

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LYT/715 and 716

- Applicants** : (i) Mr. PANG Wan Hoi (Application No. A/NE-LYT/715)
(ii) Mr. PANG Yiu Kong (Application No. A/NE-LYT/716)
all represented by Glister Engineering Consultants Company
- Sites** : Lots 1583 S.A & 1584 S.H (Application No. A/NE-LYT/715)
Lot 1584 S.B (Application No. A/NE-LYT/716)
all in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Areas** : 174 m² (about) (Application No. A/NE-LYT/715)
169 m² (about) (Application No. A/NE-LYT/716)
- 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”)
- Applications** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposals

- 1.1 The applicants, who claimed to be indigenous villagers¹, seek planning permissions to build a proposed NTEH (Small House) on each of the application sites (the Sites) in Kan Tau Tsuen, Fanling (**Plans A-1 and A-2a**). The Sites fall 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 each of the two proposed NTEHs (Small Houses) 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 As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants are indigenous villagers of Fanling Village of Fanling Heung. Their eligibility for Small House grant has yet to be ascertained.

- 1.3 Layouts of the two proposed Small Houses (including septic tanks) under applications No. A/NE-LYT/715 and 716 are shown on **Drawings A-1 to A-2** respectively. The applicants indicate that the uncovered areas of their proposed Small Houses would be used for gardens.
- 1.4 In support of the applications, the applicants have submitted the Application Forms with attachments (**Appendices Ia and Ib**) which were received on 8.10.2019.

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms at **Appendices Ia and Ib** respectively. They can be summarized as follows:

- (a) there is an imminent need for submitting the Small House applications;
- (b) the applicants are the registered owners of the Sites;
- (c) the applicants are indigenous villagers and therefore are entitled to have Small House grants in accordance with the current Small House Policy;
- (d) the Sites fall within the Village 'Environs' ('VE');
- (e) the proposed developments are compatible with the surrounding environment and land use; and
- (f) there are similar approved applications in the vicinity of the Sites.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The applicants are the "current land owners" of their respective lots. Detailed information would be deposited at the meeting for Members' inspection.

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000 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 Sites.

6. **Similar Applications**

- 6.1 There are 101 similar applications for Small House development within / partly within the "AGR" zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South

area (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000.

- 6.2 Of 90 approved applications, 54 applications were approved with conditions by the Committee between March 2001 and January 2015 (i.e. before a more cautious approach is adopted by the Board) (**Plan A-1**) 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 developments were not expected to have significant adverse traffic, drainage, environmental or landscape impacts on the surrounding area. The remaining 36 applications were approved between December 2015 and August 2019 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1**) mainly for reasons of being the subject of previously approved application; the processing of Small House grants was already at an advance stage; the implementation of new Small House under construction and approved Small House development nearby was forming a new village cluster in the locality.
- 6.3 The other 11 applications were rejected by the Committee or the Board on review between September 2003 and July 2019 mainly on the considerations that the proposed Small House developments did not comply with the Interim Criteria as the footprints of the proposed Small Houses fell mainly/entirely outside the “V” zone and the ‘VE’ of a recognized village; the proposed developments were not in line with the planning intention of the “AGR” zone; land was still available within the “V” zone; and approval of the applications would set undesirable precedents for similar applications.
- 6.4 Details of these applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7. **The Sites and Their Surrounding Areas** (Plans A-1, A-2a and aerial photo on Plan A-3 and site photos on Plan A-4)

- 7.1 The Sites are:
- (a) vacant and largely covered by wild grass (**Plan A-3**);
 - (b) located to the south of “V” zone of Kan Tau Tsuen; and
 - (c) accessible via footpath.
- 7.2 The surrounding areas have the following characteristics:
- (a) a rural landscape character dominated by village houses, vacant land and active/fallow farmland;
 - (b) to the north is the village proper of Kan Tau Tsuen (**Plan A-2a**);
 - (c) to the west and east are the sites of a number of planning applications for Small House developments which were approved by the Committee between 2002 and 2018; and

- (d) to the south is vacant land; and further south are active/fallow farmland intermixed with a few temporary structures.

8. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area 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.

9. Comments from Relevant Government Departments

9.1 The applications have 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 Sites - Footprints of the proposed Small Houses	- -	100% 100%	- The Sites and the footprints of the proposed Small Houses fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Sites - Footprints of the proposed Small Houses	100% 100%	- -	- DLO/N, LandsD advises that the Sites and footprints of the proposed Small Houses under applications No. A/NE-LYT/715 and 716 fall within the ‘VE’ of Kan Tau 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 Kan Tau Tsuen: about 3.5 ha (equivalent to 140 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 62 ² while the 10-year Small House demand forecast for the same village is 78.
	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 Kan Tau Tsuen: about 2 ha

² Among the 62 outstanding Small House applications, 9 of them fall within the “V” zone and 53 straddle or outside the “V” zone. For those 53 applications straddling or being outside the “V” zone, 34 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				(equivalent to 80 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 Sites are currently fallow land overgrown with weeds. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Sites possess potential for agricultural rehabilitation, the applications are not supported from agriculture point of view.
5.	Compatible with surrounding area/ development?	✓		- The proposed Small Houses are not incompatible with the surrounding rural setting and environment dominated by vegetated areas and village houses (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the applications. The applicants are reminded to observe ‘New Territories Exempted Houses – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) has reservation on the applications 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 are not expected to be significant, such type of developments outside the “V” zone, if permitted, will set undesirable precedent cases for similar applications in the future. The

