

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/121

- Applicant** : Mr. TSANG Kwok Wo
- Site** : Lot 1521 RP in D.D. 39, Ma Tseuk Leng, Sha Tau Kok, New Territories
- Site Area** : 128.3m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11
- Zonings** : “Agriculture” (“AGR”) (about 110m² or 86% of the site);
“Village Type Development” (“V”) (about 18.3 m² or 14% of the site);
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed himself an indigenous villager of Ma Tseuk Leng of Sha Tau Kok Heung¹, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ma Tseuk Leng, Sha Tau Kok (**Plans A-1 and A-2a**). The Site falls mostly within an area zoned “AGR” with a minor portion encroached onto “V” zone on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, whilst ‘House (NTEH only’ is always permitted in “V” zone, such use in “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 The applicant indicates that the uncovered area of the Site would be used as circulation space. Layout of the proposed Small House (including septic tank) is shown on

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Ma Tseuk Leng Village of Sha Tau Kok Heung. His eligibility for Small House concessionary grant has yet to be ascertained.

Drawing A-1.

- 1.4 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received by the Board on 19.7.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of Ma Tseuk Leng Village;
- (b) the applicant has no other private land in Hong Kong and the Site is the only available lot owned by him; and
- (c) the applicant has submitted Small House application for about 5 years, and such approval is subject to a planning approval for proposed Small House.

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

The applicant is the sole “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 New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. 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 of the Site.

6. Similar Applications

- 6.1 There are 43 similar applications involving 37 sites for Small House development within/partly within the “AGR” zones in the vicinity of the Site in the Luk Keng and Wo Hang area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among these similar cases, 31 applications were approved by the Committee between February 2001 and January 2015 (i.e. before the cautious approach being adopted by the Board) (**Plan A-1**). These applications were approved by the Committee mainly on the considerations that the application generally complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of

consideration; the proposed Small House development was not incompatible with the surrounding rural and village environment; and the proposed development was not expected to have significant adverse impacts on the surrounding area. Five other applications No. A/NE-LK/106, 107, 109, 111 and 112 (**Plan A-1**) were also approved by the Committee between December 2016 and April 2018 (i.e. after the cautious approach being adopted by the Board) mainly for reason of being the subject of previously approved applications (No. A/NE-LK/30, 73, 77 and 80).

- 6.3 Three applications No. A/NE-LK/78, 92 and 93 were rejected by the Committee in March 2013 and October 2014 (i.e. before a more cautious approach is adopted by the Board) on the grounds that proposed Small House was not in line with the planning intention of “AGR” / and “Green Belt” (“GB”) zone; the proposed development might have adverse impact on a natural stream in the vicinity; the application did not comply with the Interim Criteria /and TPB PG-No. 10 on application for development within “GB” zone in that the proposed development would involve vegetation clearance and hence affect the existing natural landscape; and the approval of the application would set an undesirable precedent for similar applications in the area. The other four applications No. A/NE-LK/114–117 were rejected by the Board on review/ the Committee between November 2018 and February 2019 (i.e. after a more cautious approach is adopted by the Board) for reasons that proposed Small House was not in line with the planning intention of “AGR” zone; the application did not comply with the Interim Criteria in that the proposed development would cause drainage impacts on the surrounding areas; and land was still available within the “V” zone of Ma Tseuk Leng for Small House development. An appeal regarding the rejected application No. A/NE-LK/114 was received by Town Planning Appeal Board and the hearing of the appeal has yet to be fixed.
- 6.4 Details of these applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (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) mainly covered by wild grasses (**Plan A-4**);
- (b) located in close proximity to the village cluster of Ma Tseuk Leng Village (**Plan A-2a**); and
- (c) encroached on an existing track at the north-western portion of the site (**Plan A-2a**).

7.2 The surrounding area has the following characteristics:

- (a) to the north are some temporary domestic structures;
- (b) to the east are fallow agriculture land;
- (c) to the south are fallow agricultural land and further south are village cluster of Ma Tseuk Leng within the “V” zone (**Plan A-2a** and **A-2b**);

- (d) to the immediately west is an active agricultural land.

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone in the Luk Keng and Wo Hang 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 Luk Keng and Wo Hang 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 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	14% -	86% 100%	- The Site and footprint of the proposed Small House mostly fall within an area zoned “AGR” and a very minor portion of the Site encroaches onto an area zoned “V”.
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 Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
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 Small House demand in Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster ² : about 13.7 ha (equivalent to 551 Small House sites). The outstanding Small

² Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster comprises Sheung Ma Tseuk Leng Village, Ha Ma Tseuk Leng Village and Shek Kiu Tau Village.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster are 56 ³ while the 10-year Small House demand forecast for the same villages is 495. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.3ha (equivalent to 92 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) states that the agricultural activities are active in the vicinity and agricultural infrastructure such as road access and water source are available. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture point of view. - From nature conservation point of view, a natural to semi-natural stream is located to the north of the Site. Should the application be approved, the applicant should be reminded to implement good site practice so as not to pollute the stream nearby.
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not entirely incompatible with the surrounding rural setting and environment dominated by fallow/active agricultural land, tree groups and temporary domestic structures.
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	

