

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-KLH/551 and 552

<u>Applicants</u>	Mr. CHAN Ho Nam (Application No. A/NE-KLH/551) Mr. CHAN Ho Yu (Application No. A/NE-KLH/552) both represented by Mr. CHAN Wai Kwok
<u>Sites</u>	Both on Government land in D.D.9, Kau Lung Hang Village, Tai Po, N.T.
<u>Site Areas</u>	Both about 65.03 m ²
<u>Land Status</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<u>Zoning</u>	“Green Belt” (“GB”)
<u>Applications</u>	Proposed House (New Territories Exempted House (NTEH) - Small House) at each of the application sites

1. The Proposals

1.1 The applicants, indigenous villagers of Kau Lung Hang of Tai Po as confirmed by the Indigenous Inhabitant Representative (IRR) ¹ of the concerned village, seek planning permission to build a NTEH (Small House) on each of the application sites (the Sites). 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)’ within the “GB” zone requires planning permission from the Town Planning Board (the Board).

1.2 Details of each of the proposed NTEHs (Small Houses) are as follows:

Total floor area	:	195.09m ²
No. of storeys	:	3
Building height	:	8.23m
Roofed over area	:	65.03m ²

Layouts of the proposed Small Houses including the sewerage connection proposals are shown on **Drawings A-1 and A-2**.

¹ District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that the applicants’ eligibilities of Small House grants have yet to be ascertained.

- 1.3 The Sites are the subject of four previous applications (No. A/NE-KLH/336, 337, 412 and 413) submitted by the same applicants for a Small House development at each of the Sites. Applications No. A/NE-KLH/336 and 337 were rejected by the Rural and New Town Planning Committee (the Committee) on 15.7.2005 whereas Applications No. A/NE-KLH/412 and 413 were subsequently approved with conditions by the Committee on 13.8.2010. Planning permission for these applications lapsed on 14.8.2018. Compared with the previously approved applications, the Small Houses' footprints and development parameters under the current applications are the same.
- 1.4 In support of the applications, the applicants have submitted the following documents:
- (a) Application form with attachment (No. A/NE-KLH/551) **(Appendix Ia)**
 - (b) Application form with attachment (No. A/NE-KLH/552) **(Appendix Ib)**
 - (c) Further Information (FI) received on 20.8.2018 **(Appendix Ic)**

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications as mentioned in Part 9 of the application forms at **Appendices Ia** and **Ib** are summarized as follows:

- (a) the Sites were Government land next to Lot 1630 in D.D. 9, which were cultivated since the time of their great-grandfather. Lots 1630, 1631 and 1632 are Small Houses of their father/ uncle and granduncle;
- (b) the applicants applied to the Lands Department for construction of Small House at the Sites in 2000. The Sites are the subject of previous applications No. A/NE-KLH/412 and 413 by the same applicants approved in 2010; and subsequent applications for extension of time for commencement (due to the delay of Government's sewerage project) were approved in 2014 with validity extended to August 2018; and
- (c) the Government's sewerage project has just been completed, and the applicants seek planning approvals again for the proposed Small Houses.

3. Compliance with the "Owner's Consent/Notification" Requirements

As the Sites involve Government land only, the "owner's consent/notification" 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) are not applicable to the applications.

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. On 23.8.2002, criterion (i) which requires that the application sites, if located within water gathering grounds (WGG), should be able to be connected to the existing or planned sewerage system in the area was incorporated. The latest set of Interim Criteria with criterion (i) remained unchanged was promulgated on 7.9.2007 and is at **Appendix II**.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for 'Application for Development within "GB" zone under section 16 of the Town Planning Ordinance' is relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development in the "GB" zone;
- (b) applications for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning ground. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas. With the exception of NTEH, a plot ratio up to 0.4 for residential development may be permitted;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites 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;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Applications

