

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/705

- Applicant** : Mr. PANG Kin Wai represented by Yicon Consultants Limited
- Site** : Lot 1850 S.N in D.D. 76, Kan Tau Tsuen, Fanling, New Territories
- Site Area** : 139 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who claimed to be an indigenous villager¹, seeks planning permission to build a proposed NTEH (Small House) on the application site (the Site) in Kan Tau Tsuen, Fanling (**Plans A-1a and A-2a**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).

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

Total Floor Area	:	195.09 m ²
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m ²

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

1.4 The Site is part of the subject of a previous planning application No. A/NE-LYT/434 for

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant is an indigenous villager of Fanling Village of Fanling Heung. The Small House application was approved in-principle in January 2017 and is pending for execution.

development of eight Small Houses. The application was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 14.1.2011. The planning permission was extended once with validity up to 14.1.2019. The planning permission lapsed on 15.1.2019. Compared with the previous application, major development parameters including the layout of the proposed Small House under the current application remain unchanged (**Plan A-1b**). The applicant under the current application is the same as previous approval.

- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which were received on 5.7.2019.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) the Site was the subject of a previous planning approval (No. A/NE-LYT/434) for eight Small House developments. In view of considerable time for the processing of Small House application, the planning permission was extended once and lapsed on 15.1.2019. As such, a fresh planning application is submitted for the consideration of the Board; and
- (b) Building License was issued by DLO/N, LandsD to the applicant.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the “current land owner” of the respective lot. 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 Applications**

- 5.1 The Site is involved in part of the three previous planning applications (No. A/NE-LYT/167, 384 and 434). Applications No. A/NE-LYT/167 and 384 are for different uses submitted by different applicants.
- 5.2 Application No. A/NE-LYT/167 for temporary trailer park with ancillary structures for a period of 12 months was rejected on review by the Board on 19.3.1999 mainly on the grounds of not in line with the planning intention of the “AGR” zone; insufficient information to demonstrate that no adverse drainage impact on the surrounding areas; and setting of an undesirable precedent.
- 5.3 Application No. A/NE-LYT/384 for proposed temporary public vehicle park for private cars for a period of 2 years was rejected by the Committee on 17.4.2009 mainly on the grounds of not in line with the planning intention of the “AGR” zone; insufficient

information to demonstrate that no adverse traffic impact on the surrounding areas; and setting of an undesirable precedent.

- 5.4 The last previous planning application (No. A/NE-LYT/434) for the development of eight Small Houses at a larger site was approved by the Committee with conditions on 14.1.2011. The application was approved mainly on the grounds that the application generally complied with the Interim Criteria. The planning permission was extended once with validity up to 14.1.2019 under the application No. A/NE-LYT/434-1. The planning permission lapsed on 15.1.2019. The applicant under the current application is the same under the previous approval. Compared with the previous application, major development parameters including the layout of the proposed Small House under the current application generally remain the same. According to DLO/N, LandsD, the Small House grants for all eight Small Houses under application No. A/NE-LYT/434 were approved in-principle in January 2017. Of them, four were executed in 2017. The other four including one under the current application were pending execution. The remaining three Small House grants which are pending to be executed sought planning permissions for Small House developments under applications No. A/NE-LYT/700 to 702 were approved with conditions by the Committee on 2.8.2019 (**Plan A-2a**).
- 5.5 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-1b**.

6. Similar Applications

- 6.1 There are 99 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-1a**) since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Of 88 approved applications, 53 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-1a**) 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 35 applications were approved between December 2015 and August 2019 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-1a**) mainly for reasons of being the subject of previously approved application; being situated in close proximity to existing village houses, the implementation of new Small House under construction and approved Small House development nearby was forming a new village cluster in the locality, and the processing of Small House grant was already at an advance stage.
- 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 IV** and their locations are shown on **Plan A-1a**.

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

7.1 The Sites are:

- (a) flat and vacant land with wild grass (**Plan A-3**);
- (b) located in close proximity to the village cluster of Kan Tau Tsuen; and
- (c) accessible via Sha Tau Kok Road – Ma Mei Ha.

7.2 The surrounding areas have the following characteristics:

- (a) to the north is site of planning application No. A/NE-LYT/702 for Small House development approved by the Committee in August 2019 (**Plan A-2a**), and to its further north across Sha Tau Kok Road - Ma Mei Ha is the “V” zone of Leng Tsai Tsuen;
- (b) to the immediate northwest and west are sites of planning application No. A/NE-LYT/700 and 701 for Small House developments approved by the Committee in August 2019 (**Plan A-2a**), and to its further west and northwest are sites of planning applications No. A/NE-LYT/679 to 681, 687 and 688 for Small House developments approved by the Committee in 2018 and April 2019 (**Plan A-2a**);
- (c) to the immediate northeast is site of planning application No. A/NE-LYT/354 for Small House developments approved by the Committee in 2007, and to its further east are village houses in “V” zone and the village proper of Kan Tau Tsuen (**Plan A-2a**); and
- (d) to the south are village houses in “V” zone of Kan Tau Tsuen.

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 application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small	- -	100% 100%	- The Site and the footprint of the proposed Small House fall entirely within the “AGR” zone.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	House			
2.	<p>Within ‘VE’?</p> <ul style="list-style-type: none"> - The Site - Footprint of the proposed Small House 	<p>100%</p> <p>100%</p>	-	- DLO/N, LandsD advises that the Site and footprint of the proposed Small House fall within the ‘VE’ of Kan Tau Tsuen.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?</p> <p>Sufficient land in “V” zone to meet outstanding Small House application?</p>	<p>✓</p>	<p>✓</p>	<p><u>Land Required</u></p> <p>- Land required to meet the Small House demand in Kan Tau Tsuen: about 4.05 ha (equivalent to 162 Small House sites). The outstanding Small House applications for Kan Tau Tsuen are 66² while the 10-year Small House demand forecast for the same village is 96.</p> <p><u>Land Available</u></p> <p>- Land available to meet the Small House demand within the “V” zone of Kan Tau Tsuen: about 2.04 ha (equivalent to 81 Small House sites) (Plan A-2b).</p>
4.	Compatible with the planning intention of “AGR” zone?		✓	- The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently fallow land overgrown with weeds. Agricultural infrastructures such as road access and water sources 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 agriculture point of view.
5.	Compatible with surrounding area/development?	✓		- The proposed Small House is not incompatible with the surrounding rural setting and environment dominated by agricultural land and

² Among the 66 outstanding Small House applications, 10 of them fall within the “V” zone and 56 straddle or outside the “V” zone. For those 56 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>
				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 application. The applicant is 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 application and advises that Small House developments should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set undesirable precedent cases for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. - Notwithstanding the above, the application involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.
10.	Drainage impact?	✓		- The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition on the submission and implementation of drainage proposal is required.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
11.	Sewerage impact?		✓	- The Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	- The Chief Town Planner / Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from the landscape planning point of view. - The Site is situated in an area of rural landscape character surrounded by village houses and car parks. No significant landscape resource of high sensibility is observed within the Site. Significant adverse impact on existing landscape resources arising from the application is not anticipated. - In consideration of the limited space within the Site, there is insufficient space for meaningful landscaping. Should the Board approve the application, it is 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, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Kan Tau Tsuen have no comment on the application.

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

- (a) District Lands Officer/North, Lands Department;
- (b) 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 12.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from the Chairman of Sheung Shui District Rural Committee, Designing Hong Kong Limited and an individual (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining comments from Designing Hong Kong Limited and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; land is still available within the “V” zone of Kan Tau Tsuen; approval of the application would set an undesirable precedent for similar applications within the “AGR” zone and the applicant should demonstrate that the proposed development would not cause an increase in flooding susceptibility of the adjacent areas.

11. Planning Considerations and Assessments

- 11.1 The application for Small House development in “AGR” zone 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 agriculture 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 Kan Tau Tsuen is 66 while the 10-year Small House demand forecast for the same village is 96. According to the latest estimate by PlanD, about 2.04 ha (equivalent to 81 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 Site falls within the ‘VE’ of Kan Tau Tsuen.
- 11.3 The Site is flat and covered with grass (**Plans A-3 and A-4a to A-4b**). It is located to the northwest of the “V” zone and village proper of Kan Tau Tsuen, which is bounded by the existing cluster of village houses and Small House applications in the north, west and east of the Site approved at different stages of development nearby. The implementation of which are forming a new village cluster in the vicinity of the Site (**Plan A-2a**). The proposed Small House is not incompatible with the surrounding rural setting comprising village houses and fallow agricultural land. Significant adverse 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 the landscape planning perspective. C for T has reservation on the application and considers that Small House developments should be confined within the “V” zone as far as possible but given that the proposed development involves one Small House, the application could be tolerated. Other relevant Government departments, including DEP, CE/MN of DSD and D of FS, have no adverse comment or 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 Kan Tau Tsuen (**Plan A-2a**). While land available within the “V” zone is insufficient to fully meet the future Small House demand, it is noted that land (about 2.04 ha or equivalent to 81 Small House sites) is still available within the “V” zone to meeting the outstanding 66 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 Site is the subject of a previously approved planning application (No. A/NE-LYT/434) for eight Small Houses approved by the Committee in 2011 submitted by the same applicant as the current application. As advised by DLO/N, LandsD, the Small House grant was approved in-principle pending execution. As such, sympathetic consideration might be given to the applicant.
- 11.5 There are 19 similar applications for Small House developments in the vicinity of the Site (i.e. applications No. A/NE-LYT/216, 234, 245, 246, 299, 351, 354, 389, 410, 679 to 681, 687, 688, 695, 697, 700 to 702) as shown on **Plan A-2a**. Of them, 9 applications (No. A/NE-LYT/216, 234, 245, 246, 299, 351, 354, 389, 410) were approved with conditions by the Committee between March 2001 and August 2010 (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/679 to 681, 687, 688, 700 to 702) were approved by the Committee between December 2018 and August 2019 (i.e. after a more cautious approach is adopted by the Board) (**Plan A-2a**) mainly on sympathetic consideration that the processing of Small House grants was already at an advance stage. The remaining 2 similar applications No. A/NE-LYT/695 and 697 to the east of the Site were rejected by the Committee in July 2019 (**Plan A-2a**) mainly on the grounds that land was still available within the “V” zone and they were considered more appropriate to concentrate Small House development within the “V” zone. It is considered that the circumstances of the current application are more similar to those approved similar applications No. A/NE-LYT/679 to 681, 687, 688, 700 to 702.
- 11.6 Regarding the adverse public comments objecting to the application mainly on the grounds of land available within the “V” zone; setting of an undesirable precedent for similar applications and adverse impact in relation to flooding susceptibility of the adjacent areas 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 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 16.8.2023, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following 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 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

Appendix I	Application Form with attachments received on 5.7.2019
Appendix II	Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories
Appendix III	Previous Applications
Appendix IV	Similar s.16 Applications for Proposed House (New Territories Exempted House (NTEH) - Small House) within/partly within the “AGR” Zone in the vicinity of the Sites in the Lung Yeuk Tau and Kwan Tei South area
Appendix V	Detailed Comments from Relevant Government Departments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Application 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
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**