

RNTPC Paper No. A/YL-KTN/765  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 11.6.2021

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**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/765**

<b><u>Applicant</u></b>	: 蔡美媛女士 represented by 黃榮健先生
<b><u>Site</u></b>	: Lot 71 RP in D.D. 110, Tai Kong Po Tsuen, Pat Heung, Yuen Long, New Territories
<b><u>Site Area</u></b>	: About 880 m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: Proposed Two Houses (New Territories Exempted Houses)

**1. The Proposal**

- 1.1 The applicant seeks planning permission for development of two proposed houses (New Territories Exempted Houses) (NTEHs) at the application site (the Site). According to the Notes of the OZP, ‘House (NTEH only)’ within “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plans A-2 and A-4**).
- 1.2 According to the applicant, two proposed NTEHs will be built on the Site with a total floor area of 148.64m<sup>2</sup>. The roof over area of each NTEH is 37.16m<sup>2</sup> and building height is 5.18m (2 storeys). The uncovered area of the proposed development will be used for private garden. The Site is accessible from Kong Po Road. No parking space is proposed within the Site. The layout plan, floor plan and section plans for the proposed development submitted by the applicant are shown in **Drawings A-1 to A-3**.
- 1.3 In support of the application, the applicant has submitted the following documents:
  - (a) Application Form with supplementary statement and plans received on 19.4.2021 (**Appendix I**)

- (b) Further Information (FI) received on 3.5.2021 providing clarification  
*[exempted from publication requirement]* **(Appendix Ia)**
- (c) FI received on 7.6.2021 in response to departmental comments  
*[exempted from publication requirement]* **(Appendix Ib)**

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form and supplementary statement in **Appendices I and Ia**. They can be summarized as follows:

- (a) The applicant is operating a chicken farm adjoining the Site to the north (**Plan A-2**). The applicant wants to build one NTEH to serve as staff quarters and another NTEH for residence of the applicant's family to bring convenience to the management and operation of the adjoining chicken farm, and enhance their living and hygienic conditions.
- (b) The proposed NTEHs conform to Cap. 121 Buildings Ordinance (Application to the New Territories) Ordinance, and fall within the definition of 'on-farm domestic structure' in terms of roofed-over area and building height.
- (c) The applicant has applied for short term waiver for on-farm domestic structures but was rejected by the Lands Department for reason of no precedent approval for similar application. The applicant therefore submitted the current application for NTEHs at the Site. The proposed development can also efficiently utilize the land resources.

## **3. Assessment Criteria**

The latest version of the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was promulgated on 7.9.2007 (**Appendix II**). The criteria<sup>1</sup> applicable to the subject NTEHs application are as follows:

- (a) the proposed development should not frustrate the planning intention of the particular zone in which the application site is located;
- (b) the proposed development should be compatible in terms of land use, scale, design and layout, with the surrounding area/development;

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<sup>1</sup> The criteria related to "Village Type Development" zone/ 'Village Environ' and demand for Small House development is not applicable to the current application as it does not involve Small House development by indigenous villager.

- (c) the proposed development should not encroach onto the planned road network and should not cause adverse traffic, environmental, landscape, drainage, sewerage and geotechnical impacts on the surrounding areas. Any such potential impacts should be mitigated to the satisfaction of relevant Government departments;
- (d) the provision of fire service installations and emergency vehicular access, if required, should be appropriate with the scale of the development and in compliance with relevant standards; and
- (e) all other statutory or non-statutory requirements of relevant Government departments must be met. Depending on the specific land use zoning of the application site, other Town Planning Board guidelines should be observed, as appropriate.

#### **4. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

#### **5. Background**

The Site is not a subject of any active planning enforcement case.

#### **6. Previous Application**

There is no previous application covering the Site.

