s latest estimate, about 2.5 ha (equivalent to about 100 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). While the amount of land available within the “V” zone of Kwan Tei Village is insufficient to fully meet the future Small House demand, it is sufficient to accommodate the outstanding Small House applications. It should be noted that the Board has formally adopted a cautious approach in approving applications for Small House development since August 2015. Among 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” zones for more orderly development pattern, efficient use of land and provision of infrastructures and services. Nevertheless, it is also noted that there are approved Small House applications at different stages of development nearby, the implementation of which are forming a new village cluster in the locality (**Plan A-2a**). Besides, the Site is the subject of a previously approved application (No. A/NE-LYT/527) submitted by the same applicants for the same use. Compared with the previous application, the major development parameters and footprints of the proposed Small Houses under the current application are the same. DLO/N advises that the Small House applications were applied and the applicants have to provide further information to substantiate their indigenous villagers status before the execution of the building licences. In this regard, sympathetic consideration might be given to the application.
- 11.4 There have been 10 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**), which are approved by the Committee between February 2016 and February 2023 after the Board’s formal adaption of a more cautious approach mainly on sympathetic consideration that more than 50% of the proposed Small House footprint fell within the “V” zone or ‘VE’ of Kwan Tei Village, the application sites were in close proximity to the existing village proper of Kwan Tei Village and there were approved Small House applications nearby forming a new cluster in the locality and the scope of extending the village to the “AGR” zone to the further east was limited and/or the sites were the subject of previous approvals. The planning circumstances of the current application are similar to those approved applications with previous approval submitted by the same applicants (i.e. A/NE-LYT/721, 790 and 791).

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, 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 10.11.2027, 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 recommended advisory clauses are attached at **Appendix VII**.

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (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 Kwan Tei Village which 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.

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 applicants.

14. Attachments

Appendix I	Application Form with Attachments received on 20.9.2023
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (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 Comment
Appendix VII	Recommended Advisory Clauses
Drawings A-1 to A-2	Proposed Small Houses Layout Plans
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available for Small House Development within the "Village Type Development" ("V") zone of Kwan Tei Village
Plan A-3	Aerial Photo
Plan A-4	Site Photos