

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

**APPLICATION NO. A/NE-LYT/682**

- Applicant** : Mr. LAM Ka Sang represented by Euro Asia Construction Engineering Limited
- Site** : Lots 614 S.A ss.1 and 614 S.D in D.D. 83, Kwan Tei Village, Fanling, New Territories
- Site Area** : 125.5 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zonings** : “Agriculture” (“AGR”) (about 65.7% of the Site) and “Village Type Development” (“V”) (about 34.3% 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<sup>1</sup>, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Kwan Tei Village, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” (about 65.7%) and “V” (about 34.3%) on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only)’ is a use always permitted within the “V” zone while ‘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 in 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 <sup>2</sup>
Number of Storeys	: 3
Building Height	: 8.23 m
Roofed Over Area	: 65.03 m <sup>2</sup>

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<sup>1</sup> According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant claimed himself to be an indigenous villager of Tsz Tong Tsuen of Fanling Heung. His eligibility for Small House concessionary grant has yet to be ascertained.

- 1.3 The applicant indicates that the uncovered area of the Site would be used as landscaping area of the proposed Small House. 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 Application Form with attachments (**Appendix I**) which was received on 14.11.2018.

## **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 summarized as follows:

- (a) the applicant is an indigenous villager and about 54% of the proposed Small House falls within “V” zone;
- (b) the Site is the only land owned by the applicant for Small House development;
- (c) the Site is bounded by the village settlements of Kwan Tei Village and is a natural extension of the village;
- (d) the Site is currently vacant and the proposed development would improve the visual and environmental qualities of the area and would not generate adverse traffic impact; and
- (e) there are similar applications (e.g. No. A/NE-LYT/587 and 588) approved by the Committee in 2016.

## **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 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 for the Site.

## **6. Similar Applications**

- 6.1 There are 21 similar applications involving 20 sites in the vicinity of the Site for Small House development within/partly within the “AGR” zone in the vicinity of the Site (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Three applications (No. A/NE-LYT/399, 400 and 511) were rejected by the Committee

on 4.9.2009 and 19.7.2013 respectively mainly on the grounds that the proposed Small House developments did not comply with the Interim Criteria as more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of a recognized village; the uses under applications were not in line with the planning intention of the “AGR” zone; and approval of the applications would set undesirable precedents for similar applications in the area.

- 6.3 For other 18 applications involving 17 sites, 13 applications were approved with conditions by the Committee between November 2004 and May 2015 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) mainly on the grounds that the applications 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 “V” zone of the same village in meeting the Small House demand; the proposed NTEH developments were not incompatible with the adjacent village setting and the surrounding rural character of the environment; the proposed Small House developments were not expected to have significant adverse traffic, drainage, environmental and/or landscape impacts; and departments consulted in general had no objection to / adverse comments on the applications. Five applications (No. A/NE-LYT/587, 588, 599, 603 and 632) were approved by the Committee between February 2016 and September 2017 (i.e. after a more cautious approach is adopted by the Board) on sympathetic consideration mainly on the grounds of the 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 village cluster in locality and the scope of extending the village to “AGR” zone to the further east is limited.
- 6.4 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plans A-1 and A-2a**.

## **7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, aerial photo on Plan A-3 and site photos on Plan A-4)**

- 7.1 The Site is:
- (a) located to the immediate east of the village cluster of Kwan Tei Village (**Plans A-2a and A-2b**);
  - (b) mainly covered by wild grasses with small hard-paved area at its west (**Plan A-4**); and
  - (c) encroached onto an existing footpath at the west of the site (**Plan A-2a**).
- 7.2 The surrounding area has the following characteristics:
- (a) situated in a rural setting dominated by village houses, temporary structures for domestic uses, and active and fallow agricultural land;
  - (b) to the west of the Site are village houses in the “V” zone of Kwan Tei Village;
  - (c) to the north, east and south are active / fallow agricultural land and some temporary structures for domestic purpose. To the further north is the vacant former Kwan Tei Public School falling within a site zoned “Government, Institution or Community” on the OZP; and

- (d) the sites of planning applications (No. A/NE-LYT/527, 553, 587, 588 and 603) for Small House developments approved between 2014 and 2017 (**Plan A-2a**) can be found to the immediate south.

## 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:

	<b>Criteria</b>	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
1.	Within “V” zone?  - The Site  - Footprint of the proposed Small House	34.3%  55.1%	65.7%  44.9%	The Site and the footprint of the proposed Small House fall within the “AGR” and “V” zones.
2.	Within ‘VE’?  - The Site  - Footprint of the proposed Small House	17.6%  26.4%	82.4%  73.6%	DLO/N, LandsD advises that a portion of the Site falls within the ‘VE’ of Kwan Tei Village.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	- Land required to meet the Small House demand in Kwan Tei Village: about 10.7 ha (equivalent to 427 Small House sites). The outstanding Small House applications for Kwan Tei Village are 48 <sup>2</sup> while the 10-year Small House demand forecast for the same village is 379.