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>resulting cumulative adverse traffic impact could be substantial.</p> <p>- Notwithstanding the above, the applications involve construction of two Small Houses. She considers that the applications can be tolerated unless they are rejected on other grounds.</p>
10.	Drainage impact?	✓		<p>- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications and advises that an approval condition on the submission and implementation of drainage proposal is required.</p>
11.	Sewerage impact?		✓	<p>- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution.</p>
12.	Landscaping impact?		✓	<p>- The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning point of view.</p> <p>- The Sites are situated in an area of rural landscape character surrounded by village houses and vegetated areas with many approved planning applications for Small Houses in the vicinity. No sensitive landscape resource is observed within the Sites. Significant adverse impact on existing landscape resources arising from the applications is not anticipated.</p> <p>- In consideration of the limited space within the Sites, there is no major public frontage along the site boundaries. Should the Board approve the applications, it is</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				considered not necessary to impose a landscape condition.
13.	Local objections conveyed by DO?		✓	- District Officer (North) (DO(N)) advises that he has consulted the locals. The Chairman of Fanling District Rural Committee and the Indigenous Inhabitant Representative (IRR) of Kan Tau Tsuen have no comment on the applications. The Resident Representative (RR) of Kan Tau Tsuen supports the applications as the Sites are within 'VE'.

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), North Development Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 15.10.2019, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, five public comments were received for each of the application (**Appendix V**). The North District Council member supports both applications. The Chairman of Sheung Shui District Rural Committee indicates no comment on both applications. The remaining three comments were from the Hong Kong Bird Watching Society, Designing Hong Kong and an individual objecting to the applications mainly on the grounds that the proposed developments are not in line with the planning intention of "AGR" zone; land is still available within the "V" zone of Kan Tau Tsuen; and approval of applications would set an undesirable precedent to future similar applications.

11. Planning Considerations and Assessments

- 11.1 The applications are for Small House developments on Sites zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP. The proposed developments are 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. As the Sites possess potential for agricultural rehabilitation, DAFC does not support the applications from the agriculture point of view.
- 11.2 Based on DLO/N, LandsD’s records, the total number of outstanding Small House applications for Kan Tau Tsuen is 62 while the 10-year Small House demand forecast for the same village is 78. According to the latest estimate by PlanD, about 2 ha (equivalent to 80 Small House sites) of land are available in the “V” zone of Kan Tau Tsuen for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the Sites fall within the ‘VE’ of Kan Tau Tsuen.
- 11.3 The Sites are flat and covered with grass (**Plans A-3 and A-4**). The proposed Small Houses are not incompatible with the surrounding rural setting comprising village houses and vegetated areas. Significant adverse impact on existing landscape resources arising from the applications is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the applications from the landscape planning perspective. C for T has reservation on the applications and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves two Small Houses, they could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment or no objection to the applications.
- 11.4 Regarding the Interim Criteria (**Appendix II**), the footprints of the proposed Small Houses fall entirely within the ‘VE’ of Kan Tau Tsuen (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand of 140 Small Houses, such available land (about 2 ha or equivalent to 80 Small House sites) is capable to meet the 62 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. Nevertheless, it is noted that the Sites are in close proximity to the existing village proper of Kan Tau Tsuen. There are also existing village houses to the west of the Sites and approved Small House applications to the east and south at different stages of development. The implementation of those approved Small Houses is forming a new village cluster in the locality. In this regard, sympathetic consideration might be given to the applications (**Plan A-2**).
- 11.5 There are 35 similar applications for Small House developments in the vicinity of the Sites as shown on **Plan A-2a**. Of them, 32 applications were approved with conditions by the Committee. Nineteen applications were approved between July 2002 and September 2013 (i.e. before a more cautious approach is adopted by the Board) (**Plan**

A-2a) 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 at the time of consideration. Eight other applications (No. A/NE-LYT/638, 604, 609-611, 614-616) were approved by the Committee in 2017 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on sympathetic consideration that those are the subject of previously approved applications. Five other applications (No. A/NE-LYT/583, 592, 600, 630 and 644) were approved by the Committee between December 2015 and January 2018 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on the ground that the implementation of those approved Small Houses is forming a new village cluster in the locality. The remaining 3 similar applications (No. A/NE-LYT/417, 440 and 642) to the south of the Sites were rejected by the Committee or the Board on review between March 2010 and December 2017 (**Plan A-2a**) mainly on the ground that the proposed Small House developments did not comply with the Interim Criteria as the proposed Small House footprints fell mainly/entirely outside the “V” zone and the ‘VE’ of a recognized village. The circumstances of the current applications are more similar to those similar applications (No. A/NE-LYT/592, 600, 630 and 644) in close proximity to the Sites approved after a more cautious approach is adopted by the Board.

- 11.6 One supporting local comment conveyed by DO(N), HAD in paragraph 9.1 above is noted. Regarding the adverse public comment objecting to the applications mainly on the grounds of not in line with planning intention of “AGR” zone and setting of an undesirable precedent as detailed in paragraph 10 above, Government departments’ comments and 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 comment conveyed by DO(N), HAD and public comments mentioned in paragraphs 9.1 and 10 above, the Planning Department has no objection to the applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that each of the permissions shall be valid until 29.11.2023, 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 applications, 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 Kan Tau Tsuen which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services.

13. Decision Sought

13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant the permission.

13.2 Should the Committee decide to approve the applications, 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 applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

14. Attachments

Appendices Ia to Ib	Application Forms with attachments received on 8.10.2019
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 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 South area
Appendix IV	Detailed Comments from Relevant Government Departments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawings A-1 to A-2	Layout Plans
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Estimated Amount of Land Available within the "V" zone of Kan Tau Tsuen for Small House Development
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2019**