- 6.1 The Sites are the subject of four previous applications (No. A/NE-KLH/336, 337, 412 and 413) submitted by the same applicants for a Small House development at each of the Sites. The Site of application No. A/NE-KLH/551 is the subject of previous applications No. A/NE-KLH/336 and 412 whereas the Site of application No. A/NE-KLH/552 is the subject of previous applications No. A/NE-KLH/337 and 413.
- 6.2 Applications No. A/NE-KLH/336 and 337 were rejected by the Committee on 15.7.2005 mainly for the reasons of not complying with the Interim Criteria in that the proposed development was not in line with the planning intention of “GB”; the proposed Small House was not able to be connected to the existing or planned sewerage system in the area; and insufficient information in the submission to demonstrate that the proposed development would not have adverse drainage and slope stability impacts.
- 6.3 Applications No. A/NE-KLH/412 and 413 were approved with conditions by the Committee on 13.8.2010 mainly on the consideration of being in line with the Interim Criteria in that the proposed Small House would be able to be connected to the planned sewerage system, which was scheduled to be completed in 2016/2017. Planning permission for these two applications subsequently lapsed on 14.8.2018.
- 6.4 Details of the previous applications are summarized at **Appendix III**.

7. Similar Applications

- 7.1 There are 14 similar applications for Small House development in the same “GB” zone and in the vicinity of the Sites since the first promulgation of the Interim Criteria on 24.11.2000. Six of them were approved with conditions, and the other eight applications were rejected.
- 7.2 Among the six approved applications, five of them (No. A/NE-KLH/290, 357, 401, 408 and 437) were approved between 2002 and 2012 mainly on considerations that the application complied with the Interim Criteria in that more than 50% of the proposed Small House footprint fell within the ‘VE’; there was a general shortage of land in meeting the Small House demand in the “V” zone at the time of consideration; the proposed house would be able to be connected to the planned sewerage system in the area; and the proposed development would not involve extensive clearance of existing natural vegetation or affect the existing natural landscape. Subsequently, application No. A/NE-KLH/547, which was the subject of a previously approved case (No. A/NE-KLH/408) from the same applicant, was approved in 2017 based on sympathetic consideration and that the proposed Small House would be able to be connected to the existing sewerage system.
- 7.3 For the eight rejected applications, two of them (No. A/NE-KLH/335 and 338) were rejected by the Committee on 15.7.2005 mainly for reasons of being not in line with the planning intention of “GB” zone; not in compliance with the Interim Criteria in that the proposed house was not able to be connected to the

planned sewerage system in the area; and adverse drainage and/or slope stability impacts. Application No. A/NE-KLH/419 was rejected on 21.1.2011 for not complying with the Interim Criteria in that the proposed house fell outside both the village 'environs' ('VE') and "V" zone; not complying with the TPB PG-No. 10 as the proposed development would affect the existing natural landscape of the area; was not able to be connected to the planned public sewers; and setting of undesirable precedent. For the remaining five applications (No. A/NE-KLH/461, 462, 495, 496 and 534), they were rejected between 2014 and 2017 mainly for reasons of not complying with the Interim Criteria and TPB PG-No. 10 in that the proposed development would cause adverse landscape impact to the surrounding area; and land was still available within the "V" zone for Small House development.

7.4 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

8. The Sites and their Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3 and A-4)

8.1 The Sites are:

- (a) vacant and covered with grass;
- (b) located at the northern fringe of Kau Lung Hang Lo Wai and to the north of Kau Lung Hang Ecologically Important Stream (EIS);
- (c) entirely within the 'VE' of Kau Lung Hang Lo Wai, Kau Lung Hang San Wai and Yuen Leng; and
- (d) accessible by a local track.

8.2 The surrounding areas are predominantly rural in character with scattered tree groups, village houses, temporary structures and fallow agricultural land. There are existing/ approved Small Houses to the immediate east of the Sites.

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 The applications have 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 Small Houses - Application sites	- -	100% 100%	- The Sites and the footprints of the Small Houses fall entirely within the “GB” zone.
2.	Within ‘VE’? - Footprint of the Small Houses - Application sites	100% 100%	- -	- The Sites and the footprints of the proposed Small Houses fall entirely within ‘VE’ of Kau Lung Hang Lo Wai, Kau Lung Hang San Wai and Yuen Leng. - DLO/TP, LandsD has no objection to the applications.
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: about 12.18 ha (equivalent to 487 Small House sites). The outstanding Small House applications are 130 ² while the 10-year Small House demand forecast for the same villages is 357. - Land available to meet Small House demand within the “V” zone of the villages concerned: about 6.67 ha (equivalent to 266 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “GB” zone?		✓	- Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the applications from nature conservation point of view as the Sites are located adjacent to existing village houses and are vacant.
5.	Compatible with surrounding area/development?	✓		- The proposed Small Houses are not incompatible with the surrounding areas which are predominantly rural in character mainly comprising of scattered tree groups, village houses, temporary structures and fallow agricultural land.

² Among the 130 outstanding Small House applications, 79 of them fall within the “V” zone and 51 straddle or outside the “V” zone. For those 51 applications straddling or being outside the “V” zone, 12 of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
6.	Within Water Gathering Ground (WGG)?	✓		<ul style="list-style-type: none"> - Chief Engineer/ Construction, Water Supplies Department (CE/C, WSD) has no objection to the applications as the proposed Small Houses would be able to be connected to the newly constructed public sewerage system. - Approval conditions on connection to public sewers and provision of protective measures to WGG are required.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire services installations and emergency vehicular access (EVA)?		✓	<ul style="list-style-type: none"> - Director of Fire Services (D of FS) has no in-principle objection to the applications.
9.	Traffic impact?	✓		<ul style="list-style-type: none"> - Commissioner for Transport (C for T) in general has reservation on the applications but considers the applications only involving development of a Small House at each of the Sites can be tolerated on traffic grounds.
10.	Drainage impacts?	✓		<ul style="list-style-type: none"> - Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no in-principle objection to the applications from public drainage viewpoint. - Approval condition on submission and implementation of drainage proposal is required.
11.	Sewerage impacts?	✓		<ul style="list-style-type: none"> - Chief Engineer/Consultant Management, Drainage Services Department (CE/CM, DSD) advises that new public sewerage network at Kau Lung Hang was completed. There is existing public sewer in the vicinity of the

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>proposed Small Houses for connection.</p> <ul style="list-style-type: none"> - Director of Environmental Protection (DEP) has no objection to the applications as the applicants have proposed to connect the Small Houses to the public sewer manholes to the immediate north of the Sites (Plan A-2a), sewer connection is feasible and capacity is available for the proposed Small House developments.
12.	Landscape impact?	✓		<ul style="list-style-type: none"> - Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations on the applications from landscape planning point of view as approval of the applications would further attract similar developments within the “GB” zone; the cumulative effect of approving similar applications would result in degradation of landscape character and cause adverse landscape impact. - Since the footprints of proposed Small Houses cover the entire Sites, there is no space for landscaping within the Sites. The standard condition for submission and implementation of landscape proposal is not recommended.
13.	Geotechnical impact	✓		<ul style="list-style-type: none"> - Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advises that the proposed Small House developments are overlooked by steep natural hillside and meet the alert criteria for a Natural Terrain Hazard Study (NTHS). - The applicants agree to undertake a NTHS should the applications be approved. An approval condition

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				requiring the submission of a NTHS and the implementation of mitigation measures identified therein is recommended to address H(GEO), CEDD's concerns.
14.	Local objections conveyed by DO?		✓	

10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Other detailed comments are at **Appendix V**.

- (a) District Lands Officer/Tai Po, Lands Department;
- (b) Commissioner for Transport;
- (c) Director of Environmental Protection;
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (e) Chief Engineer/Mainland North, Drainage Services Department;
- (f) Chief Engineer/Consultant Management, Drainage Services Department;
- (g) Director of Agriculture, Fisheries and Conservation;
- (h) Director of Fire Services;
- (i) Chief Engineer/Construction, Water Supplies Department;
- (j) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (k) Director of Electrical and Mechanical Services.

10.3 The following Government departments have no comment on / no objection to the applications:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department; and
- (c) District Officer/Tai Po, Home Affairs Department.

11. Public Comment Received During Statutory Publication Period

On 17.7.2018, the applications were published for public inspection. During the first three weeks of the statutory public inspection period, one public comment (**Appendix VI**) was received from an individual objecting to both applications mainly on the grounds of being not in line with the planning intention of "GB" zone; adverse geotechnical and sewerage impacts; impact on the Ecologically Important Stream nearby; and encourage further developments in "GB" zone.

12. Planning Considerations and Assessments

12.1 The Sites fall entirely within an area zoned "GB". The proposed Small

Houses are 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. DAFC has no strong view on the applications from nature conservation point of view as the Sites are located adjacent to existing village houses and are vacant.

- 12.2 The applicants are indigenous villagers of Kau Lung Hang. According to DLO/TP, LandsD’s records, the total number of outstanding Small House applications for Kau Lung and Yuen Leng villages is 130 while the 10-year Small House demand forecast for the same villages is 357. Based on the latest estimate by the Planning Department, about 6.67 ha of land (or equivalent to about 266 Small House sites) are available within the “V” zone of Yuen Leng, Kau Lung Hang Lo Wai and San Wai (**Plan A-2b**). As the footprints of the proposed Small Houses fall entirely within ‘VE’, DLO/TP, LandsD has no objection to the applications.
- 12.3 The Sites are located at the northern fringe of Kau Lung Hang Lo Wai where existing village houses can be found to the east of the Sites. The proposed developments are not incompatible with the surrounding areas which are predominantly rural in character with tree clusters, village houses, temporary structures and fallow agricultural land (**Plans A-2a** and **A-4**). Whilst there is no existing tree within the Sites and adverse impact on landscape resources arising from the proposed developments is not anticipated, CTP/UD&L of PlanD has some reservations on the applications from the landscape planning point of view as approval of the applications would further attract similar applications encroaching onto the “GB” zone, the cumulative effect of approving such applications would result in degradation of landscape character and cause adverse landscape impact to the area.
- 12.4 The Sites are within the upper indirect WGG. The applicants have proposed to connect the proposed Small Houses to the public sewer manholes to the immediate north of the Sites (**Plan A-2a** and **Drawing A-2**). Both DEP and CE/C of WSD have no objection to the applications provided that the applicants shall connect the proposed Small Houses to the public sewer at their own costs and adequate spaces within the Sites will be reserved for connection. Besides, C for T in general has reservation on the applications but considers that the applications only involving the development of a Small House at each of the Sites can be tolerated.
- 12.5 H(GEO) of CEDD advises that the Sites are overlooked by steep natural hillside and meet the alert criteria requiring a NTHS. Whilst there is no submission of Geotechnical Planning Review Report in support of the applications, the applicants’ representative agrees in the FI to undertake the NTHS should the applications be approved (**Appendix Ic**). To address H(GEO) of CEDD’s concern, an approval condition on the submission of a NTHS and the implementation of the mitigation measures identified therein is recommended in paragraph 13.2(d) below. H(GEO) of CEDD has no further comment on the above arrangement. Other relevant Government departments including CE/MN and CE/CM of DSD, CHE/NTE of HyD and D of FS have no objection to or no adverse comment on the applications.

