

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/668

<u>Applicant</u>	Mr. Ryan WONG represented by Mr. HUI Kwan Yee
<u>Site</u>	Lot 551 S.D ss.4 in D.D. 28, Tai Mei Tuk, Tai Po, N.T
<u>Site Area</u>	About 55.7 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 villager (IV) of Tai Mei Tuk, Tai Po¹, 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)’ within the “GB” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

1.2 Details of the proposed Small House development are as follows:

Total floor area	: 90m ²
No. of storeys	: 3
Building height	: 8.23m
Roofed over area	: 30m ²

Layout plan of the proposed Small House is shown on **Drawing A-1**. The septic tank will be provided underneath the proposed Small House.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) application form with attachments on 29.4.2019 (**Appendix I**)
- (b) further information received on 3.9.2019 providing a revised layout plan (*accepted and exempted from*) (**Appendix Ia**)

¹ District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicant’s eligibility of Small House grant has yet to be ascertained.

publication and recounting requirements)

- 1.4 On 21.6.2019, the Committee agreed to the applicant's request to defer making a decision on the application for two months to allow time for preparation of further information to support the application. The applicant submitted further information on 3.9.2019. The application is scheduled for consideration by the Committee on 1.11.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application as mentioned in Part 9 of the application form at **Appendix I** and further information at **Appendix Ia** are summarized as follows:

- (a) the proposed Small House will be built on vacant agricultural land;
- (b) there is no alternative land resources available to the applicant;
- (c) there are similar houses built in the vicinity of the Site;
- (d) the proposed Small House is not able to be connected to public sewers as the available public sewer is distant from the Site and the applicant is unable to obtain the consent of the affected land owners; and
- (e) an underground septic tank will be installed within the proposed Small House because there is limited space within the Site. The maintenance works of the septic tank can be carried out inside the proposed Small House.

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 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 Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for 'Application for Development within "GB" 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;

- (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.

6. Previous Application

There is no previous application at the Site.

7. Similar Applications

- 7.1 There are 83 similar applications (including 67 within “GB” zone only and 16 straddling on both “GB” and “V” zones) within the same “GB” zone and in the vicinity of the Site since the first promulgation of the Interim Criteria on 24.11.2000. Out of the 83 similar applications, 49 cases were approved and 34 were rejected.
- 7.2 Out of the 34 rejected applications, five of them (No. A/NE-TK/258, 263, 273, 274 and 279) were rejected by the Committee or the Board on review in 2009 mainly for reasons of not complying with the Interim Criteria and the TPB PG-No. 10 for development within “GB” zone in that they would likely involve site formation and slope stabilisation works resulting in clearance of natural vegetation and damage of existing landscape of the surrounding area. Subsequently, the concerned Small Houses were approved under applications No. A/NE-TK/327, 328, 344, 392 and 393 between 2010 and 2012 mainly because the applicants had submitted Landscape Impact Assessment Report, Geotechnical Planning Review Report and Natural Terrain Hazard Study Report to demonstrate that no cutting of slopes and no felling of trees on site or in the adjacent woodland would be required, and thus the proposed development would not cause adverse geotechnical or landscape impacts on the surrounding area.

- 7.3 For the remaining 29 rejected applications (No. A/NE-TK/372, 401, 426, 443, 444, 486 – 493, 519, 520, 524, 555, 557, 558, 559*, 570*, 571*, 577, 578, 598*, 622, 635, 660 and 663), they were rejected by the Committee/the Board on review between 2011 and 2019 mainly for reasons of being not in line with the planning intention of “GB” zone; and/or not complying with the Interim Criteria and TPB PG-No. 10 in that the applicants failed to demonstrate that the proposed Small House would not cause adverse landscape, sewage, water quality and/or geotechnical impacts on the surrounding areas. Moreover, the proposed Small House footprint under applications No. A/NE-TK/372, 443, 444, 519 and 520 fell outside both the “V” zone and the village ‘environs’ (‘VE’). Applications No. A/NE-TK/555, 557, 558, 559, 570, 571, 577, 578, 598, 622, 635, 660 and 663 were also rejected as land was still available within the “V” zone for Small House development.
- 7.4 Apart from the five approved applications mentioned in paragraph 7.2 above, there were 36 applications (No. A/NE-TK/140, 177, 179, 192, 204, 211, 213, 217, 226, 243, 259 – 262, 275 – 278, 294, 362, 363, 367, 373, 375, 419, 425, 440, 449, 450, 473, 476, 521, 522, 531, 540 and 545) approved with conditions by the Committee between 2002 and April 2015 before the Board’s adoption of a more cautious approach in approving applications for Small House development in August 2015. These applications were approved mainly on the considerations of being generally in compliance with the Interim Criteria in that the proposed Small House footprint 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; no significant adverse impact on the surrounding areas; and/or being the subject of previously approved application. Although some proposed Small Houses under Application No. A/NE-TK/204 (applied for 37 Small Houses) were not in line with the Interim Criteria in that less than 50% of their footprints fell within the ‘VE’, the application was approved on sympathetic consideration in that 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 grant applications had been approved by LandsD in 2001.
- 7.5 After the Board’s adoption of a more cautious approach, seven applications (No. A/NE-TK/573, 580, 582, 585, 618, 654 and 664) were approved between 2016 and 2019 on sympathetic considerations in that the site was the subject of previously approved application (No. A/NE-TK/580, 582, 618, 654 and 664); the proposed house was located in close proximity to the existing village cluster (No. A/NE-TK/573, 582 and 585); and the processing of Small House land grants were at an advanced stage (No. A/NE-TK/618, 654 and 664).
- 7.6 For the remaining approved application (No. A/NE-TK/432), it was the subject of a Town Planning Appeal (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.
- 7.7 Details of the above similar applications are summarized at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

* Applications No. A/NE-TK/559, 570, 571 and 598 were the subjects of Town Planning Appeals lodged by the respective applicants in 2016 and 2017, which were dismissed by the Town Planning Appeal Board on 22.3.2017, 17.10.2017 and 3.4.2019.

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

8.1 The Site is:

- (a) partially vacant and partially under cultivation;
- (b) located near the northern fringe of Tai Mei Tuk;
- (c) entirely within the ‘VE’ of Lung Mei and Tai Mei Tuk; and
- (d) accessible via local track off Ting Kok Road.

8.2 The surrounding areas are predominantly rural in character comprising scattered tree groups and village houses. Village clusters are mainly found to the south of the Site.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limit 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.

10. Comments from Relevant Government Departments

10.1 The application has been assessed against the assessment criteria in **Appendix II**. 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%	- Both the Site and the proposed Small House footprint fall entirely within “GB” zone.
2.	Within ‘VE’? - Footprint of the Small House - Application site	100% 100%	- -	- Both the Site and the proposed Small House footprint fall entirely within the ‘VE’ of Lung Mei and Tai Mei Tuk (Plan A-1). - The District Lands Officer/Tai Po, LandsD (DLO/TP, LandsD) has no objection to the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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 Small House demand: about 7.68 ha (equivalent to 307 Small House sites). The outstanding Small House applications are 60 ² while the 10-year Small House demand forecast is 247. <u>Land Available</u> - Land available to meet Small House demand within the “V” zone of the villages concerned: about 1.79 ha (equivalent to about 71 Small House sites) (Plan A-2b).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		
4.	Compatible with the planning intention of “GB” zone?		✓	- There is a general presumption against development within the “GB” zone. - Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application from nature conservation point of view as the Site is partially vacant and partially under cultivation.
5.	Compatible with surrounding area/development?	✓		- The surrounding areas are predominantly rural in character comprising scattered tree groups and village houses.
6.	Within Water Gathering Ground (WGG)?		✓	- The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
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.
9.	Traffic impact?	✓		- The Commissioner for Transport (C for T) in general has reservation on

² Among the 60 outstanding Small House applications, 29 of them fall within the “V” zone, 31 straddle or fall outside the “V” zone. For those 31 applications straddling or being outside the “V” zone, 9 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				the application but considers that the application only involving development of a Small House can be tolerated on traffic grounds.
10.	Drainage impact?	✓		<ul style="list-style-type: none"> - 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 the submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> - Director of Environmental Protection (DEP) has no objection to the application.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has reservations on the application from the landscape planning point of view as part of the Site is located on a slope at the fringe of the adjacent tree groups and the proposed development would inevitably involve site formation and/or slope works. With no related information such as formation level or extent of slope works, adverse impact arising from site formation works/or slope works to the adjacent woodland cannot be ascertained. Approval of the application would further attract similar developments into the “GB” zone, and the cumulative effect of approving such applications would result in degradation of landscape character and irreversible changes to the area. - Should the application be approved, given that the proposed Small House footprint covers most of the Site, there is no adequate space for meaningful landscaping to benefit the public realm. No landscape condition can be imposed.
13.	Geotechnical impact?		✓	

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
14.	Local objections conveyed by DO?		✓	

10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Other detailed comments are at **Appendix IV**.

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

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

- (a) Chief Engineer/Consultants Management, Drainage Services Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Project Manager/North, Civil Engineering and Development Department;
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (e) Director of Electrical and Mechanical Services; and
- (f) District Officer/Tai Po, Home Affairs Department.

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

On 7.5.2019, the application was published for public inspection. During the statutory public inspection period, five public comments were received from The Hong Kong Bird Watching Society, Designing Hong Kong Limited, WWF-Hong Kong and two individuals objecting to the application mainly on the grounds of being not in line with the planning intention of “GB” zone; being not complied with TPB-PG No. 10 for development within “GB” zone; being located outside the village cluster; being in conflict with the existing agricultural activities; setting of undesirable precedent; similar applications recently rejected; and causing adverse landscape, ecological and geotechnical impacts.

12. Planning Considerations and Assessments

12.1 The application is for a proposed Small House development at the Site falling entirely within “GB” zone on the OZP. 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. There is no strong planning justification in the submission for a departure from the planning intention of the “GB” zone.

- 12.2 CTP/UD&L of PlanD advises that as part of the Site is located on a slope at the fringe of the adjacent tree groups, the proposed development would inevitably involve site formation and/or slope works. Without related information such as formation level or extent of slope works, adverse impact arising from site formation and/or slope works to the adjacent woodland cannot be ascertained. Approval of the application would further attract similar developments into the “GB” zone, and the cumulative effect of approving such applications would result in degradation of landscape character and irreversible changes to the area. Hence, the proposed development does not comply with TPB PG-No. 10 for development within “GB” zone in that the proposed development involving clearance of existing natural vegetation would result in deterioration of landscape quality in the subject “GB” zone.
- 12.3 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Lung Mei and Tai Mei Tuk is 60 while the 10-year Small House demand forecast for the concerned villages is 247. Based on the latest estimate by the PlanD, about 1.79 ha of land (equivalent to about 71 Small House sites) are available within the “V” zone of Lung Mei and Tai Mei Tuk. As the proposed Small House footprint falls entirely within the ‘VE’ of the concerned villages, DLO/TP, LandsD has no objection to the application.
- 12.4 The Site, located at the northern fringe of Tai Mei Tuk, is partially vacant and partially under cultivation. The surrounding areas are predominantly rural in character comprising scattered tree groups and village houses. Village clusters are mainly found to the south of the Site (**Plan A-2a**). DAFC has no strong view on the application from nature conservation point of view as the Site is partially vacant and partially under cultivation. For reasons as pointed out in paragraph 12.2 above, CTP/UD&L, PlanD has reservations on the application from the landscape planning perspective. C for T in general also has reservation on the application but considers that the application only involving development of a Small House can be tolerated unless it is rejected on other grounds. Other relevant Government departments including DEP, CE/MN and CE/CM of DSD, CE/C of WSD, PM/N and H(GEO) of CEDD, CHE/NTE of HyD and D of FS have no objection to or adverse comment on the application.
- 12.5 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprint falls within the ‘VE’ of Lung Mei and Tai Mei Tuk. While land available within the “V” zone (**Plan A-2b**) is insufficient to fully meet the future Small House demand of 307 Small Houses, such available land (about 1.79 ha or equivalent to 71 Small House sites) is capable to meet the 60 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development since August 2015. 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. In this regard, 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.
- 12.6 There are 11 similar applications covering nine sites in close proximity to the Site, with only three of them approved (**Plan A-2a**). Applications No. A/NE-TK/204 and 217 were approved with conditions by the Committee in 2006 before the Board’s adoption of a more cautious approach in August 2015. For the remaining approved

application No. A/NE-TK/432, it was the subject of a Town Planning Appeal (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. For the remaining eight similar applications, they were all rejected by the Committee. Amongst them, five applications (No. A/NE-TK/372, 443, 444, 519 and 520) were rejected by the Committee or the Board on review between 2011 and 2017 mainly for the reasons of being not in line with the planning intention of the “GB” zone; not complying with the Interim Criteria and TPB PG-No. 10 in view of adverse landscape and sewage impacts on the surrounding areas; and/or land still being available within the “V” zone for Small House development. For the remaining three applications (No. A/NE-TK/570 and 571, and 598), they were the subject of Town Planning Appeal No. 4 of 2016 and No. 2 of 2017, which were dismissed by the Town Planning Appeal Board on 17.10.2017 and 3.4.2019 respectively mainly on the same rejection reasons of the above rejected cases. The current application is similar to the above rejected cases in terms of not being in line with the planning intention of the “GB” zone; not complying with the Interim Criteria and TPB PG-No. 10 in view of adverse landscape impacts on the surrounding areas; and land still being available within the “V” zone for Small House development.

- 12.7 Regarding the public comments raising objection to the application on the grounds as detailed in paragraph 11 above, Government departments’ comments and the planning assessments in above paragraphs are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, 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 “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. 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 “GB” zone under section 16 of the Town Planning Ordinance’ in that the proposed development would affect the existing natural landscape on the surrounding environment;
 - (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 impacts on the surrounding areas; and
 - (d) land is still available within the “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.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.11.2023, 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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. Attachments

Appendix I	Application form and attachments received on 29.4.2019
Appendix Ia	Further information received on 3.9.2019
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Similar applications
Appendix IV	Detailed comments from relevant Government departments
Appendix V	Public comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Layout plan 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 the "V" Zone
Plan A-3	Aerial photo
Plan A-4	Site photo