

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

**APPLICATION NO. A/NE-LYT/709**

- Applicant** : Mr. PANG Chun Pui represented by Mr. YIP Tin Sang
- Site** : Lot 1776 in D.D. 76, Ma Mei Ha Leng Tsui, Fanling, New Territories
- Site Area** : 121.4 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
- Zonings** : “Agriculture” (“AGR”) (about 70m<sup>2</sup> or 57.7% of the site)  
“Village Type Development” (“V”) (about 51.4m<sup>2</sup> or 42.3% of the site)
- Application** : Proposed House (New Territories Exempted House (NTEH) - Small House)

**1. The Proposal**

1.1 The applicant, who claimed to be an indigenous villager<sup>1</sup>, seeks planning permission to build a proposed 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 partly zoned “AGR” (about 57.7%) and partly zoned “V” (about 42.3%) 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 use always permitted within the “V” zone while ‘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 <sup>2</sup>
Number of Storeys	:	3
Building Height	:	8.23 m
Roofed Over Area	:	65.03 m <sup>2</sup>

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<sup>1</sup> As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicant of the proposed Small House claimed himself to be an indigenous villager of Fanling Village of Fanling Heung. His eligibility for Small House grant has yet to be ascertained.

- 1.3 Layout of the proposed Small House (including septic tank) is shown on **Drawing A-1**. The applicant indicated that the uncovered area of the Site would be used for garden and circulation area.
- 1.4 The Site is the subject of two previously approved applications (No. A/NE-LYT/327 and 550) for Small House development. Application No. A/NE-LYT/327 submitted by a different applicant was approved on 28.4.2006. Application No. A/NE-LYT/550 submitted by the same applicant as the current application was approved on 17.10.2014. That planning permission lapsed on 18.10.2018. Compared with the last previous application No. A/NE-LYT/550, the site area and major development parameters including the layout of the proposed Small House under the current application generally remain the same.
- 1.5 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 15.7.2019.

## **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 in **Appendix I**. They can be summarised as follows:

- (a) the applicant is an indigenous villager of a recognized village of Leng Tsui Village in Fanling;
- (b) the Site is vacant for years; and
- (c) the Small House grant application has been submitted to District Lands Office, North (DLO/N). The Certificate of Exemption relating to building works in addition to site formation and drainage works should be obtained from DLO prior to the commencement of any building works. It is understood that a planning application should be obtained to proceed the Small House application.

## **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 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 the subject of two previous applications (No. A/NE-LYT/327 and 550) for the Small House development.

- 5.2 Application No. A/NE-LYT/327 submitted by a different applicant was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 28.4.2006 mainly on the considerations that that the application complied with the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell entirely within the village ‘environs’ (‘VE’) of Ma Mei Ha Leng Tsui, and there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand; and the proposed developments were not expected to have significant adverse traffic, drainage and environmental impacts on the surrounding area.
- 5.3 Application No. A/NE-LYT/550 submitted by the same applicant as the current application was approved by the Committee on 17.10.2014 mainly on the grounds that the application generally complied with the Interim Criteria. The planning permission lapsed on 18.10.2018. Compared with the last previous application No. A/NE-LYT/550, the major development parameters including the site area and the layout of the proposed Small House under the current application remain unchanged.
- 5.4 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plans A-1** and **A-2a**.

## 6. Similar Applications

- 6.1 There are 63 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. Of them, 61 similar applications were approved with conditions by the Committee between April 2003 and August 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 and previous/similar applications were approved by the Committee.
- 6.2 The remaining two similar applications (No. A/NE-LYT/267 and 424) were rejected by the Committee in September 2003 and July 2010 respectively. Application No. A/NE-LYT/267 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. Application No. A/NE-LYT/424 for the proposed 11 NTEHs (not Small Houses) was rejected by the Committee on the grounds that the proposed development was not in line with the planning intention of “AGR” zone and there was no strong planning justification in the submission for a departure from the planning intention; the application site fell within the village ‘environs’ (‘VE’) of Ma Mei Ha Leng Tsui and Leng Pei Tsuen and land within ‘VE’ or “Village Type Development” (“V”) zone for recognized New Territories villages should be primarily reserved for Small House development by indigenous villagers; and approval of the application would set an undesirable precedent for similar applications within “AGR” zone in the future.
- 6.3 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

**7. The Site and Its Surrounding Area (Plans A-1, A-2a and A-2b, A-3 and A-4)**

7.1 The Site is:

- (a) a piece of vacant land partly paved and partly covered by wild grass (**Plan A-4**);
- (b) located to the immediate west of the village proper of Ma Mei Ha Leng Tsui (**Plan A-2a**); and
- (c) accessible via a local track from Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where village houses and fallow agricultural land are found;
- (b) to the east are the village houses in “V” zone of Ma Mei Ha Leng Tsui (**Plans A-2a and A-3**);
- (c) to the immediately west are sites of planning applications (No. A/NE-LYT/373, 374, 376, 529, 530, 653, 654) for Small House developments approved between 2008 and June 2018 (**Plan A-2a**); and
- (d) to the immediately south is some vacant land and further south are a number of approved applications for Small House developments between 2014 and October 2018 (**Plan A-2a**).

**8. Planning Intentions**

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

8.2 The planning intention of the “V” zone in the Lung Yeuk Tau and Kwan Tei South area is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

**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	42.3%	57.7%	- The Site falls mainly (about 57.7%) within the “AGR” zone whereas part of

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	- Footprint of the proposed Small House	40.5%	59.5%	<p>the Site (about 42.3%) falls within the “V” zone.</p> <p>- The footprint of the proposed Small House falls mainly (about 59.5%) within the “AGR” zone whereas part of the footprint (about 40.5%) falls within the “V” zone.</p>
2.	<p>Within ‘VE’?</p> <p>- The Site</p> <p>- Footprint of the proposed Small House</p>	<p>100%</p> <p>100%</p>	-	DLO/N, LandsD advises that the Site falls within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House application plus 10-year Small House demand)?		✓	<p><u>Land Required</u></p> <p>- 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 cluster is 132.</p> <p><u>Land Available</u></p> <p>- 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>.</p>
	Sufficient land in “V” zone to meet outstanding Small House application?		✓	
4.	Compatible with the planning intention of “AGR” zone?	✓		The Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is currently paved, surrounded by the main road and domestic structures, the Site possesses low potential for agricultural rehabilitation. She has no strong view against the application from agricultural point of view.

<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 being outside the “V” zone, 31 of them have already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
5.	Compatible with surrounding area/development?	✓		The Site is located to the immediate west of Ma Mei Ha Leng Tsui and the proposed Small House is not incompatible with the surrounding rural setting and environment dominated by village houses and vegetated area ( <b>Plan A-2a</b> ).
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?	✓		<ul style="list-style-type: none"> <li>- 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 developments 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 involves construction of one Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</li> </ul>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
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.
11.	Sewerage impact?		✓	- 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 the landscape planning point of view.</li> <li>- The Site is situated in an area of rural landscape character surrounded by village houses and vegetated areas. The Site is hard paved with no landscape resource observed. Significant adverse impact on existing landscape resources arising from the application is not anticipated.</li> <li>- In consideration of limited space within the Site, there is insufficient space for meaningful landscaping, 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 objections conveyed by DO?	✓		District Officer (North) (DO(N)) advises that he has consulted the locals. The Vice-Chairman and First Vice-Chairman of Fanling District Rural Committee object the application mainly on the grounds that the applicant is not an indigenous villager and the proposed development will have adverse impact on fung shui and surrounding environment. The Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Leng Tsui 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) Chief Engineer/Mainland North, Drainage Services Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Environmental Protection;
- (e) Director of Agriculture, Fisheries and Conservation;
- (f) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (g) Director of Fire Services;
- (h) Commissioner for Transport; 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 23.7.2019, the application was published for public inspection. During the statutory public inspection period, three public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Two individuals object to the application mainly on the grounds that the use of septic tank is not appropriate; it is considered more appropriate to concentrate the proposed Small House development within the “V” zone for more orderly development pattern; and the applicant may not be eligible for Small House development.

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

11.1 The application is for a Small House development in an area partly zoned “AGR” (about 57.7%) and partly zoned “V” (about 42.3%) on the OZP. The proposed Small House 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. In considering the Site is surrounded by the main road and domestic structures, which possesses low potential for agricultural rehabilitation, DAFC has no strong view against the application from agricultural point of view.

11.2 DLO/N, LandsD advises that the Site falls entirely within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. 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 0.89 ha (equivalent to 35 Small House sites) of land are available within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen for Small House development (**Plan A-2b**), which is insufficient to meet even the outstanding Small House applications. As such, the application generally



complies with the Interim Criteria and sympathetic consideration should be given to the application.

- 11.3 The Site is currently vacant, partly paved and partly covered with wild grass (**Plan A-3**). It is situated in an area of rural village character in close proximity to the existing village houses, and the proposed Small House development is not incompatible with the surrounding environment (**Plans A-2a and A-3**). The Site is located to the immediate west of the village proper of Ma Mei Ha Leng Tsui and there are a number of approved Small House developments in the vicinity of the Site. CTP/UD&L, PlanD has no objection to the application as significant adverse impact arising from the proposed use on existing landscape resources is not anticipated. 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/C of WSD, CE/MN of DSD and D of FS, have no adverse comment or no objection to the application.
- 11.4 There are 35 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**). All applications were approved between 2003 and October 2018 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 and previous/similar applications were approved by the Committee. The Site is the subject of a previously approved application (No. A/NE-LYT/550) submitted by the same applicant as the current application. As advised by DLO/N, LandsD, the Small House grant is under processing. The planning circumstances of the current application are similar to these similar and previously approved applications.
- 11.5 Regarding the local objection conveyed by DO(N), HAD and adverse public comments objecting to the application as detailed in paragraphs 9 and 10 above respectively, the Government department’s comments and the planning assessments above are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and 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 6.9.2023, 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 reason for rejection is suggested for members' reference:

the proposed development is not in line with the planning intention of the "AGR" zone in 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.

## **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 applicants.

## **14. Attachments**

<b>Appendix I</b>	Application Form with Attachments received on 15.7.2019
<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 s.16 Applications
<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 Sites in the Lung Yeuk Tau and Kwan Tei 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 of Ma Mei Ha Leng Tsui and Leng Pei Tsuen for Small House Development
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2019**