³ Among the 56 outstanding Small House applications, 14 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, 8 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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) 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. - Notwithstanding the above, the application only involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
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.
11.	Sewage impact?		✓	- 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?		✓	- Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection on the application from the landscape planning point of view. - The Site is located in the rural landscape character comprises village houses and clustered tree groups. The proposed Small House is considered

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>not incompatible with the surrounding environment. Significant adverse impact on existing landscape resources arising from the proposed developments are not anticipated.</p> <p>- If the application is approved, landscape condition is considered not practicable given there is inadequate planting space for tree planting works.</p>
13.	Local objection conveyed by DO?	✓		<p>- District Officer (North) (DO(N)) advises that the Indigenous Inhabitant Representative (IIR) of Ma Tseuk Leng Ha and a villager objected the application on the grounds that the applicant is not indigenous villager of Ma Tseuk Leng; the Site locates closely with the river stream which might cause environmental pollution; and the Site encroaches onto a footpath. The Resident Representative (RR) of Ma Tseuk Leng Ha supported the application while the incumbent North District Council (NDC) member of subject constituency, the Chairman of Sha Tau Kok District Rural Committee, the IIR and RR of Ma Tseuk Leng Sheung had no comment on the application.</p>

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 IV**.

- (a) District Lands Officer/North, Lands Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Fire Services;
- (e) Commissioner for Transport;
- (f) Chief Engineer/Mainland North, Drainage Services Department;
- (g) Director of Environmental Protection;
- (h) Chief Town Planner/Urban Design and Landscape, Planning Department; and
- (i) District Officer (North), Home Affairs Department.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department ; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 26.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix V**). A member of North District Council supports the application. The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Ltd., a local villager and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent to the future similar applications within the “AGR” zone; land is still available within the “V” zone of Ma Tseuk Leng for Small House development; and approval of Small House application with septic tank is undesirable.

11. Planning Considerations and Assessments

- 11.1 The Site falls mostly within an area zoned “AGR” with a minor portion encroached onto “V” zone on the OZP. The proposed Small House development is not in line with the planning intention of the “AGR” zone which is intended 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. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster is 56 while the 10-year Small House demand forecast for the same village cluster is 495. According to the latest estimate by PlanD, a total of about 2.3 ha (equivalent to 92 Small House sites) of land are available within the “V” zone of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the footprint of the proposed Small House falls entirely within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong.
- 11.3 The Site is situated in an area of rural landscape character consisted of dominated by fallow/active agricultural land, tree groups and temporary domestic structures. The proposed Small House is not incompatible with the surrounding rural setting comprising village houses, temporary domestic structures and clustered tree groups (**Plans A-2a** and **A-3**). Significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective. C for T has reservation on the application and considers that Small House development should be confined within the “V” zone as far as possible but given that the proposed developments involve one Small House, it could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 Regarding the Interim Criteria (**Appendix II**), more than 50% of the footprint of the proposed Small House falls within the ‘VE’ of Ma Tseuk Leng, Ma Tseuk Leng San Uk Ha and Wo Tong Kong (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 2.3 ha or equivalent to 92 Small House sites) is still available within the “V” zone to

meet the 56 outstanding Small House applications. 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 developments within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

- 11.5 There is no previous application for the Site. For the 43 similar applications for Small House development within/partly within the “AGR” zones (**Plan A-1**), 34 applications were considered before a more cautious approach is adopted by the Board. Of them, 31 were approved between February 2001 and January 2015, and 3 were rejected between March 2013 and October 2014 (**Plan A-1**). After a more cautious approach is adopted by the Board, five applications were approved between December 2016 and April 2018 mainly for reason of being the subject of previously approved applications. The other four applications No. A/NE-LK/114–117 (**Plan A-1**) were rejected between November 2018 and February 2019 for reasons that proposed Small House was not in line with the planning intention of “AGR” zone; the application did not comply with the Interim Criteria in that the proposed development would cause drainage impacts on the surrounding areas; and land was still available within the “V” zone of Ma Tseuk Leng for Small House development. The circumstances of the current application are similar to those rejected similar applications No. A/NE-LK/114–117.
- 11.6 One supporting comment conveyed by DO(N), HAD in paragraph 9 above is noted. Regarding the adverse public comments as detailed in paragraph 10, the Government department’s comments and the planning assessment 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 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 in the Luk Keng and Wo Hang area 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 Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau village cluster where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for 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 6.9.2023, 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, as proposed by the applicant, 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 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 19.7.2019
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 within/partly within the "AGR" Zones in the vicinity of the Site on the Luk Keng and Wo Hang OZP
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 Tseuk Leng, Ma Tseuk Leng San Uk Ha and Shek Kiu Tau for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos