

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-CWBN/57

- Applicant:** : LAU Tin Chi, Eric and LAU Yip Po, Frankie represented by Vision Planning Consultants Limited
- Site:** : Lots 416 S.A ss.1, 416 S.B, 416 S.C ss.1, 416 S.C ss.2, 416 S.C RP, 416 RP, 417 S.A ss.1, 417 S.A ss.2 S.A, 417 S.A ss.2 S.B, 417 S.A ss.2 RP, 417 S.A RP & 417 S.B in D.D. 238 and Adjoining Government Land (Site A), and Lots 322 S.A, 322 RP and 416 S.A. RP in D.D. 238 (Site B), Ng Fai Tin, Sai Kung, New Territories
- Site Area:** : 421m² (Including 63m² Government Land) (Site A: 289m²; Site B: 132m²)
- Land Status:** : Private Lot held under Block Government Lease demised for agricultural use
- Plan:** : Approved Clear Water Bay Peninsula North Outline Zoning Plan (OZP) No. S/SK-CWBN/6
- Zoning:** : “Green Belt” (“GB”)
- Application:** : Proposed 2 Houses (New Territories Exempted Houses (NTEHs) - Small House), Sitting Out Area, Slope Stability Works and associated Excavation and Filling of Land

1. The Proposal

- 1.1 The applicants, indigenous villagers of Pan Long Wan Village, seek permission for development of two NTEHs (Small Houses) with slope stability works and associated excavation and filling of land (Site A) and sitting out area with associated filling of land (Site B) at the application sites (the Sites) (**Plans A-1, A-2a and A-2b**). 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)” is a column 2 use within the “GB” zone which requires planning permission from the Town Planning Board (the Board). Provision of “Open Space” (including sitting out area) is always permitted on land falling within the boundaries of the OZP, however, the Notes of the OZP for the “GB” zone stipulate that excavation and filling of land within “GB” zone requires planning permission from the Board.

- 1.2 According to the applicants, the proposed two NTEHs in Site A have a total gross floor (“GFA”) of 390.18m². Each house has a building height of 8.23m and a built over area of 65.03m². Septic tanks with soakaway system for the NTEHs will be provided within Site A (**Drawings A-3 and A-4**). The proposed excavation and filling of land are 80m² and 190m² (140m² platform and 50m² slope) in area and about 0-3.7m and 0.5-3m in depth respectively. Slope stability works will also be involved in Site A on the government land.
- 1.3 The proposed sitting out area in Site B consists of a public amenity area with seating benches and ornamental planting which involves filling of land of about 100m² in area and 1-1.5m in depth (**Drawings A-3 and A-4**). The design, construction and maintenance of the sitting-out area will be undertaken by the applicants.
- 1.4 The applicants indicates that 8 trees within Site A will be felled and 11 compensatory trees will be planted in both Site A and Site B. Plans showing the Indicative Master Layout Plan, Landscape Master Plan, landscape sections and planting plan of the proposed development submitted by the applicants are shown in **Drawings A-3 to A-8**.
- 1.5 In support of the application, the applicants have submitted the following documents:
- (a) Application Form received on 3.5.2019 **(Appendix I)**
 - (b) Planning Statement **(Appendix Ia)**
 - (c) Further Information from the applicants received on 27.8.2019 comprising an updated Drainage Impact Assessment (DIA) report which consolidates and supersedes the previously submitted DIA reports dated 5.6.2019 and 18.7.2019 (accepted and exempted from publication) **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicants in support of the application are detailed in section 4 of the Planning Statement at **Appendix Ia**. They are summarized as follows:

- (a) the proposed development is in line with Town Planning Board Guidelines No. 10 for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance and complies with the Board’s “Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories”;
- (b) Pan Long Wan Village is a recognized village in Sai Kung and is entitled for erecting NTEHs. The applicants are indigenous villagers of Pan Long Wan Village;
- (c) the proposed development is considered compatible with the surrounding land uses which would not cause environmental impacts to the surrounding areas, and is located within the Village Environ (VE) of Pan Long Wan Village;

- (d) there is a shortage of land with “Village Type Development” (“V”) zone of Pan Long Wan Village for increasing rural population; and
- (e) the proposed development will bring positive gain to the local community by strengthening the stability of the existing local slope and providing landscaped sitting out area.

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

- 3.1 The applicants are one of the “current land owners”. In respect of the other “current land owners”, the applicants have complied with the requirements as set out in the “Town Planning Board Guidelines on Satisfying the ‘Owner’s Consent/Notification’ Requirements under Section 12A and 16 of the Town Planning Ordinance” (TPB PG-No. 31A) by obtaining consent from other “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.
- 3.2 The “owner’s consent/notification” requirement as set out in the “Town Planning Board Guidelines on Satisfying the ‘Owner’s Consent/Notification’ Requirements under Section 12A and 16 of the Town Planning Ordinance” (TPB PG-No. 31A) are not applicable on the government land portion of the Site.

4. Assessment Criteria

The set of interim criteria for assessing planning application for NTEH / Small House development in the New Territories (the Interim Criteria) was first promulgated on 24.11.2000 and had been amended four times on 30.3.2001, 23.8.2002, 21.3.2003 and 7.9.2007. The latest set of Interim Criteria promulgated on 7.9.2007 is at **Appendix II**.

5. Town Planning Board Guidelines

- 5.1 The Town Planning Board Guidelines for Application for Development within “GB” Zone (TPB PG-No. 10) are relevant to this application (**Appendix III**). The following specific main planning criteria are relevant:
 - (a) there is a general presumption against development in a “GB” zone;
 - (b) an application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
 - (c) application for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the Site 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; and
- (f) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

6. Previous Applications

6.1 Site A is the subject of two previous applications (No. A/SK-CWBN/16 and A/SK-CWBN/25) both for proposed three village houses/NTEHs development (**Plans A-1 and A-2a**). Application No. A/SK-CWBN/16 was rejected by the Rural and New Town Planning Committee (“the Committee”) on 24.2.2012 and Application No. A/SK-CWBN/25 was rejected upon review by the Board on 7.11.2014. These applications were rejected mainly on grounds of:

- (a) not in line with the planning intention of the “GB” zone and fail to provide strong justification in the submission for a departure from the planning intention;
- (b) not in line with the Town Planning Board Guidelines No. 10 and the 'Interim Criteria for consideration of application for New Territories Exempted House/Small House in New Territories' in that extensive clearance of natural vegetation has been involved and the planning intention of the "GB" zone would be jeopardized;
- (c) not comply with the ‘Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories’ as the proposed development will have adverse landscape impact on the surrounding areas. There is insufficient information to demonstrate that the proposed development will not have adverse landscape impacts on the surrounding areas; and
- (d) approval of the application would set an undesirable precedent for similar application within the "GB" zone.

6.2 Details of the applications are summarised in **Appendix IV**.

6.3 There is no previous application for Site B.

7. Similar Application

7.1 For NTEH (Small House) development, one application (No. A/SK-CWBN/18) for proposed Small House Development in between Site A and Site B was rejected by the Committee on 17.6.2011 (**Plans A-1 and A-2a**) on the following

grounds: (a) not in line with the planning intention of the “GB” zone; (b) not in line with the TPB-PG No. 10 and the Interim Criteria; and (c) setting of an undesirable precedent.

8. The Site and Its Surrounding Areas (Plans A-1 to A-3 and Photos on Plans A-4a to A-4b)

8.1 The Sites are:

- (a) within the VE of Pan Long Wan Village;
- (b) accessible through informal track; and
- (c) forming part of a natural slope partly covered by weedy vegetation (Site A) and partly flat and hard-paved with some weedy vegetation (Site B).

8.2 The surrounding areas have the following characteristics:

- (a) to its immediate north and east is a vegetated area within the “GB” zone;
- (b) to its immediate west and south up the slope, and further east down the slope are existing NTEHs within the “V” zone; and
- (c) to its further north is an existing streamcourse.

9. Planning Intention

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

10. Comments from Relevant Government Departments

10.1 For Site A, 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 NTEH/Small House - Application Site		- 100% - 100%	Entirely within the “GB” zone.
2.	Within “VE” - Footprint of the NTEH/Small House	- 100%		

	Criteria	Yes	No	Remarks
	- Application Site	- 100%		
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?	✓		<ul style="list-style-type: none"> • Land required to meet Small House demand: about 4.28ha (equivalent to 171 Small House sites). The outstanding Small House application is 56¹ while the 10-year Small House demand forecast for the village is 115. • Land available to meet Small House demand within “V” zone of the village: about 1.98 ha (equivalent to 79 Small House Sites).
4.	Compatible with the planning intention of “GB” zone?		✓	<p>There is a general presumption against development within this zone.</p> <p>The applicants have not provided strong justifications.</p>
5.	Compatible with surrounding area / development	✓		The surrounding area is mainly rural in character with clusters of village houses within the adjoining “V” zones.
6.	Within Water Gathering Ground		✓	Chief Engineer/Construction, Water Supplies Department (CE/Construction, 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 comment on the application. The applicants are advised to observe the “New Territories Exempted House – A Guide to fire safety Requirements” published by Lands Department. Detailed fire safety requirements will be formulated upon receipt of formal

¹ Among the 56 outstanding Small House applications, there are 5 Small House applications straddling or outside the “V” zone. For those 5 applications straddling or being outside the “V” zone, none of them have obtained valid planning approvals from the Board. Besides, there are 28 Small House applications falling onto government land, in which 15 applications have no indication of the proposed locations.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				application referred by Lands Department.
9.	Traffic Impact?	✓		<p>Commissioner for Transport (C for T) has reservation on the application and such type of development should be confined within the “V” zone as far as possible.</p> <p>Although additional traffic generated by the proposed development is not expected to be significant, such type of development at the current “GB” zone, if permitted, will set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial.</p> <p>Notwithstanding the above, the application only involves construction of two NTEHs – Small House. She considers that the application can be tolerated unless it is rejected on other grounds.</p>
10.	Drainage Impact?		✓	Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no in-principle objection to the application.
11.	Sewerage Impact?		✓	Director of Environmental Protection (DEP) has no adverse comment on the application as the applicant is committed to install sewage septic tank with a soakaway system for sewage treatment for the proposed development.
12.	Landscaping Impact?	✓		<p>Chief Town Planner/ Urban Design and Landscape (CTP/UD&L) has reservations on the application from the landscape planning point of view.</p> <p>The existing “GB” serves as a natural buffer between villages. Given the existing topography, with the proposed retaining structure, the development will involve permanent change in landform within the “GB”,</p>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>and hence destroying the natural buffer.</p> <p>It is anticipated significant adverse landscape impact will be imposed to the Sites and surrounding, which also deviates undesirably from the planning intention of “GB” zone. Approval of the application may cause a ripple effect for other applications in “GB”, and hence degradation of the natural landscape character of the area with irreversible impact.</p> <p>Since there is no major public frontage along the site boundary and clustered tree groups are found in close proximity of the Sites, it is considered not necessary to impose a landscape condition should the application be approved by the Board, as its effect on enhancing the quality of public realm is not apparent.</p>
13.	Local objection conveyed by District Officer/ Sai Kung, Home Affairs Department (DO/SK, HAD)?		✓	DO/SK, HAD has no comment on the application.

10.2 Departmental comments regarding Site B are summarised as follows:

Comments of District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD):

Site B is located on Lots No. 332 S.A, 322 RP and 416 S.A RP in D.D. 238 which are held under the Block Government Lease demised for agricultural uses. No structure is allowed to be erected on the lots without prior written approval from his office pursuant to the lease restriction.

10.3 Comments from the following government departments on Site A and Site B have been incorporated in the above paragraph. Other comments are at **Appendix V**.

- (a) DLO/SK, LandsD;
- (b) DEP;
- (c) Director of Agriculture Fisheries and Conservation (DAFC);
- (d) Director of Electrical and Mechanical Services (DEMS)

- (e) Chief Building Surveyor/ New Territories East 2 & Rail, Buildings Department (CBS/NTE2&Rail, BD);
- (f) CTP/UD&L;
- (g) CE/Construction, WSD;
- (h) D of FS;
- (i) C for T; and
- (j) CE/MS, DSD.

10.4 The following government departments have no objection to or no comment on the application for both Site A and Site B:

- (a) Chief Engineer/ New Territories East, Highways Department;
- (b) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Director of Leisure and Cultural Services; and
- (d) Project Manager/ New Territories East, Civil Engineering and Development Department.

11. Public Comments Received During Statutory Publication Period

11.1 The application and the FIs submitted by the applicants were published for public inspection on 10.5.2019, 14.6.2019 and 30.7.2019. During the statutory public inspection periods which ended on 31.5.2019, 5.7.2019 and 20.8.2019, a total of 38 comments were received (**Appendix VI**).

11.2 Among the 38 comments, one supporting comment is received from the Chairman of the Hang Hau Rural Committee. 33 commenters object to the application and 4 commenters of which are individuals of the public raise concerns on the application. The main concerns include the area is over-crowded with problem of parking, management and maintenance of sitting out area is uncertain and adverse environmental impacts.

11.3 Comments objecting to the application are received from the Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited, World Wide Fund for Nature Hong Kong, The Hong Kong Bird Watching Society, and 24 individuals of the public. The major grounds of objection are summarised as follows:

- (a) not in line with the planning intention of the “GB” zone, and there is no strong justification for a departure;
- (b) adverse drainage, sewerage, environmental, ecological, traffic, landscape and visual impacts of the proposed development;
- (c) any applicant seeking the Private Treaty Grant and exchanges of land is no longer constitutional under the new Small House Policy;
- (d) sufficient land is still available within the “V” of Pan Long Wan Village for Small House developments;
- (e) inadequate space for car park and road access, no emergency vehicle

access is provided and illegal car park has been found at the Sites causing safety impact;

- (f) occupancy and management of the proposed sitting out area is uncertain. No guarantee of implementation and maintenance of the proposed sitting out area;
- (g) the communal sitting out area would be supported only if it is on a condition of granting 24/7 public access;
- (h) the proposed development will affect the maintenance work of the nearby retaining walls; and
- (i) approval of the application will set an undesirable precedent for similar applications within the “GB” zone.

12. Planning Considerations and Assessments

Site A – Proposed NTEHs (Small House)

- 12.1 The applicants apply for two proposed Small Houses at Site A which falls within “GB” zone. The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. The proposed Small Houses are not in line with the planning intention of the “GB” zone and no strong planning grounds and justifications have been provided in the submission for a departure from the planning intention.
- 12.2 Although the proposed Small Houses development is not incompatible with the surrounding area which is mainly rural in character with clusters of village houses within the adjoining “V” zones, Site A is located within an elongated tip of the “GB” zone which serves as a natural buffer between the villages. It is currently covered by weedy vegetation and surrounded by vegetated areas to the immediate north. CTP/UD&L has reservation on the application from landscape planning point of view as the proposed development will involve permanent change in landform within the “GB” zone and destroy the natural landform, and it is anticipated that significant adverse landscape impact will be imposed to Site A and surrounding. The proposed Small Houses development is therefore considered not in line with the Town Planning Board Guidelines No. 10 and the Interim Criteria in that the proposed development would cause adverse landscape impact on the surrounding areas which will jeopardize the planning intention of the “GB” zone.
- 12.3 Site A and the footprint of the proposed Small Houses fall entirely within the ‘VE’ of Pan Long Wan Village. According to DLO/SK, the total number of outstanding Small House applications for Pan Long Wan Village is 56. As advised by the Indigenous Inhabitants Representative of Pan Long Wan Village, the 10-year demand forecast for Small House development is 115. As such, the total estimated Small House demand forecast for the village is 171 (or equivalent to about 4.28ha of land). According to the latest estimate of Planning Department,

about 1.98ha of land (or equivalent to about 79 Small House sites) is available within the “V” zone of Pan Long Wan Village. Although there is insufficient land to fully meet the future Small House demand of the village in the long run, 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. 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 infrastructures and services.

- 12.4 Previous applications covering Site A were rejected by the Committee/upon review by the Board while the current application contains similar proposal and justifications as per the previous planning applications. Since the rejection of the last application, there is no change in planning circumstances.
- 12.5 Part of Site A encroaches onto the government land for the proposed slope stability works. Although H(GEO), CEDD has no adverse geotechnical comment on the slope works, as Site A forms part of the natural slope, there is no strong justification to take up government land for slope stability works to support the proposed Small House development.
- 12.6 Other relevant government departments have no objection to or no comment on the application on visual, sewerage, drainage, water supply and environmental aspects.
- 12.7 Previous applications and the similar application within the “GB” zone were rejected by the Committee or the Board, approval of the application (NTEHs development) would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving similar applications would result in encroachment of “GB” area by development and a general degradation of the natural landscape character of the area.

Site B – Proposed Sitting-out Area

- 12.8 Site B is proposed for a sitting-out area, which consists of a public amenity area with seating benches and ornamental planting, involving filling of land. Provision of open space (including sitting out area) is always permitted on land falling within the boundaries of the OZP, however, the associated filling of land within “GB” zone requires planning permission from the Board. As claimed by the applicants in the supplementary planning statement (**Appendix Ia**), a landscaped sitting-out area of about 132m² will be built and maintained for enjoyment of the local community. The design, construction and maintenance of the sitting-out area will be undertaken by the applicants. Although relevant departments consulted have no particular comment on the proposed sitting-out area at Site B, it should be noted that Site B is partly covered with weedy vegetation and forms part of a natural buffer between the villages. The applicants have not provided strong reason to develop Site B as a sitting-out area at the expense of the existing natural landscape. Besides, DO(SK) has not received any request for provision of sitting out area in the vicinity of the Sites and the applicants have not demonstrated there is demand of such sitting out area. It is

also noted that Site B is owned by a third party whilst there is no information in the application to ensure that the sitting-out area would be maintained and open for the local community.

- 12.9 Regarding public comments objecting to the application, the planning assessments in paragraphs 12.1 to 12.8 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 mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed NTEHs (Small Houses) development at Site A 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. No strong planning grounds and justifications have been provided in the submission for a departure from the planning intention;
- (b) the proposed NTEHs (Small House) development at Site A is not in line with the Town Planning Board Guidelines No. TPB PG-No.10 for ‘Application for Development within “GB” Zone’ and the ‘Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories’ in that the proposed development would cause adverse landscape impact on the surrounding areas;
- (c) land is still available within the “V” zone of Pan Long Wan Village, which is primarily intended for NTEH / Small House development. It is considered more appropriate to concentrate the village type development within the “V” zone for an orderly development pattern, efficient use of land and provision of infrastructure and services; and
- (d) approval of the application in particular the proposed NTEHs (Small Houses) development at Site A would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving similar applications will result in encroachment of green belt area by development and a general degradation of the natural landscape 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 **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 approval condition and advisory clauses also suggested for Members’ reference:

Approval Condition

the provision of septic tank as proposed by the applicants to the satisfaction of the Director of Lands 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 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.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 3.5.2019
Appendix Ia	Planning Statement
Appendix Ib	Further Information from the applicants received on 27.8.2019 comprising an updated Drainage Impact Assessment (DIA) report which consolidates and supersedes the previously submitted DIA reports dated 5.6.2019 and 18.7.2019
Appendix II	Interim Criteria for Consideration of Application for NTEH / Small House in New Territories
Appendix III	Town Planning Board Guidelines for Application for Development within “GB” Zone (TPB PG-No. 10)
Appendix IV	Previous applications
Appendix V	Government departments’ detailed comments
Appendix VI	Public Comments
Appendix VII	Advisory Clauses
Drawing A-1	Location Plan supplied by the applicants
Drawing A-2	Lot Index Plan supplied by the applicants
Drawing A-3	Indicative Master Layout Plan supplied by the applicants
Drawing A-4	Indicative Landscape Master Plan supplied by the applicants
Drawings A-5 to A-7	Landscape Sections supplied by the applicants
Drawing A-8	Planting Plan supplied by the applicants
Plan A-1	Location Plan
Plan A-2a	Site Plan
Plan A-2b	Site Plan showing the land available for Small House Development
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**