

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/477

<u>Applicant</u>	:	Winner Surveying Consultants Company represented by R-riches Property Consultants Limited
<u>Site</u>	:	Lot 2964 S.B in D.D. 116, Kong Tau Tsuen, Yuen Long, New Territories
<u>Site Area</u>	:	165 m ² (about)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	:	“Agriculture” (“AGR”) (about 50.6%) “Village Type Development” (“V”) (about 49.4%) [restricted to a maximum building height of 3 storeys (8.23m)]
<u>Application</u>	:	Proposed House (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

1.1 The applicant, who is authorised by an indigenous villager of Tung Tau Tsuen, Yuen Long, 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 (NTEH only)’ is 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)’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently formed, paved and forming part of a private garden of an adjoining Small House.

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

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

Roofed over area : 65.03 m²

The uncovered area of the Site is proposed for circulation space of the proposed Small House. Plans showing the access leading to the Site and the proposed layout are at **Drawings A-1** and **A-2** respectively.

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

- (a) Application Form with attachment and plans received on 11.7.2019 (**Appendix I**)
- (b) Further Information (FI) received on 30.9.2019 (**Appendix Ia**) clarifying the background of the represented indigenous villager
[accepted and exempted from publication and recounting requirements]

1.4 On 6.9.2019, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer a decision on the application for a period of two months, as requested by the applicant. On 30.9.2019, FI (**Appendix Ia**) was received and the application is submitted to the Committee for consideration at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachment to the Application Form at **Appendix I** and the Further Information (**Appendix Ia**). They can be summarised as follows:

- (a) There was a previous planning approval (No. A/DPA/YL-TT/12) for the same use on the Site. Approval of the application would not set an undesirable precedent.
- (b) The Site is accessible via a local track from Long Ho Road, which allows emergency vehicular access and therefore the fire risk hazard is low.
- (c) Upon approval of the planning application, the applicant will make effort in complying with approval conditions/relevant government regulations related to environmental, fire safety, landscape and drainage aspects, where appropriate.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting a notice at the Site and sending notification letter to the Shap Pat Heung Rural Committee by registered mail. 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 set of Interim Criteria is at **Appendix II**.

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Application

6.1 The Site is the subject of one previous approved application (No. A/DPA/YL-TT/12) covering a much larger site (i.e. about 930m²) for two Small Houses when the Site was zoned “Unspecified Use” on the then draft Tai Tong Development Permission Area Plan No. DPA/YL-TT/1 and before promulgation of the Interim Criteria. The application was submitted by DLO/YL, LandsD on behalf of two house owners whose houses were affected by the Yuen Long Southern Bypass Project and had to be resumed. The application was to enable rehousing of the two house owners under the village removal terms. The application was approved by the Committee on 24.1.1992 mainly on the grounds that the proposed development was not incompatible with the surrounding area. The two houses have since been implemented and built, with the current Site forming part of the private garden of one of the houses. The current Site has also been carved out as a separate lot with no building status. Details of the application are summarised in **Appendix III** and its location is shown on **Plans A-1** and **A-2a**.

6.2 Compared with the last application, the current application is submitted by a different applicant for the same use within part of the private garden of one of the implemented houses (**Plan A-4**).

7. Similar Applications

There are five similar applications (No. A/YL-TT/265, 283, 287, 299 and 307) for proposed NTEH/Small House development within or straddling the same “AGR” zone, which have all been rejected by the Committee or the Board on review on 19.11.2010, 15.4.2011, 22.7.2011, 16.3.2012 and 18.1.2013 respectively, mainly on the grounds that the proposed developments were not in line with the planning intention of the “AGR” zone; there were insufficient information in the submission to demonstrate that there were no suitable sites within the “V” zone for the proposed development; approval of the application would set an undesirable precedent; and the proposed development did not comply with the Interim Criteria. The applicant of application No. A/YL-TT/307 subsequently lodged an appeal against the Board’s decision. The appeal was also dismissed by the Town Planning Appeal Board on 31.7.2014 mainly on the same rejection grounds as per the review stage. Details of the applications are summarised in **Appendix IV** and the locations of the sites are shown on **Plan A-1**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4)

8.1 The Site is:

- (a) located at the northern fringe of Kong Tau San Tsuen;
- (b) accessible by a local track leading from Long Ho Road to its west (**Plans A-2a and A-3**);
- (c) generally flat, formed, and partially fenced off; and
- (d) forming part of the private garden of an adjoining Small House approved under application No. A/DPA/YL-TT/12 (**Plan A-2a**).

8.2 The surrounding areas have the following characteristics (**Plan A-2a**):

- (a) predominantly rural in character with residential structures intermixed with scattered vacant land, parking of vehicles, a workshop, a pavilion and an open storage yard;
- (b) the Shap Pat Heung Interchange of the Yuen Long Highway and a nullah are located to the further north; and
- (c) apart from the aforementioned pavilion, the remaining parking of vehicles, workshop and open storage yard in the vicinity of the Site are mostly suspected unauthorised developments subject to enforcement action taken by the Planning Authority.

9. Planning Intentions

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

9.2 The planning intention of the “V” zone is to designate both existing recognised 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

10.1 The application has been assessed against the Interim Criteria at **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? - Footprint of the proposed Small House - Application Site	53.1%	46.9%	
2.	Within ‘VE’? - Footprint of the proposed Small House - Application Site	-	100%	The Site does not fall within the ‘Village Environ’ (‘VE’) of any recognised village in the locality (Plan A-2a).
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 in Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen is <u>about 12.28 ha (equivalent to about 491 Small House sites)</u> , including 100 outstanding Small House applications (i.e. about 2.50 ha of land) and a 10-year Small House demand forecast of 391 houses (i.e. about 9.78 ha of land).
	Sufficient land in “V” zone to meet outstanding Small House applications?	✓		Land available to meet Small House demand within the subject “V” zone is <u>about 20.20 ha (equivalent to about 808 Small House sites)</u> (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view from agriculture point of view as the Site is currently a private backyard and possesses low potential for agricultural rehabilitation.
5.	Compatible with surrounding area / development?	✓		The surrounding areas are predominantly rural in character with village houses, vacant land and temporary structures (Plan A-2a).

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within Water Gathering Ground (WGG)?		✓	The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no comment on the application. The Site is not located within WGG.
7.	Encroachment onto the planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access?		✓	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) has no comment on the application from traffic engineering point of view.
10.	Drainage impact?		✓	The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application.
11.	Sewerage impact?		✓	In view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscape impact?		✓	Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advises that with reference to the aerial photo of 2018 (Plan A-3), it is observed that the Site is completely vegetated by shrubs and a large tree. In view of existing village houses in the vicinity, the proposed use is considered not incompatible with the surrounding environment.
13.	Local objections received by District Officer (DO)?		✓	

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

- (a) DLO/YL, LandsD;
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) DAFC;
- (d) C for T;
- (e) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (f) CE/MN, DSD;
- (g) DO (Yuen Long), Home Affairs Department (DO(YL), HAD);
- (h) Director of Environmental Protection (DEP);
- (i) D of FS; and
- (j) CTP/UD&L, PlanD.

10.3 The following government departments have no comment on the application:

- (a) CE/C, WSD;
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 19.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.8.2019, four public comments were received from three members of the public and Designing Hong Kong Limited (**Appendices VI-1 to VI-4** respectively) raising concerns/objecting to the application mainly on the grounds that the proposal would generate adverse drainage and noise impacts; incompatibility with the rural setting of the surroundings; inconformity with the planning intention of the “AGR” zone; land is still available within the “V” zone for Small House development; and approval of the application would set an undesirable precedent leading to a general degradation of the local environment.

12. Planning Considerations and Assessments

12.1 The application is for proposed house (NTEH – Small House) at a site straddling the “AGR” (about 46.9% of the proposed NTEH footprint) and “V” zones (about 53.1%). Although the proposed Small House 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, the Site is currently formed, paved and partly fenced off as part of a private garden of an adjoining Small House. In this connection, DAFC has no strong views on the application from agriculture point of view as the Site possesses low potential for agricultural rehabilitation.

- 12.2 The Site is located at the northern fringe of Kong Tau San Tsuen and is not incompatible with the surrounding environment. CTP/UD&L, PlanD has no objection to the application as the Site is not adjoining any prominent public frontage and is not incompatible with the surrounding environment. Other government departments, including C for T, DEP, D of FS, CE/C of WSD and CE/MN of DSD, have no adverse comment on/objection to the application.
- 12.3 According to DLO/YL, LandsD's record, the total number of outstanding Small House applications for Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen is 100 (i.e. equivalent to about 2.50 ha of land) while the 10-year forecast of Small House demand is 391 (i.e. about 9.78 ha of land). As such, land is required to accommodate a total of 491 Small Houses within the subject "V" zone, equivalent to about 12.28 ha of land. DLO/YL, LandsD advises that the Site does not fall within the 'VE' of any recognised village.
- 12.4 Regarding the Interim Criteria (**Appendix II**), the Site and the footprint of the proposed Small House fall entirely outside the 'VE' of any recognised village. It is noted that about 808 Small House sites (equivalent to about 20.20 ha of land) are available within the relevant "V" zone for Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen, which can accommodate the outstanding Small House applications and the forecasted long-term Small House demand. As such, the proposed development does not comply with the Interim Criteria in that there is no general shortage of land in meeting the demand for Small House development in the concerned "V" zone. It is therefore 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.
- 12.5 There is one previous application (No. A/DPA/YL-TT/12) covering a much larger site, which was approved with conditions by the Committee on 24.1.1992 before the promulgation of the Interim Criteria. The Site was zoned "Unspecified Use" at the time of that application and the application warranted special circumstances as the houses were for rehousing under village removal terms due to the Yuen Long Southern Bypass Project. Although the current Site falls within the private garden of one of these houses, the current Site has since been carved out as a separate lot with no building status. The special circumstances warranted by the previous approval are no longer relevant to the current application and the prevailing Interim Criteria should be used in assessing the current case.
- 12.6 There are five similar applications within or straddling the subject "AGR" zone, which were all rejected on the grounds that the proposed developments were not in line with the planning intention of the "AGR" zone; there were insufficient information in the submission to demonstrate why suitable sites within the concerned "V" zone could not be made available for Small House development; approval of the application would set an undesirable precedent; and/or the proposed development did not comply with the Interim Criteria. Such considerations are generally applicable to the current application. Approval of the current application would set an undesirable precedent and attract similar applications within the "AGR" zone. The cumulative impact would result in a general degradation of the rural agricultural character of the area. Overall,

rejecting this application would be in line with the Committee's previous decisions.

- 12.7 Four public comments were received during the statutory publication period as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.6 above 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 in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) 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 there is no general shortage of land in meeting the demand for Small House development in the "V" zone of Kong Tau Tsuen, Kong Tau San Tsuen, Nga Yiu Tau and Tong Tau Po Tsuen; and
- (b) approval of the application would set an undesirable precedent for similar applications at the subject "AGR" zone resulting in a general degradation of the rural agricultural character of the area.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 29.11.2023, 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 a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

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

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 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.

15. Attachments

Appendix I	Application Form with attachment and plans received on 11.7.2019
Appendix Ia	FI received on 30.9.2019 clarifying the background of the represented indigenous villager
Appendix II	Extract of the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous application covering the Site
Appendix IV	Similar applications within/straddling the same “AGR” zone on the OZP
Appendix V	Detailed Comments from Relevant Government Departments
Appendices VI-1 to VI-4	Public Comments Received During Statutory Publication Period
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Proposed Access Plan
Drawing A-2	Proposed Layout Plan
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 Photos

**PLANNING DEPARTMENT
NOVEMBER 2019**