

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

**APPLICATION NO. A/NE-LYT/724**

- Applicant** : Mr. PANG Wing Fong represented by Mr. PANG Hing Yuen
- Site** : Lot 1771 S.D ss. 1 in D.D. 76, Ma Mei Ha Leng Tsui, Fanling, New Territories
- Site Area** : 129.93 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
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

1.1 The applicant, who claimed himself an indigenous villager of Fanling Village of Fanling Heung<sup>1</sup>, seeks planning permission to build a NTEH (Small House) on the application site (the Site) in Ma Mei Ha Leng Tsui, 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)’ 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	: 65.03m <sup>2</sup>

1.3 The applicant indicates that the uncovered area of the Site would be used for circulation area of the house. Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**.

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<sup>1</sup> According to District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant’s eligibility for Small House concessionary grant has yet to be ascertained.

- 1.4 The Site is the subject of a previous application (No. A/NE-LYT/463) for the development of a Small House submitted by a different applicant, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 15.6.2012. However, the planning permission lapsed on 16.6.2016 as the approved development did not commence within the validity period. Compared with the previously approved application, except the disposition of septic tank, there is no change to the major development parameters including the site area and the layout of the proposed Small House.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 9.3.2020.
- 1.6 In view of the situation of COVID-19 and the latest special work arrangement for government departments announced by the Government, the Planning Department (PlanD) has only provided essential and limited public services and the District Planning Offices of PlanD have suspended all fieldwork, including visit to the Site for gathering of background information, until further notice. In view of the above, the Board on 24.4.2020 agreed to defer consideration of this application. The application is now scheduled for consideration by the Committee at this meeting.

## **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 village of Fanling Wai, he is entitled to have a Small House grant under the Small House policy;
- (b) the Site falls within the ‘Village Environs’ (‘VE’) of Ma Mei Ha Leng Tsui;
- (c) there is no available land for Small House development in Fanling Wai where is his original village. Besides, expansion area for Small House development in Fanling Wai of Ling Shan Tsuen has been suspended. He therefore has to seek other alternative site for Small House development;
- (d) the applicant does not own any property. It has been hard to find a suitable site for Small House development;
- (e) there are similar approved Small House applications in the vicinity of the Site; and
- (f) the proposed development is compatible with surrounding environment. No tree felling and land filling would be involved. Hence, there is no environmental impact anticipated.

## **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. 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/463 for the development of a Small House submitted by a different applicant. The application was approved by the Committee on 15.6.2012 mainly on the considerations that the application generally complied with the Interim Criteria in that most of the footprint of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone at the time of consideration; the proposed development was not incompatible with the surrounding area; and significant adverse landscape impact was not anticipated. However, the planning permission lapsed on 16.6.2016 as the approved development did not commence within the validity period. Compared with the previously approved application, except the disposition of septic tank, there is no change to the major development parameters including the site area and the layout of the proposed Small House.
- 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 65 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. Except A/NE-LYT/267 which 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, all the other 64 similar applications were approved with conditions by the Committee between April 2003 and September 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; the implementation of Small Houses formed a new village cluster in the locality and previous/similar applications were approved by the Committee.
- 6.2 Details of the applications are summarized at **Appendix IV** 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) vacant and covered by grass;
- (b) located to the immediate west of the village cluster of Ma Mei Ha Leung Tsui Village (**Plan A-2a**); and
- (c) accessible by a local track.

7.2 The surrounding area has the following characteristics:

- (a) situated in a rural setting dominated by village houses, temporary structures, fallow agricultural land and tree groups;
- (b) to the immediate northwest are sites of planning applications for Small House developments approved between April 2014 and October 2018;
- (c) to the immediate east is a village house under construction under planning application No. A/NE-LYT/464, and further east are village houses in the “V” zone of Ma Mei Ha Leung Tsui village cluster;
- (d) to the immediate south is a village house under construction under planning application No. A/NE-LYT/538, and further south are village houses with planning applications approved for Small House developments between February 2013 and June 2018; and
- (e) some vacant land can be found to the immediate west, and further west are village houses with planning applications and temporary structures for domestic purpose.