#### **7. Similar Applications**

There are 2 similar applications for House (NTEH) (not Small House) (Nos. A/YL-KTN/461 and 502) in the vicinity of the same “AGR” zone since the first promulgation of the Interim Criteria in November 2000. Both applications were rejected by the Committee/ the Board on review in 2015 (the appeal lodged by the applicant was discussed in 2017) and 2016 respectively mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. Details of these applications are summarized in **Appendix III** and its location is shown on **Plan A-1**.

#### **8. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

8.1 The Site is:

- (a) currently vacant; and
  - (b) accessible from Kong Po Road.
- 8.2 The surrounding areas are rural in character and intermixed with chicken farm, residential dwellings/structures, open storage/storage yards, orchard, agricultural land and vacant/unused land:
- (a) to its immediate north is a chicken farm. To its further north are residential structures/ dwellings, open storage/ storage yards, cultivated agricultural land and vacant land. The village cluster of Cheung Kong Tsuen and Tai Kong Po is located to the further west and north of the Site;
  - (b) to the west and south are residential dwellings/ structures, orchard and vacant/unused land;
  - (c) to the east across Kong Po Road and a nullah are open storage yards, residential structures/ dwellings and vacant/ unused land.

## **9. 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.

## **10. Comments from Relevant Government Departments**

- 10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) Lot No. 71 RP in D.D. 110 (“the Lot”) is an Old Schedule Agricultural lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Lot is not covered by any Modification of Tenancy/ Building Licence.
- (c) Basically the Site does not fall within the Village Environ Boundary (VEB) of recognised villages except a very small

negligible portion at the north-eastern corner of the Lot falling within VEB of Tai Kong Po.

- (d) It is a general principle that land transactions permitting development exempted from the Buildings Ordinance (Cap. 123), i.e. NTEH development, outside the New Territories Small House Policy will not be considered by LandsD. As such, any lease modification/ land exchange application for NTEH development on the Site will not be considered by his office even if the subject planning application for NTEH development is approved by the Board.

### **Traffic**

#### 10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) He has no comment on the application from traffic engineering perspective.
- (b) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

#### 10.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD) :

It is noted from the submission that no vehicular access is proposed or to be granted under the application. He has no comment from the highways maintenance point of view on the understanding that there is and will be no vehicular access to/from the Site.

### **Environment**

#### 10.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) In view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
- (b) Septic tank and soakaway system is an acceptable means of collection, treatment and disposal of the sewage provided that its design and construction follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" and duly certified by an Authorized Person.

### **Agriculture and Nature Conservation**

#### **10.1.5 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):**

- (a) The Site falls within the “AGR” zone and is currently abandoned. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water sources are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural perspective.
- (b) Nevertheless, he has no comment on the planning application from nature conservation perspective. The applicant shall be reminded to adopt necessary measures to avoid polluting the watercourse to the southeast of the Site during construction.

### **Landscape**

#### **10.1.6 Comments of the Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD)**

- (a) He has no objection to the application from landscape planning point of view.
- (b) Based on the aerial photo taken in 2020, the Site is situated in an area of rural inland plains landscape character comprising of temporary structures, village houses, scattered tree groups and farmlands. The proposed use is considered not entirely incompatible with the surrounding landscape setting. According to the site photos taken on 4.5.2021, the Site is vacant with a few trees of common species along the boundary within the Site. In view that the proposed houses are not in direct conflict with the existing trees, significant adverse impact on existing landscape resources within the Site arising from the proposed development is not anticipated.
- (c) The applicant should note that approval of the application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority/ government department(s) direct to obtain the necessary approval on tree works.

### **Drainage**

#### **10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):**

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal including how the overland flow from the area at northern and western sides can be intercepted for proper discharge to nearby downstream drainage facilities, and implementation of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

### **Fire Safety**

#### 10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no in-principle objection to the application.
- (b) The applicant is advised to observed 'NTEHs – A Guide to Fire Safety Requirements' published by LandsD.

