

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/708

- Applicant** : Mr. PANG Ka Ho represented by Euro Asia Construction Engineering Limited
- Site** : Lot 1748 S.A in D.D. 76, Leng Pei Tsuen, Fanling, New Territories
- Site Area** : 223.7 m² (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
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicant, who claimed to be an indigenous villager¹, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Leng Pei Tsuen, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” 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, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ 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 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant has indicated that the uncovered area of the Site would be used for landscaping.

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 Fanling Village of Fanling Heung. The Small House application has been approved in August 2018 and pending the execution of Building Licence.

- 1.4 The Site is the subject of a previous application (No. A/NE-LYT/558) for Small House development submitted by the same applicant. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 16.1.2015 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 of the same village in meeting the Small House demand and the proposed development was not expected to have significant adverse impacts on the surrounding area. The planning permission lapsed on 17.1.2019. Compared with the previous application, except there is a slight change in the disposition of the septic tank, the 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 15.7.2019.

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 Site is the subject of a previous planning application approved by the Board in 2015. Since the Small House application is still under processing by District Lands Office (DLO), the planning permission had lapsed after 16.1.2019. A fresh application is submitted for consideration;
- (b) the applicant is an indigenous villager and more than 50% of the footprint of the proposed Small House falls within the village 'environs' ('VE'), the application is in line with the Government's Small House Policy;
- (c) there are a number of similar applications which had been approved by the Board. Application No. A/NE-LYT/437 is one of the approved applications near the Site;
- (d) the Site is currently vacant, and the proposed development with landscape features will improve the visual and environmental quality of the area;
- (e) the Site would not cause adverse traffic impact to the surrounding area; and
- (f) the Site is the only land resource available for Small House development.

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

- 5.1 The Site is the subject of a previous application (No. A/NE-LYT/558) for the Small House development submitted by the same applicant as the current application. The application was approved by the Committee on 16.1.2015 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 of the same village in meeting the Small House demand and the proposed development was not expected to have significant adverse traffic, drainage and environmental impacts on the surrounding area. The planning permission lapsed on 17.1.2019.
- 5.2 Details of the previous application are summarised at **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

6. Similar Applications

- 6.1 There are 64 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 (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Of them, 62 similar applications were approved with conditions by the Committee between April 2003 and August 2019. These applications were approved mainly on the considerations that the applications 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; the proposed Small House developments were not incompatible with the surrounding rural and village environment; and the proposed developments were not expected to have significant adverse impacts on the surrounding area and previous/similar applications were approved by the Committee.
- 6.2 The remaining two similar applications (No. A/NE-LYT/267 and 424) were rejected by the Committee in September 2003 and July 2010 respectively. Application No. A/NE-LYT/267 was rejected mainly on the grounds that it did not comply with Interim Criteria as the application site fell entirely outside both the "V" zone and the 'VE' of a recognized village. Application No. A/NE-LYT/424 for the proposed 11 NTEHs (not Small Houses) was rejected by the Committee on the grounds that the proposed development was not in line with the planning intention of "AGR" zone and there was no strong planning justification in the submission for a departure from the planning intention; the application site fell within the village 'environs' ('VE') of Ma Mei Ha Leng Tsui and Leng Pei Tsuen and land within 'VE' or "Village Type Development" ("V") zone for recognized New Territories villages should be primarily reserved for Small House development by indigenous villagers; and approval of the application would set an undesirable precedent for similar applications within "AGR" zone in the future.
- 6.3 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, A-3 and A-4)

7.1 The Site is:

- (a) flat, vacant and mostly covered by wild grass (**Plan A-4**);
- (b) located to the immediate west of the village proper of Leng Pei Tsuen (**Plan A-2a**); and
- (c) accessible via a local track from Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where village houses and active/fallow agricultural land are found;
- (b) to the east are the village houses in “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen (**Plans A-2a and A-3**);
- (c) to the immediately north is the site of planning application (No. A/NE-LYT/703) for Small House development approved by the Committee in August 2019 (**Plan A-2a**); and
- (d) to the immediately west and east are plant nursery and active agricultural land respectively (**Plan A-2a**).

8. Planning Intention

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.

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	37.6%	62.4%	DLO/N, LandsD advises that more than 50% of the footprint of the proposed Small

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	- Footprint of the proposed Small House	50.9%	49.1%	House falls 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 application 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 4.43 ha (equivalent to 177 Small House sites). The outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster are 45 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 application?		✓	<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 0.89 ha (equivalent to 35 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of "AGR" zone?		✓	The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently fallow land overgrown with grasses. The agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouse, 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 immediate west of Leng Pei Tsuen and the proposed Small House is not incompatible with the surrounding rural setting and environment dominated by village houses and active/fallow agricultural land (Plan A-2a).