- 12.6 Regarding the Interim Criteria (**Appendix II**), more than 50% of the proposed Small House footprints fall within the 'VE' of Yuen Leng and Kau Lung Hang, and the proposed developments within WGG would be able to be connected to the public sewerage system (**Plan A-2a**). While land available within the "V" zone (about 6.67 ha or equivalent to about 266 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 130 outstanding Small House applications. It should be noted that the Board has adopted a more cautious approach in approving applications for Small House development in recent years. 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. Nonetheless, the Sites are the subject of previously approved applications (No. A/NE-KLH/412 and 413) submitted by the same applicants without any change to the Small House footprints and the development parameters. Hence, sympathetic consideration could be given to the current applications.
- 12.7 There are 14 similar applications for Small House development within the same "GB" zone, of which seven cases are in close proximity to the Sites (**Plan A-2a**). Out of the seven applications, four of them were approved and the remaining three cases were rejected. Three applications (No. A/NE-KLH/357, 401 and 408) were approved between 2007 and 2010 before the adoption of a more cautious approach by the Board, mainly because the proposed house would be able to be connected to the planned public sewerage system and there was a general shortage of land in meeting the demand for Small House development in the "V" zone at the time of consideration. The planning permissions for these applications subsequently lapsed between 2011 and 2018. Application No. A/NE-KLH/547, being the subject of a previously approved case (A/NE-KLH/408) from the same applicant, was approved in 2018 mainly based on sympathetic consideration. Regarding the rejected cases, applications No. A/NE-KLH/335 and 338 were rejected in 2005 mainly on the ground that the proposed house was not able to be connected to the planned sewerage system in the area. Application No. A/NE-KLH/534, despite being part of a previously approved case (A/NE-KLH/401), was rejected in 2017 as the footprint of the proposed house had been changed and the application was submitted by another applicant. The planning circumstances of the current applications are similar to application No. A/NE-KLH/547, which was approved mainly on sympathetic consideration as the site was the subject of a previous approval from the same applicant.
- 12.8 There is one public comment raising objection to both the applications mainly on the grounds of being not in line with the planning intention of "GB" zone; adverse geotechnical and sewerage impacts; impact on the Ecologically Important Stream nearby; and encourage further developments in "GB" zone, the planning assessments and comments of concerned Government departments in the above paragraphs are relevant.

13 Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account

the public comment mentioned in paragraph 11, the Planning Department has no objection to the applications.

- 13.2 Should the Committee decide to approve the applications, it is suggested that each of the permissions shall be valid until 7.9.2022, 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 submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) the connection of the foul water drainage system to the public sewers to the satisfaction of the Director of Water Supplies or of the Town Planning Board;
- (c) the provision of protective measures to ensure no pollution or siltation occurs to the water gathering grounds to the satisfaction of the Director of Water Supplies or of the Town Planning Board; and
- (d) the submission of a natural terrain hazard study (NTHS) and the implementation of the mitigation measures identified therein to the satisfaction of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses for each of the permissions are attached at **Appendix VII**.

- 13.3 Alternatively, should the Committee decide to reject the applications, the following reasons for rejection are suggested for Members' reference:
- (a) the proposed development 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. There is no strong planning justification given in the submission for a departure from the planning intention of the "GB" zone; and
 - (b) land is still available within the "V" zone of Yuen Leng, Kau Lung Hang Lo Wai and Kau Lung Hang San Wai where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

14. Decision Sought

- 14.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the applications, 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.
- 14.3 Alternatively, should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

15. Attachments

Appendix Ia	Application form with attachment (A/NE-KLH/551)
Appendix Ib	Application form with attachment (A/NE-KLH/552)
Appendix Ic	Further Information received on 20.8.2018
Appendix II	Interim Criteria
Appendix III	Previous applications
Appendix IV	Similar planning applications
Appendix V	Detailed comments from relevant Government departments
Appendix VI	Public Comment
Appendix VII	Recommended advisory clauses
Drawing A-1	Site plan including sewerage connection (A/NE-KLH/551)
Drawing A-2	Site plan including sewerage connection (A/NE-KLH/552)
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within “V” zone
Plan A-3	Aerial photo
Plan A-4	Site photo