**8. Planning Intention**

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

**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	-  -	100%  100%	The Site and the footprint of the proposed Small House fall within the “AGR” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> <li>- The Site</li> <li>- Footprint of the proposed Small House</li> </ul>	<p>100%</p> <p>100%</p>	<p>-</p> <p>-</p>	<p>DLO/N, LandsD advises that the Site falls within the ‘VE’ of Ma Mei Ha Leung Tsui and Leng Pei Tsuen.</p>
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p>		✓	<p><u>Land Required</u></p> <ul style="list-style-type: none"> <li>- 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<sup>2</sup> while the 10-year Small House demand forecast for the same village is 132.</li> </ul>
	<p>Sufficient land in “V” zone to meet outstanding Small House application?</p>		✓	<p><u>Land Available</u></p> <ul style="list-style-type: none"> <li>- 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) (<b>Plan A-2b</b>).</li> </ul>
4.	<p>Compatible with the planning intention of “AGR” zone?</p>		✓	<p>The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently an abandoned land. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.</p>
5.	<p>Compatible with surrounding area/ development?</p>	✓		<p>The proposed Small House is compatible with the surrounding rural setting and environment dominated by village houses and temporary structures (<b>Plan A-2a</b>).</p>
6.	<p>Within Water Gathering Grounds (WGGs)?</p>		✓	

<sup>2</sup> 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 outside the “V” zone, 28 of them have obtained valid planning approval from the Board.

	<b>Criteria</b>	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
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?	✓		<ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> </ul>
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> </ul>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<ul style="list-style-type: none"> <li>- The Site is located within rural landscape area comprising temporary structures, village houses and patchy areas of weedy vegetation. Significant landscape impact by the proposed use is not anticipated. The proposed use is considered not incompatible with the surrounding setting.</li> <li>- It is noted that there is no major public frontage along the site boundary and the Site has inadequate space. Should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.</li> </ul>
13.	Local objection conveyed by DO?		✓	District Officer (North) (DO(N)) advises that the Indigenous Inhabitant Representative (IIR) of Leng Tsui has no comment on the application. The Chairman of Fanling District Rural Committee and the Resident Representative (RR) of Leng Tsui object to the application on the grounds of adverse traffic and environmental impacts. The North District Council member of the subject constituency did not reply.

9.2 Comments from the following Government departments have been incorporated in paragraph 9.1 above. Detailed comments from Government departments are at **Appendix V**.

- (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 17.3.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix VI**). The Sheung Shui District Rural Committee indicates no comment on the application. The remaining public comments from the Chairman, the First Vice Chairman of Fanling District Rural Committee, Designing Hong Kong and an individual raise objection to the application mainly on the grounds that the proposed development would induce more traffic flow and thus threaten safety of villagers; there is potential environmental pollution during construction stage that would affect villagers' quality of life; the proposed development is not in line with the planning intention of "AGR" zone; land is still available within "Village Type Development" zone; septic tank would contaminate water sources; and approval of the application will set undesirable precedents for similar applications in the area.

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

- 11.1 The application is for a Small House development in an area zoned "AGR" 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 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 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 0.89ha (equivalent to 35 Small House sites) of land are available in the "V" zone of the subject village cluster for Small House development (**Plan A-2b**). DLO/N, LandsD advises that the Site falls within the 'VE' of the subject village cluster.
- 11.3 The Site is vacant and covered by grass. The village proper of Ma Mei Ha Leng Tsui and Leng Pei is located to the immediate east of the Site and there are approved Small House applications in the vicinity of the Site (**Plan A-2a**). The proposed Small House development is not incompatible with the surrounding rural landscape character dominated by village houses and temporary structures. Significant landscape impact on existing landscape resources arising from the application is not anticipated. In this regard, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. C for T considers that Small House development should be confined within the "V" zone as far as possible but given that the proposed development involves 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/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 Mei Ha Leng Tsui and Leng Pei Tsuen (**Plan A-2a**). Land available (about 0.89ha or equivalent to 35 Small House sites) within the "V" zone is insufficient to meet the 45 outstanding Small House applications and Small House demand of 177 Small Houses (including the 10-year demand forecast for 132 Small Houses). The application is generally considered in compliance with the Interim Criteria and sympathetic consideration could be given to the applicant.



- 11.5 The Site is the subject of an approval previous application (No. A/NE-LYT/463) submitted by a different applicant. The planning permission lapsed on 16.6.2016. There has not been any major change in planning circumstances of the area since the approval of the previous application.
- 11.6 As shown on **Plan A-2a**, there are 50 similar applications for Small House development in close proximity to the Site. All similar applications were approved with conditions by the Committee between April 2006 and September 2019 mainly on the grounds of complying 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; compatible with the surrounding rural environment; and no significant adverse impacts on the surrounding area. The circumstances of the current application are similar to the previously approved similar applications.
- 11.7 Regarding four adverse public comments, 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 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 15.5.2024, 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 a 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 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 applicant.

### **14. Attachments**

<b>Appendix I</b>	Application Form with attachments received on 9.3.2020
<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>	Previous Application
<b>Appendix IV</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 V</b>	Detailed Comments from Relevant Government Departments
<b>Appendix VI</b>	Public Comments
<b>Appendix VII</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 Ma Mei Ha Leng Tsui and Leng Pei for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos