

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/635

<u>Applicant</u>	Mr. WONG Chun Tong
<u>Site</u>	Lot 591 in D.D. 28, Tai Mei Tuk, Tai Po, New Territories
<u>Site Area</u>	About 167 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Green Belt” (“GB”)
<u>Application</u>	Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

1.1 The applicant, who claims to be an indigenous villager¹ of Tai Mei Tuk, seeks planning permission to build an NTEH (Small House) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ use within the “GB” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed NTEH (Small House) are as follows:

Total floor area	:	195.09m ²
Number of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

Layout of the proposed Small House with septic tank location and site formation works are shown on **Drawings A-1 to A-3**.

1.3 In support of the application, the applicant submitted the application form with the attachments (**Appendix I**).

¹ As advised by DLO/TP, LandsD, the indigenous villager status of the applicant has yet to be ascertained.

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 at **Appendix I**. They can be summarised as follows:

- (a) he is an indigenous villager and intends to construct a village house and live with his parents; and
- (b) the Site is his only private land.

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. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development in the “GB” zone;
- (b) applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning ground. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas. With the exception of NTEH, a plot ratio up to 0.4 for residential development may be permitted;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to existing villages and in keeping with the surrounding uses, and where the development is to meet the demand from indigenous villagers;
- (d) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

5. Assessment Criteria

The set of Interim Criteria for Consideration of Application for 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 promulgated on 7.9.2007 is at **Appendix II**.

6. Background

6.1 Part of the Site is the subject of a previous enforcement action against unauthorized development for filling of land taken by the Planning Authority under the Town Planning Ordinance, including issuance of Enforcement Notice (EN) on 20.2.2012 and Reinstatement Notice (RN) requiring removal of leftovers/debris and grassing of the land on 3.5.2012. Subsequently, Compliance Notice was issued on 29.11.2012.

6.2 The Site is at present not involved in any of the active enforcement action/cases.

7. Previous Applications

There is no previous application at the Site.

8. Similar Applications

8.1 Within the same "GB" zone, there are 78 similar applications (including 62 within "GB" zone only and 16 straddling on both "GB" and "V" zones) (**Plan A-1**) since the first promulgation of the Interim Criteria on 24.11.2000. Out of the 78 similar applications, 47 were approved and 31 were rejected.

8.2 For the 45 applications (No. A/NE-TK/140, 177, 179, 192, 211, 213, 217, 226, 243, 259 – 262, 275 – 278, 294, 327, 328, 344, 362, 363, 367, 373, 375, 392, 393, 419, 425, 440, 449, 450, 473, 476, 521, 522, 531, 540, 545, 573, 580, 582, 585 and 618) approved with conditions by the Rural and New Town Planning Committee (the Committee) from 2002 to 2017, they were approved mainly on the considerations of generally in compliance with the Interim Criteria in that the proposed Small Houses fell mostly within the village 'environs' ('VE'); there was a general shortage of land to meet the demand for Small House development in the "V" zone of the concerned village at the time of consideration; no significant adverse impact on the surrounding areas; and/or being the subject of previously approved application. Application No. A/NE-TK/582 was also approved as the site was located in close proximity to existing village cluster and sites of approved Small House cases. For application No. A/NE-TK/618, it was also approved on consideration that processing of the land grant was at an advanced stage.

8.3 For the other two approved applications, application No. A/NE-TK/204 for 37 Small Houses was approved on 7.4.2006. While some proposed Small Houses were not in line with the Interim Criteria in that less than 50% of their footprints fell within the 'VE', sympathetic consideration was given at the time

of consideration as planning permission for Small Houses had previously been granted by the Board in 2000 before the first promulgation of the Interim Criteria on 24.11.2000 and the related Small House applications had been approved by Lands Department in 2001. Application No. A/NE-TK/432 was the subject of an appeal case (No. 5/2014) allowed by the Town Planning Appeal Board on 22.10.2015 mainly on considerations of the unique characteristics of the appeal site (i.e. located on agricultural land not covered by dense vegetation, well separated from the edge of the Pat Sin Leng Country Park, close to adjacent Small House developments and being able to be connected to public sewer).

- 8.4 Regarding the 31 rejected applications (No. A/NE-TK/258, 263, 273, 274, 279, 372, 401, 426, 443, 444, 486 – 493, 519, 520, 524, 555, 557 – 559*, 570*, 571*, 577, 578, 598* and 622), they were rejected by the Committee/the Board on review from 2009 to 2017 mainly for reasons of being not in line with the planning intention of “GB” zone; not complying with the Interim Criteria and the TPB PG-No. 10 for development within “GB” zone in that the applicants failed to demonstrate that the proposed Small House would not cause adverse landscape, sewerage, water quality and/or geotechnical impacts on the surrounding areas. Applications No. A/NE-TK/555, 557, 558, 559, 570, 571, 577, 578, 598 and 622 were also rejected for the reason that land was still available within the “V” zone for Small House development. Moreover, the footprint of the proposed Small House under applications No. A/NE-TK/372, 443, 444, 519 and 520 fell outside both the “V” zone and the ‘VE’. Thus, they were not in compliance with the Interim Criteria.
- 8.5 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

9. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

- 9.1 The Site is:
- (a) situated on sloping ground and grown with grass, weeds and eight siblings of *Carica Papaya* (番木瓜);
 - (b) situated to the east of a cluster of village houses; and
 - (c) accessible by a local track leading to Ting Kok Road.
- 9.2 The surrounding areas are predominantly rural in character. The village proper of Tai Mei Tuk is located to the southwest of the Site. A dense woodland containing mature trees and undergrowth forming a natural backdrop of the area is located to the east of the Site.

* Applications No. A/NE-TK/559, 570, 571 and 598 are the subject of Town Planning Appeals lodged by the respective applicants in 2016 and 2017. The Appeals of applications No. A/NE-TK/559, 570 and 571 were dismissed by the Town Planning Appeal Board on 22.3.2017 and 17.10.2017 respectively. Hearing of the Appeal of application No. A/NE-TK/598 has been scheduled on 29 and 30.5.2018.

10. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

11. Comments from Relevant Government Departments

11.1 The application has been assessed against the assessment criteria in **Appendix IV**. The assessment is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - Footprint of the Small House - Application site		100% 100%	- The Small House footprint and the Site fall entirely within the “GB” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%		- The Site falls wholly within the ‘VE’ of Lung Mei and Tai Mei Tuk. District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) has no objection to the application.
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	- Land required to meet Small House demand : about 7.7 ha (equivalent to 308 Small House sites). The outstanding Small House applications are 61 ² while the 10-year Small House demand forecast is 247. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 2.9 ha (equivalent to 116 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “GB” zone?		✓	- There is a general presumption against development within the “GB” zone. - The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the

² Among the 61 outstanding Small House applications, there are 13 Small House applications straddling or outside the “ V” zone that have already obtained planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				application as the Site is covered with common weeds only.
5.	Compatible with surrounding area/ development?	✓		- The surrounding areas are predominantly rural in character with village houses located to the west of the Site.
6.	Within Water Gathering Ground (WGG)?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	- The Director of Fire Services (D of FS) has no in-principle objection to the application.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T), in general, has reservation on the application and advises that such type of development should be confined within the “V” zone as far as possible. - Notwithstanding, the application only involving development of a Small House 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 in-principle objection to the application from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) has no objection

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				to the application and advises that in view of the scale and nature of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the application from the landscape planning perspective. The Site is located on a sloping ground, and the proposed development would inevitably involve site formation and/or slope works. The topography of the Site will be irreversibly altered due to the proposed development. The cumulative effect of approving similar applications would cause adverse landscape impact to the area and result in degradation of landscape character. - Approval condition on submission and implementation of landscape proposal is required.
13.	Geotechnical impact	✓		<ul style="list-style-type: none"> - The Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advises that the stability conditions of the slope Feature No. 3SE-D/DT7 at the Site is unknown. An investigation to delineate the scale and extent of the adjacent man-made slopes, and implementation of necessary geotechnical remedial works is considered necessary to ensure that the proposed development would not affect or be affected by the adjacent man-made slopes. - Approval condition on the submission of geotechnical

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				investigation report and implementation of necessary geotechnical remedial works identified therein is required.
14.	Local objections conveyed by DO?		✓	

11.2 Comments from the following Government departments have been incorporated in paragraph 11.1 above. Other detailed comments are at **Appendix IV**.

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

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department; and
- (c) District Officer/Tai Po, Home Affairs Department.

12. Public Comments Received During Statutory Publication Period (Appendix V)

On 9.2.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, seven public comments from WWF-Hong Kong, Designing Hong Kong Limited and five individuals were received objecting to the application mainly for the reasons of being not in line with the planning intention of the “GB” zone; non-compliance with the Interim Criteria and TPB-PG No. 10 due to adverse landscape, visual and geotechnical impacts on the surrounding area; setting of undesirable precedent; and land is still available in the “V” zone.

13. Planning Considerations and Assessments

13.1 The Site falls entirely within an area zoned “GB” (**Plan A-2a**). The proposed development is not in line with the planning intention of “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by

natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

- 13.2 According to the DLO/TP, LandsD's record, the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 61 while the 10-year Small House demand forecast for the concerned villages is 247. Based on the latest estimate by the Planning Department, about 2.9 ha (or equivalent to about 116 Small House sites) of land are available within the "V" zone of Lung Mei and Tai Mei Tuk. As more than 50% of the proposed Small House footprint falls within the 'VE' of the concerned villages, DLO/TP, LandsD has no objection to the application.
- 13.3 The Site is situated on a natural slope covered with weeds and groundcovers with eight siblings of *Carica Papaya* (番木瓜). The proposed Small House development is considered not incompatible with the surrounding areas which is predominantly rural in character with village houses located to the south and west. DAFC has no strong view on the application as the Site is covered with common weeds only. CTP/UD&L, PlanD has some reservations on the application as the proposed development, situated on a sloping ground, would inevitably involve site formation and/or slope works that will irreversibly alter the topography of the Site. The cumulative effect of approving such developments would cause adverse landscape impact to the area and result in degradation of landscape character.
- 13.4 H(GEO) of CEDD advises that the Site may be affected by previous excavation and filling works. An investigation to delineate the scale and extent of the slope works, and implementation of necessary geotechnical remedial works are considered necessary to ensure that the proposed development would not affect or be affected by the adjacent man-made slopes. In this regard, the applicant fails to demonstrate that the stability of the adjacent slope would not be adversely affected. C for T has reservation on the application and advises that the proposed development should be confined within the "V" zone. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside "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. DEP advises that, in view of the scale and nature of the proposed development, the application alone is unlikely to cause major pollution. Other concerned Government departments, including CE/MN of DSD, CE/C of WSD, CHE/NTE of HyD, PM/NTE of CEDD and D of FS have no objection to/adverse comment on the application.
- 13.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint is located within the 'VE' of Lung Mei and Tai Mei Tuk. Whilst land available within the "V" zone for Small House development (about 2.9 ha or equivalent to 116 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the outstanding 61 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.

- 13.6 The proposed development does not comply with the Interim Criteria and TPB-PG No. 10 as the proposed development would involve site formation and/or slope works affecting the existing natural landscape, and the applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the surrounding areas and that the stability of the adjacent slope would not be adversely affected.
- 13.7 There are 47 similar applications approved between 2002 and 2017 mainly on the considerations that the proposed Small Houses fell mostly within the ‘VE’; there was a general shortage of land to meet the demand for Small House development in the “V” zone of the concerned village at the time of consideration; would have no significant adverse impact on the surrounding areas; and/or being the subject of previously approved application. As the Site is situated on a sloping ground and construction of the proposed Small House would cause adverse landscape impact on the surrounding areas and be subject to adverse geotechnical impact, its circumstances are different from the approved similar applications.
- 13.8 The other 31 similar applications were rejected mainly for the reasons of being not in line with the planning intention of “GB” zone; not complying with the Interim Criteria and the TPB PG-No. 10 in that the applicants failed to demonstrate that the proposed Small House would not cause adverse landscape, sewerage, water quality and/or geotechnical impacts on the surrounding areas; and/or the proposed Small House footprint fell outside both the “V” zone and the ‘VE. Applications No. A/NE-TK/401, 577 and 622 located to the immediate northwest of the Site (**Plan A-2a**) were rejected for the reasons of being not in line with the planning intention of “GB” zone; and the proposed development would affect existing natural landscape and adversely affect slope stability in the area. Applications No. A/NE-TK/577 and 622 were also rejected as land was still available within the “V” zone for Small House development. Their circumstances are similar to the current application.
- 13.9 Regarding the public comments objecting to the application mainly for the reasons of being not in line with the planning intention of the “GB” zone, adverse landscape, visual and geotechnical impacts on the surrounding area; setting of undesirable precedent; and land is still available in the “V” zone, Government departments’ comments and the planning assessments above are relevant.

14. Planning Department’s Views

- 14.1 Based on the assessments made in paragraph 13 and having taken into account the public comment mentioned in paragraph 12, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “Green Belt” zone for the area which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from this planning intention;
- (b) the proposed development does not comply with the Town Planning Board Guidelines No. 10 for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’ in that the proposed development would involve clearance of existing natural vegetation affecting the existing natural landscape, and the applicant fails to demonstrate that the proposed development would have no adverse landscape impact on the surrounding areas and that the stability of the adjacent slope would not be adversely affected;
- (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories in that the proposed development would cause adverse landscape impact on the surrounding areas and be subject to adverse geotechnical impact; and
- (d) land is still available within the “Village Type Development” (“V”) zone of Lung Mei and Tai Mei Tuk which is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within “V” zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

14.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 16.3.2022, 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;
- (b) the submission of geotechnical investigation report and implementation of necessary geotechnical remedial works identified therein to the satisfaction of the Director of Civil Engineering and Development or of the Town Planning Board;
- (c) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and

- (d) the submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

15. Decision Sought

- 15.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 15.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.
- 15.3 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.

16. Attachments

Appendix I	Application form and attachments
Appendix II	Interim Criteria
Appendix III	Similar applications
Appendix IV	Government departments' detailed comments
Appendix V	Public comment
Appendix VI	Recommended Advisory Clauses
Drawings A-1 to A-3	Drawings submitted by the applicant
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within "V" zone
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2018**