### **Building Matters**

#### 10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Noting that the buildings to be erected on the Site will be NTEHs under the Buildings Ordinance (Application to the New Territories) (Cap 121), DLO/YL, LandsD should be in a better position to comment on the application.
- (b) In case DLO/YL, LandsD decides not to issue the certificates of exemption for the site formation works and/or drainage works associated for the NTEH development, formal application for approval and consent for such works from the Building Authority under the Buildings Ordinance is required. In the circumstance, an Authorized Person (AP) should be appointed as the coordinator for the proposed works. The applicant may approach DLO/YL, LandsD or seek AP's advice for details.
- (c) The applicant's attention is drawn to the Practice Note for Authorization Persons, Registered Structural Engineers and Registered Geotechnical Engineers APP-56 regarding the exemption criteria for site formation works associated with the NTEH development.

### **Water Supply**

10.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);

- (a) He has no objection on the application.
- (b) For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### **District Officer's Comments**

10.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD) :

His office has not received any comment from the locals upon close of consultation and he has no particular comment on the application.

10.2 The following Government departments have no comment on/ no objection to the application:

- (a) Director of Electrical and Mechanical Services;
- (b) Project Manager/ West, Civil Engineering and Development Department;  
and
- (c) Commissioner of Police.

## **11. Public Comments Received During Statutory Publication Period**

On 21.4.2021, the application was published for public inspection. During the three-week statutory publication period, four public comments from Kadoorie Farm & Botanic Garden Corporation and individuals were received (**Appendices III-1 to III-4**), objecting to the application mainly on the grounds that the development would induce adverse traffic, fire, environmental and ecological impact and affect villager's safety and living quality; the proposed use is not in line with the planning intention; the Site is outside "Village Type Development" zone; and approval of the application would set an undesirable precedent for similar applications within the "AGR" zone.

## **12. Planning Considerations and Assessments**

12.1 The application is for proposed two houses (NTEHs) in "AGR" zone. The planning intention of the "AGR" zone 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. The proposed use is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification given in the submission to justify a departure from the planning intention.

- 12.2 The proposed NTEHs development are considered not entirely incompatible with the surrounding areas which are rural in character and intermixed with chicken farm, residential dwellings/structures, cultivated agricultural land and vacant/unused land. The Site is not subject to any previous application. There are two similar House (NTEH) (not Small House) applications in the vicinity of the same “AGR” zone which were rejected by the Committee for the reasons as detailed in paragraph 7. Approving the application would set an undesirable precedent that may lead to the spread of non-Small House NTEH development in the “AGR” zone.
- 12.3 While relevant Government departments consulted, including C for T, CE/MN of DSD, D of FS and CE/C of WSD have no adverse comment on the application, the application is not in line with the relevant criteria of the Interim Criteria as set out in paragraph 3 in that the proposed development is not in line with the planning intention of the “AGR” zone. DLO/YL, LandsD also advised that any lease modification/ land exchange application for NTEH development on the Site will not be considered by his office even if the subject planning application for NTEH development is approved by the Board.
- 12.4 There are four public comments received objecting to the application during the statutory publication period as mentioned in paragraph 11 above. In this regard, the departmental comments and planning considerations and assessments as set out in paragraphs 12.1 to 12.4 above are relevant.

### **13. Planning Department’s Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, 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. 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; and
  - (b) approving the application would set an undesirable precedent that may lead to the spread of non-Small House NTEH development in the “AGR” zone.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 11.6.2025, 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 provision of septic tank at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of 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 V**.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

**15. Attachments**

<b>Appendix I</b>	Application form received on 19.4.2021
<b>Appendix Ia</b>	FI received on 3.5.2021
<b>Appendix Ib</b>	FI received on 7.6.2021
<b>Appendix II</b>	Extract of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
<b>Appendix III</b>	Similar applications within the same "AGR" zone on the Kam Tin North OZP

<b>Appendices IV-1 to IV-4</b>	Public comments received during the statutory publication period
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Floor Plan
<b>Drawing A-3</b>	Section Plans
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
JUNE 2021**