² Among the 45 outstanding Small House applications, 4 of them fall within the "V" zone and 41 straddle or outside the "V" zone. For those 41 applications straddling or being outside the "V" zone, 31 of them have already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD.
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - The Commissioner for Transport (C for T) has reservation on the application and 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 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 involves construction of one Small House. She considers 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 submission and implementation of drainage proposal 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.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 the landscape planning point of view. - The Site is situated in an area of rural landscape character surrounded by village houses and farmland. The Site is covered by wild grass and vegetation, existing trees of common species are found along the boundary and in close proximity to the Site. No highly sensitive landscape resource is observed within the Site. Significant adverse impact on existing landscape resources arising from the development is not anticipated. - In consideration of limited space within the Site, there is insufficient space for meaningful landscaping, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.
13.	Local objections conveyed by DO?		✓	District Officer (North) (DO(N)) advises that he has consulted the locals. The Indigenous Inhabitant Representative (IIR) of Leng Pei Tsuen supports the application as the proposed Small House can improve the environment. The Chairman of Fanling District Rural Committee and the Resident Representative (RR) of Leng Pei Tsuen indicate no comment on the application, the RR opines that the application can improve the environment.

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) District Lands Officer/North, Lands Department;
- (b) Chief Engineer/Mainland North, Drainage Services Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Environmental Protection;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Chief Town Planner/Urban Design and Landscape, Planning Department;

- (g) Director of Fire Services;
- (h) Commissioner for Transport; 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), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 23.7.2019, the application was published for public inspection. During the statutory public inspection period, three public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Designing Hong Kong Limited and an individual object to the application mainly on the considerations that the proposed Small House is not in line with planning intention of the “AGR” zone; land is still available in “V” zone of Leng Pei Tsuen; approval of the application will set an undesirable precedent for similar applications in the area; and the use of septic tank is not appropriate.

11. Planning Considerations and Assessments

- 11.1 The application is for a Small House development in an area zoned “AGR” on the OZP. The proposed Small House 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. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 DLO/N, LandsD advises that more than 50% of footprint of the proposed Small House falls within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster is 45 while the 10-year Small House demand forecast for the same village cluster is 132. According to the latest estimate by PlanD, about 0.89 ha (equivalent to 35 Small House sites) of land are available within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen for Small House development (**Plan A-2b**), which is insufficient to meet even the outstanding Small House applications. As such, the application generally complies with the Interim Criteria and sympathetic consideration should be given to the application.
- 11.3 The Site is flat and covered with grass (**Plan A-3**). It is situated in an area of rural village character in close proximity to the existing village houses and some active/fallow agricultural land, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a and A-3**). The village proper of Leng Pei Tsuen is located to the immediate east and there are approved Small House applications to the northwest and northeast of the Site. CTP/UD&L, PlanD has no objection to the application as significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. C for T has reservation on the application and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, the

application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD, CE/C of WSD and D of FS, have no adverse comment or no objection to the application.

- 11.4 The Site is the subject of a previously approved planning application (No. A/NE-LYT/558) for Small House development approved by the Committee in 2015 submitted by the same applicant as the current application. As advised by DLO/N, LandsD, the Small House application at the Site was approved in-principle in August 2018 but yet to be executed. The processing of the Small House grant is already at an advance stage. In this regard, sympathetic consideration might be given to the applicant.
- 11.5 There are 10 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**). Except for application No. A/NE-LYT/424, all other applications were approved between 2009 and August 2019 mainly on the considerations that the applications 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. The application (No. A/NE-LYT/424) for the proposed 11 NTEHs (not Small Houses) was rejected by the Committee in 2010 on the grounds that the proposed development was not in line with the planning intention of "AGR" zone; and the approval of the application would set an undesirable precedent for similar applications within "AGR" zone in the future. The planning circumstances of the current application are similar to the approved applications.
- 11.6 One supporting local comment conveyed by DO(N), HAD in paragraph 9 above is noted. Regarding the adverse public comments objecting to the application, the Government department's comments and the 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 views and 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 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 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 in 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.

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 15.7.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous s.16 Application
Appendix IV	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 Sites in the Lung Yeuk Tau and Kwan Tei area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	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 Mei Ha Leng Tsui and Leng Pei Tsuen for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos