

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/254

- Applicant:** Master Art Limited represented by Man Chi Consultants and Construction Limited
- Site:** Lot 110 in D.D. 219, Kei Pik Shan, Tai Chung Hau, Sai Kung, New Territories
- Site Area:** About 67.8m²
- Lease Status:** Old Schedule House Lot held under Block Government Lease
- Plan:** Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
- Zoning:** “Conservation Area” (“CA”)
- Application:** Proposed Redevelopment of House (New Territories Exempted House (NTEH))

1. The Proposal

- 1.1 The applicant seeks planning permission to redevelop one New Territories Exempted House (NTEH) at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (Redevelopment only)’ is a Column 2 use within the “CA” zone and requires planning permission from the Town Planning Board (the Board). Also, the Remarks of the “CA” zone stipulate that no redevelopment, including alteration and/or modification, of an existing house shall result in a total redevelopment in excess of the plot ratio, site coverage and height of the house which was in existence on the date of the first publication in the Gazette of the notice of the interim development permission area (IDPA) plan. The Site is currently vacant.
- 1.2 The Site is the subject of a previous application (No. A/SK-PK/44) for House (Redevelopment) submitted by a different applicant and was rejected by the Rural and New Town Planning Committee (the Committee) on 2.5.1997 and the Board on review on 26.9.1997.
- 1.3 The development parameters of the current application compared to the

previously rejected application are summarised in the table below:

Major Development Parameters	Previous Application A/SK-PK/44 (a)	Current Application (b)	Difference (b) – (a)
Site Area (m ²)	65	About 67.8	+2.8 (+4.1%)
Total GFA (m ²)	195	120	-75 (-38.5%)
Building Height (m)	8.22	Not exceeding 6.4	- 1.82 (-21.7%)
No. of Storeys	3	2	-1 (-33.3%)

1.4 The plans submitted by the applicant are shown in **Drawings A-1 to A-5**.

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

- (a) Application form received on 3.9.2019 **(Appendix I)**
- (b) Supporting Planning Statement dated August 2019 **(Appendix Ia)**
- (c) Further Information (FI) dated 10.10.2019 providing response to departmental comments (*exempted from publication and recounting requirements*) **(Appendix Ib)**
- (d) FI dated 10.12.2019 providing response to departmental comments and drainage proposal (*exempted from publication and recounting requirements*) **(Appendix Ic)**
- (e) FI dated 17.1.2020 providing response to departmental comments and revised drainage proposal (*not exempted from publication and recounting requirements*) **(Appendix Id)**

1.6 On 1.11.2019 and 20.3.2020, the Committee agreed to the applicant's request to defer making a decision on the application each for two months to allow time for the applicant to prepare FI in support of the application. The applicant submitted FIs as detailed in paragraph 1.5 above. The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix Ia**. They can be summarised as follows:

- (a) the subject lot was governed by Block Crown Lease of D.D. 219 issued in 1905 with a total registered area of 0.02 acres and general description for "house" purpose with no development restriction stipulated therein. Allowing the

application will enable the applicant to legitimately execute the right of the already-established building status within the Site;

- (b) the already low and further decreased redevelopment intensity of the house development compared to the previous application No. A/SK-PK/44 would generate minimal impact to the surrounding environment and would not induce permanent impact to the natural character and landscape of the area;
- (c) the landscape and ecological value of the Site is not significant compared to other parts of the “CA” zone as there is currently no tree and vegetation within the Site. The Site does not fall within the area under any other environmental conservation ordinances, and has remained vacant for more than 50 years. The proposed NTEH would not affect the landscape and ecological values within the Site and the surrounding environment;
- (d) the current application would not set an undesirable precedent of development within “CA” zone due to its unique nature, i.e. being granted before the gazettal of the Interim Development Permission Area (IDPA) plan, and the fact that there are only two lots with housing entitlement in the 1905 Block Crown Lease. The Survey Plan from Lands Department dated February 1963 (**Drawing A-2**) also indicated that the Site was a ruin site with relics of structure thereat, confirming the past existence of the house; and
- (e) due to the small development scale, the traffic generation and attraction of the proposed use is anticipated to be very minimal. The existing village track and footpath connecting to the Site would be sufficient to meet the future need of the applicant. Appropriate environmental mitigation measures would be applied during the construction and operation period to ensure no adverse environmental and drainage impacts would be generated.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background (Plans A-3a and A-3b)

- 4.1 According to the applicant, the Site was a ruin site with relics of structure in 1963. According to the aerial photos of the Lands Department, the Site was partly vegetated and vacant when the Pak Kong IDPA Plan No. IDPA/SK-PK/1 was published on 12.10.1990 (**Plan A-3a**). The Site and its surrounding area had been cleared and formed since around 1998 (**Plan A-3b**).
- 4.2 The Site is not subject to enforcement action under the Town Planning Ordinance. However the use currently found at the adjacent site to the east is the subject of an active enforcement case for unauthorized development (UD) involving storage use (No. E/SK-PK/89). Enforcement Notice (EN) was issued on 4.11.2019, requiring the UD to be discontinued on or before 4.2.2020. Since the UD has not been discontinued upon expiry of the EN, prosecution action

may be followed.

5. Previous Application (Plans A-1 and A-2)

The Site is the subject of a previous application (No. A/SK-PK/44) for House (Redevelopment) submitted by a different applicant which was rejected by the Committee on 2.5.1997 and the Board upon review on 26.9.1997 for the reasons of not in line with the planning intention of the “CA” zone; the existing track leading to the Site is substandard and is inadequate to serve the proposed development; approval of the proposed redevelopment will set an undesirable precedent for similar applications which cumulatively will lead to adverse impacts on the natural character of the area and cause adverse effects on the environment and infrastructural provisions in the area; and there is no information in the submission to demonstrate that there would not be any increase in plot ratio, site coverage and building height in the proposed redevelopment scheme as compared to the alleged previously existing house on the Site, a comparison required to meet the stipulation in the Notes for the “CA” zone. The applicant lodged an appeal to the Town Planning Appeal Board and the appeal was subsequently dismissed on 9.12.1998 mainly on planning intention, access track and development intensity grounds.

6. Similar Applications

There is no similar application within the “CA” zone on the Pak Kong and Sha Kok Mei OZP.

7. The Site and its Surrounding Areas (Plans A-1 and A-2, aerial photo on **Plan A-3c, and photos on **Plan A-4a** and **A-4b**)**

7.1 The Site is:

- (a) located on a flat and formed platform with the subject lot fenced;
- (b) accessible by a footpath leading from the south of the Site; and
- (c) falls within the water gathering ground (WGG) which covers a large part of Kei Pik Shan.

7.2 The surrounding areas have the following characteristics:

- (a) to its north, west and south are dense woodland. To its further north and west is Ma On Shan Country Park;
- (b) to its east is a private lot (Lot 111 in D.D. 219) which is fenced off with brick walls with several structures and gardens inside; and
- (c) to its south is a natural stream and a footbridge providing access to the Site and Lot 111 in D.D. 219. Across the stream to the south is dense woodland, vegetation and slopes which remain in a relatively natural state.

8. Planning Intention

The planning intention of the “CA” zone is intended to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

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

- (a) the Site is an Old Schedule House Lot under Block Government Lease and it has an area of 0.02ac (about 80.93m²) and class of “House” with an annual rent of \$0.50;
- (b) there was a rebuilding application submitted from the previous landowner in 1979. The Site was approved to redevelop one building by way of Approval Letter issued on 21.8.1979 which allows to build a 3-storey building with 700 sq.ft (i.e. 65.04m²) in built-over area and 7.62m in height but its balconies/canopy are not allowed to project over government land. However, the Site was not redeveloped and the approval for rebuilding of the Site was withdrawn on 31.5.1982 because of the change of land ownership. No rebuilding application has been received thereafter and there is no record of the current use of the Site; and
- (c) from land administration point of view, he has no objection to the planning application. The rebuilding proposal of NTEH would be processed by way of Approval Letter if a rebuilding application is received and valid planning permission has been obtained. He will post notices and seek comments from relevant departments. However, there is no guarantee that the rebuilding proposal will be approved.

Traffic

9.3 Comments of the Commissioner for Transport (C for T):

no comment on the application from traffic engineering viewpoint.

Water Supply

- 9.4 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):
- (a) the Site is located within the upper indirect WGG;
 - (b) no objection to the application subject to the following conditions:
 - (i) a septic tank and soakaway pit system shall be used for foul effluent disposal. Any such permitted septic tank and soakaway pit system shall be designed and maintained in accordance with the Environmental Protection Department's ProPECC Practice Note No. 5/93;
 - (ii) the septic tank and soakaway pit system shall be located at a distance of not less than 30m from any water course and shall be properly maintained and desludged at a regular frequency. All sludge thus generated shall be carried away and disposed of outside the gathering grounds;
 - (iii) the whole of foul effluent from the Site shall be conveyed through cast iron pipes or other approved material with sealed joints and hatch boxes;
 - (iv) the house should be located as far away from the water course as possible; and
 - (v) the drainage facilities should be designed and provided to the satisfaction of the Director of Water Supplies or of the Board; and
 - (c) for provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Environment

- 9.5 Comments of the Director of Environmental Protection (DEP):
- (a) the Site is located within upper indirect WGG. The Site is accessible only by a footpath and the applicant has confirmed in the FI dated 10.10.2019 (**Appendix Ib**) that the building materials will be delivered to the Site manually using the existing footpath and construction of an access road is not required. The use of septic tank and soakaway (ST/SA) system is proposed for treating the wastewater from the redevelopment of NTEH with a small population of five persons;
 - (b) he notes WSD's view that the proposed ST/SA system located within the

upper indirect WGG is still acceptable for an isolated development and does not object to the application;

- (c) in view that WSD is the controlling authority for developments within the WGG and water resources in Hong Kong and the key pollution concern being sewage discharge, he concurs with WSD's view and has no objection to the application; and
- (d) the applicant is reminded to design and construct the ST/SA system in accordance with the ProPECC PN5/93, in particular the 30m minimum clearance from the nearby watercourse. Hence, the following advisory clause is suggested to be incorporated:

“Note the Director of Environmental Protection’s advice that the applicant is reminded that the design and construction of the septic tank and soakaway system should follow Environmental Protection Department (EPD)’s Practice Note ProPECC PN 5/93 (available on EPD’s website) including the clearance distance of the soakaway pit and the percolation test, which should be properly certified by Authorized Person (AP).”

Landscape

9.6 Comments of the Chief Town Planner / Urban Design and Landscape (CTP/UD&L):

- (a) she has reservations on the application from landscape planning perspective;
- (b) with reference to the aerial photo of 2018, the Site is located at the heart of the “CA” zone and surrounded by extensive native woodlands. It is also sitting at the door-step (less than 300m) of Ma On Shan Country Park. The Site is situated in an area of upland and hillside landscape character predominated by dense woodlands and small quantity of structures / houses. The proposed development is not entirely compatible with the surrounding environment;
- (c) when comparing the series of aerial photos from 1990 to 2018, the Site and its surrounding area was originally covered with vegetation, but it had been cleared and formed since 1998. The Site is currently vacant without vegetation and surrounded by chain link fence along the site boundary. No existing tree and planting of high-valued conservation is found within the Site;
- (d) having reviewed the drainage layout plan and block plan submitted by the applicant in its FI dated 16.1.2020 (**Drawing A-5**), there is insufficient information to demonstrate the existing vegetation along the footpath/proposed u-channel and catchpit would not be affected by the proposed development during construction stage;
- (e) although no further adverse landscape impact arising from the proposed

development is anticipated, approving the application would set an undesirable precedent for similar site modification within the “CA” zone prior to approval. The cumulative effect of which would result in a general degradation of the landscape character of the area and undermine the intactness of the “CA” zone; and

- (f) in view of limited space within the Site and the Site is not facing any public frontage, implementation of effective landscape treatment to enhance the public realm seems not practicable. It is considered not necessary to impose any landscape-related condition should the application be approved by the Board.

Drainage

9.7 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

- (a) no in-principle objection to the application from a drainage maintenance viewpoint provided that necessary stormwater drainage collection and disposal facilities would be provided in connection with the proposed use to deal with the surface runoff of the Site or the same on to the Site from the adjacent areas without causing any adverse drainage impact to the areas or nuisance to the adjoining areas; and
- (b) according to DSD’s records, the Site is within an area where neither stormwater nor sewerage connections maintained by DSD is available in the vicinity at present.

Building Matters

9.8 Comments of the Chief Building Surveyor/ New Territories East 2 and Rail, Buildings Department (CBS/NTE2 & Rail, BD):

- (a) no comment on the application under Buildings Ordinance;
- (b) all non-exempted ancillary site formation and/or communal drainage works are subject to compliance with Buildings Ordinance; and
- (c) Authorized Person must be appointed for the site formation and communal drainage works referred to (b) above.

Nature Conservation

9.9 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) no comment on the application;
- (b) the proposed redevelopment site is within a private lot located in a piece of barren government land and is not adjoining to the surrounding natural vegetation. The area of barren land mentioned above has been vacant for decades according to available records of aerial photos. The Site is more

than 40m from a nearby natural stream. Nevertheless, the Site is accessible only by a footpath bordered by natural vegetation;

- (c) it is noted from the applicant's FI submission dated 17.1.2020 (**Drawing A-5**) that the revised drainage plan will not encroach onto any natural vegetation in the CA" zone. The applicant has also undertaken to use the existing footpath to deliver the concrete and building material manually in order to minimise the impact to natural vegetation in the "CA" zone; and
- (d) the applicant should be reminded to implement necessary measures for protection of trees along the footpath as recommended in the "Guidelines on Tree Preservation during Development" promulgated by Greening Landscape and Tree Management Section of Development Bureau in April 2015 with the aim to minimise any damage to trees on government land in the "CA" zone.

Fire Safety

9.10 Comments of the Director of Fire Services (D of FS):

- (a) no specific comment on the application; and
- (b) the applicant is advised to observe "New Territories Exempted Houses – A Guide to fire safety Requirements" published by LandsD. Detailed and fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

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

- (a) Chief Engineer (Works), Home Affairs Department;
- (b) District Officer (Sai Kung), Home Affairs Department;
- (c) Chief Highway Engineer/New Territories East, Highways Department; and
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

10. Public Comments Received During Statutory Publication Period

On 10.9.2019 and 24.3.2020, the application and FI submitted by the applicant were published for public inspection. During the first three weeks of the statutory public inspection periods, four public comments were received from a Sai Kung District Council member, Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited and an individual of the public (**Appendix II**). Three comments object to the application mainly on grounds that the proposed development is not in line with the planning intention; approval of the application may set an undesirable precedent for other similar applications which will result in encroachment of the "CA" zone; approval would encourage "destroy first, build later"; and there would be adverse drainage impact. One comment notes that if there is a residual right to the existence of a previous dwelling, it should be transferred to a similar plot of government land within an

appropriate zoning.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed redevelopment of one house (NTEH) at the Site falling within an area zoned “CA” on the approved Pak Kong and Sha Kok Mei OZP. The planning intention of the “CA” zone is intended to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted. The proposed development is not in line with the planning intention of the “CA” zone. The applicant fails to provide strong justification for a departure from the planning intention of the “CA” zone.
- 11.2 According to the Remarks of the “CA” zone, no redevelopment, including alteration and/or modification, of an existing house shall result in a total redevelopment in excess of the plot ratio, site coverage and height of the house which was in existence on the date of the first publication in the Gazette of the notice of the IDPA plan. According to DLO/SK, approval was granted to a previous landowner to redevelop one building by way of Approval Letter issued on 21.8.1979. However, the Site was not redeveloped and the approval for rebuilding of the Site was withdrawn on 31.5.1982 because of the change of land ownership. The proposed redevelopment in the current application is not in excess of the rebuilding application approved in 1979 by DLO/SK. However, it is noted that the Site was partly vegetated and vacant in 1990 and is now formed without any existing structures on it. There is no information provided in the application to demonstrate a house had been erected on the Site and that the development intensity of the proposed house under application will not result in a total redevelopment in excess of the plot ratio, site coverage and height of the house which was in existence on the date of the first publication in the Gazette of the notice of the IDPA plan.
- 11.3 The Site is located in the heart of the “CA” zone and surrounded by extensive native woodlands. It is also less than 300m of Ma On Shan Country Park. The Site is situated in an area of upland and hillside landscape character predominated by dense woodlands and small quantity of structures/houses. CTP/UD&L, PlanD considers that the proposed redevelopment is not entirely compatible with the surrounding environment. According to CTP/UD&L, comparing the series of aerial photos from 1990 to 2018, the Site and its surrounding area was originally covered with vegetation, but it has been cleared and formed since 1998 (**Plan A-3b**). The Site is currently vacant without vegetation and surrounded by fence along the Site boundary. Although no existing tree and planting of high-valued conservation is found within the Site and no further landscape impact arising from the proposed development is anticipated, CTP/UD&L has reservation on the application. The applicant fails to demonstrate that the proposed house redevelopment would not result in a general

degradation of the landscape character of the area. Approval of the application will set an undesirable precedent for other similar applications within the “CA” zone and the cumulative effect of approving such applications will result in a general degradation of the landscape character of the area.

- 11.4 The applicant has submitted a drainage proposal to support the proposed redevelopment (**Drawing A-5**). However, it is noted that the drainage proposal falls outside the Site and involves both the adjacent private lot (i.e. Lot 111 in D.D. 219) and government land in the “CA” zone. The applicant has not provided any information regarding any excavation or land filling works required for the proposed drainage works and to demonstrate the existing vegetation along the footpath/proposed u-channel and catchpit would not be affected by the proposed works.
- 11.5 The Site is the subject of a previous application (Application No. A/SK-PK/44) rejected by the Committee and the Board upon review on the grounds of not in line with the planning intention of the “CA” zone, the existing track leading to the site is substandard and is inadequate to serve the proposed development, setting on undesirable precedent and lack of information to demonstrate that there would not be any increase in plot ratio, site coverage and building height in the proposed redevelopment scheme as compared to the alleged previously existing house on the site, a comparison required to meet the stipulation in the Notes for the “CA” zone. The previous applicant submitted an appeal which was dismissed by the Town Planning Appeal Board mainly on planning intention, access track and development intensity grounds. While C for T has no comment on the application from traffic engineering viewpoint, since the rejection of the previous application, there has been clearance of the Site and the adjacent lot which have resulted in substantive landscape impact on the area.
- 11.6 Relevant government departments consulted, including DEP, CE/Construction, WSD, CE/MS of DSD and D of FS, have no adverse comment on / no objection to the application on other technical aspects.
- 11.7 Regarding the public comments objecting to the application, the assessments in paragraphs 11.1 to 11.4 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “CA” zone which is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. The applicant fails to provide strong justification in the submission for a departure from the planning intention; and

- (b) the applicant fails to demonstrate a house had been erected on the Site and that the development intensity of the proposed house will not result in a total redevelopment in excess of the plot ratio, site coverage and height of the house which was in existence on the date of the first publication in the Gazette of the notice of the IDPA plan.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 15.5.2024, 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 a septic tank and soakaway pit system for foul effluent disposal to the satisfaction of Director of Environmental Protection or of the Town Planning Board; and
- (b) the submission and implementation of drainage facilities to the satisfaction of the Director of Water Supplies or the Town Planning Board.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form dated 3.9.2019
Appendix Ia	Supporting Planning Statement
Appendix Ib	Further Information (FI) dated 10.10.2019 providing responses to departmental comments
Appendix Ic	FI dated 10.12.2019 providing responses to departmental comments
Appendix Id	FI dated 16.1.2020 providing responses to departmental

Appendix II	comments and revised drainage proposal Public comments received during the statutory publication periods
Appendix III	Advisory clauses
Drawing A-1	Location Plan submitted by the applicant
Drawing A-2	Survey Sheet submitted by the applicant
Drawings A-3 and A-4	Lot Index Plan and Elevation Plan submitted by the applicant
Drawing A-5	Drainage Layout Plan and Block Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3a to A-3c	Aerial Photos
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**