<sup>2</sup> Among the 48 outstanding Small House applications, 30 of them fall within the “V” zone and 18 straddle or outside the “V” zone. For those 18 applications straddling or being outside the “V” zone, 11 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House application?	✓		- Land available to meet the Small House demand within the “V” zone of Kwan Tei Village: about 2.59 ha (equivalent to 103 Small House sites) ( <b>Plan A-2b</b> ).
4.	Compatible with the planning intention of “AGR” zone?		✓	The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is a shrubby land. Agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water source are available. The application is not supported from agriculture point of view as the Site possesses potential for agricultural rehabilitation.
5.	Compatible with surrounding area/ development?	✓		The proposed Small House is not entirely incompatible with the surrounding rural setting and environment dominated by village houses and agricultural land ( <b>Plan A-2a</b> ).
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?	✓		<p>- 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.</p> <p>- Notwithstanding the above, the application only involves construction of one Small House. She considers</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				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 for the application.
11.	Sewage 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"> <li>- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&amp;L, PlanD) has no objection to the application from landscape planning perspective.</li> <li>- The Site is located in an area of rural landscape character comprising of village houses, farmlands, temporary structures, vegetated area and clustered tree groups. Similar uses/developments with approved planning permissions are found in the vicinity. The proposed development is considered not entirely incompatible with the existing surrounding environment. The Site is mainly covered by wild grass. No tree or other significant vegetation is found within the Site. Significant adverse landscape impact arising from the proposed development is not anticipated.</li> <li>- In view of the limited space within the Site for meaningful landscaping, the approval condition on the submission and implementation of landscape proposal is considered not required for this application. However, the applicant should be advised to maintain all landscape plantings within the Site at all times during the planning approval.</li> </ul>
13.	Local objection		✓	District Officer (North) (DO(N)) advises

	<b>Criteria</b>	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
	conveyed by DO?			that he has consulted the locals. The Chairman of Fanling District Rural Committee (FDRC) and the Indigenous Inhabitant Representatives and Resident Representative of Kwan Tei have no comment on the application.

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

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

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

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

On 23.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, five public comments were received respectively (**Appendix V**). A North District Council member supports the application as it can provide convenience to the villagers whereas the Chairmen of FDRC and Sheung Shui District Rural Committee indicate no comment on the application. The remaining comments from The Hong Kong Bird Watching Society and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; there is land available in the “V” zone to meet the outstanding Small House demand; the proposed development would have adverse sewerage impact; and approval of the application would set an undesirable precedent for similar applications.

## **11. Planning Considerations and Assessments**

- 11.1 The Site falls within an area zoned “AGR” (about 65.7%) and “V” (about 34.3%) on the OZP (**Plans A-1 and A-2a**). 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. DAFC does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity of the Site.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kwan Tei Village is 48 while the 10-year Small House demand forecast

for the same village is 379. According to the latest estimate by PlanD, about 2.59 ha (equivalent to 103 Small House sites) of land are available in the “V” zone of Kwan Tei Village for Small House development (**Plan A-2b**). DLO/N, LandsD advises that a portion of the Site fall within the ‘VE’ of Kwan Tei Village.

- 11.3 The Site is mainly covered by wild grasses with small hard-paved area at its west. The village proper of Kwan Tei is located to the immediate west of the Site and part of the Site is within the “V” zone of Kwan Tei Village (about 34.3%) (**Plan A-2a**). The proposed Small House development is not entirely incompatible with the surrounding rural landscape character dominated by village houses and active/fallow agricultural land (**Plan A-2**). Significant changes or disturbance to the existing landscape character and resources arising from the proposed development are not anticipated. In this regard, 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 Small House development should be confined within the “V” zone as far as possible but given that the proposed development involve one Small House, it could be tolerated. Regarding the Site encroaches onto a footpath, DLO/N, LandsD has no comment on it as the footpath is on private land. DO(N), HAD advises that the footpath is neither constructed nor maintained by his office. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment on/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 “V” zone of Kwan Tei Village (**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 2.59 ha or equivalent to 103 Small House sites) is still available within the “V” zone to meet the 48 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 development within the “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services. Nevertheless, the Site is in close proximity to the existing village proper of Kwan Tei Village and there are approved Small House applications nearby (**Plan A-2a**). Given that the ‘VE’ boundary is in proximity to the “V” zone boundary where the proposed Small House is situated, the scope of extending the village to the “AGR” zone to the further east is limited. It is also noted that apart from DAFC, other concerned Government departments, have no objection to the application. In this regard, sympathetic consideration may be given to the applicant.
- 11.5 There are eight similar applications for Small House development in the vicinity of the Site. Two applications (No. A/NE-LYT 399 and 400) were rejected by the Committee on 4.9.2009 mainly on the grounds that the proposed Small House development did not comply with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of a recognized village; and the uses under applications were not in line with the planning intention of the “AGR” zone. Three of them (No. A/NE-LYT/390, 527 and 553) were approved by the Committee between March 2009 and December 2014 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on the grounds of complying with the Interim Criteria, the proposed NTEH developments not incompatible with the adjacent village setting and the surrounding rural character, and not expected to have significant adverse impacts. The remaining three applications (No. A/NE-LYT/587, 588 and 603) located to the immediate south of the Site were approved with conditions by the Committee on 5.2.2016 and 3.2.2017 (i.e. after a more cautious approach is adopted by the Board) on sympathetic consideration as the Sites were in close proximity to the existing village



proper of Kwan Tei, there were approved Small House applications nearby forming a new village cluster in locality and the scope of extending the village to “AGR” zone to the further east is limited. The circumstances of the subject application are similar to applications No. A/NE-LYT/587, 588 and 603 approved in 2016 and 2017 respectively.

- 11.6 Regarding the adverse public comments objecting to the application on the grounds as summarized in paragraph 10 above, Government departments’ comments and planning assessments in the above paragraphs are relevant.

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

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments 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 4.1.2023, 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**.

- 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 in the Lung Yeuk Tau and Kwan Tei South 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 Kwan Tei Village which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House 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 applicant.

**14. Attachments**

<b>Appendix I</b>	Application Form with attachments received on 14.11.2018
<b>Appendix II</b>	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
<b>Appendix III</b>	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 Site in the Lung Yeuk Tau and Kwan Tei South area
<b>Appendix IV</b>	Detailed Comments from Relevant Government Departments
<b>Appendix V</b>	Public Comments
<b>Appendix VI</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Estimated Amount of Land Available within the “V” zone of Kwan Tei Village for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos