RNTPC Paper Nos. A/FSS/266 and 267 For Consideration by the Rural and New Town Planning Committee on <u>4.5.2018</u>

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NOS. A/FSS/266 and 267

| <u>Applicants</u> | Mr. Lau Yat Hay Mr. Lau Chung Kan | (Application No. A/FSS/266) (Application No. A/FSS/267) | | |
|---------------------|--|--|--|--|
| | All represented by Mr. Pang Hing | Yeun | | |
| <u>Sites</u> | Lot 1543A S.A Lot 1543A RP | (Application No. A/FSS/266) (Application No. A/FSS/267) | | |
| | All in D.D 92, Tsung Pak Long, Sheung Shui, New Territories | | | |
| <u>Site Areas</u> | 102.6 m ² 110.5 m ² | (Application No. A/FSS/266) (Application No. A/FSS/267) | | |
| Lease | Old Schedule Agricultural Lots held under Block Government Lease | | | |
| <u>Plan</u> | Approved Fanling/Sheung Shui Outline Zoning Plan (OZP) No. S/FSS/22 | | | |
| Zonings | "Green Belt" ("GB") | (Application Nos. A/FSS/266 & 267) | | |
| Applications | Proposed Houses (New Territories Exempted Houses (NTEHs) – Small Houses) | | | |

1. <u>The Proposals</u>

- 1.1 The applicants¹ sought planning permissions to build a proposed NTEH (Small House) on each of the application site (the Site) in Tsung Pak Long, Sheung Shui. The Sites fall within an area zoned as "GB" on the Fanling/Sheung Shui OZP No. S/FSS/22 (**Plans A-1**). The Sites are largely vacant covered by vegetation with existing young trees grown at the fringe, and the Site of Application No. A/FSS/266 includes a section of an existing footpath which forms the only access to the temporary domestic structures to the east of the Sites (**Plan A-2a**).
- 1.2 According to the Notes of the OZP, 'House' is a Column 2 use within the "GB" zone, which requires planning permission from the Town Planning Board (the Board).
- 1.3 Details of each of the proposed NTEHs (Small Houses) are as follows:

| Total Floor Area | : | 195.09 m² |
|------------------|---|-----------|
| Covered Area | : | 65.03 m² |
| No. of Storeys | : | 3 |

As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD), the applicants claim themselves to be indigenous villagers of Tsung Pak Long. Their eligibilities for Small House concessionary grant have yet to be ascertained.

Building Height : 8.23m

The applicants have indicated that the uncovered areas of each of the Sites are used as circulation area.

- 1.4 In support of the applications, the applicants have submitted:
 - (a) Application form of Application No. A/FSS/266 with (Appendix I) attachments received on 8.3.2018
 - (b) Application form of Application No. A/FSS/267 with (Appendix II) attachments received on 8.3.2018
 - (c) Supplementary information clarifying the location of (**Appendix IIa**) the Sites received on 9.3.2018

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed in Part 9 of the Application Forms at **Appendices I** to **II**. They can be summarised as follows:

- (a) the applicants are indigenous villagers of Tsung Pak Long and are entitled to a Small House each under the current Small House Policy;
- (b) the proposed NTEHs are located within the 'village environ' ('VE') of Tsung Pak Long;
- (c) the Sites are the only pieces of land owned by the applicants that are eligible for Small House development.
- (d) there is no trees and river within each of the Sites. The proposed Small House developments would not cause environmental impact; and
- (e) the applicants would take Planning Department's advice to ensure no environmental impact would be induced.

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

The applicants are the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

4. <u>Town Planning Board Guidelines</u>

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' promulgated in July 1991 is relevant to Application Nos. A/FSS/266 and 267. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development (other than redevelopment) 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. 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 NTEHs, a plot ratio up to 0.4 for residential development may be permitted;
- (c) applications for NTEHs with satisfactory sewage disposal facilities and access arrangements may be approved if the sites are in close proximity to existing villages and in keeping 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 vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided;
- (f) 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;
- (g) the proposed development should not overstrain the overall provision of Government, Institution or Community (G/IC) facilities in the general area; and
- (h) 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.

5. <u>Assessment Criteria</u>

The set of Interim Criteria for Consideration of Application for New Territories Exempted House/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 respectively. The latest set of Interim Criteria, promulgated on 7.9.2007, is at **Appendix III**.

6. <u>Previous Application</u>

6.1 The Sites are the subject of 2 previous applications (Nos. A/FSS/94 and 155) each covering both of the Sites (i.e. lot 1543A S.A and lot 1543A RP) for a Small house development submitted by a different applicant. Both applications were rejected by the Committee on 7.11.1997 and 7.11.2003 respectively before the promulgation of

of Interim Criteria on 7.9.2007 mainly on the grounds that the applications were not in line with the planning intention of the "GB" zone; land was still available within the "V" zone of Tsung Pak Long in meeting the demand for Small House development; and the proposed development would set an undesirable precedent for similar applications in the area.

6.2 Details of the previous applications are summarized at **Appendix IV** and its location is shown on **Plan A-1**.

7. <u>Similar Applications</u>

- 7.1 There are 15 similar applications for Small House development in the vicinity of the Sites within, or partly within the same "GB" zone in the Tsung Pak Long area after the promulgation of the Interim Criteria on 7.9.2007.
- 7.2 14 applications (Nos. A/FSS/192, 207, 213, 214, 215, 216, 217, 228, 229, 230, 231, 232, 243 and 244) were approved by the Rural and New Town Planning Committee (the Committee) between 2010 and 2015 mainly on the grounds that the applications complied with the Interim Criteria with both the application sites and the footprints of the proposed Small House fell entirely within the village 'environs' ('VE') of Tsung Pak Long (For Nos. A/FSS/192, 207, 214, 215, 216, 228, 229, 230, 231, 232, 243 and 244); the application generally meet the Interim Criteria in that more than 50% of the footprint of the proposed Small House fell within the "Village Type Development" ("V") zone of Tsung Pak Long (For Nos. A/FSS/213 and 217); there was a general shortage of land in meeting the demand for Small House development in the "V" zone of the same village; the applications complied with TPB PG-No. 10 in that the application sites were in close proximity to the village proper of Tsung Pak Long and there was insufficient land to meet the Small House demand; the proposed development was not incompatible with the surrounding land uses which were situated in an area of rural landscape character dominated by village houses; and the propose developments would not have significant adverse impacts on the traffic, environment and drainage of the surrounding area.
- 7.3 The remaining application (No. A/FSS/193) was rejected by the Committee in 11.6.2010 on the grounds that the application did not comply with the Interim Criteria as both the application site and footprint of the proposed Small House fell entirely outside the 'VE' of Tsung Pak Long; approval of the application which did not comply with the Interim Criteria might set an undesirable precedent for other similar applications in the "GB" zone, and the cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 7.4 Detailed of the applications are summarised at **Appendix V** and their locations are shown on **Plan A-1**.

The Sites and Their Surrounding Areas (Plans A-1, A-2a, A-3 and site photos on Plan A-4)

- 8.1 The Site(s):
 - (a) are located to the south-east of the village proper of Tsung Pak Long and falling entirely within the 'VE' of Tsung Pak Long;
 - (b) for Application No. A/FSS/266 has included a section of an existing footpath which forms the only access to the temporary domestic structures to the east of the Sites;
 - (c) are largely vacant covered by vegetation with existing young trees grown at the fringe; and
 - (d) are accessible via a local track branching off from a vehicular access road leading from Fanling Highway.
- 8.2 The surrounding areas have the following characteristics:
 - (a) predominately rural in character with a mix of village houses, temporary structures, vehicle repair workshop and vacant / unused land;
 - (b) to the north are village houses in the "V" zone of Tsung Pak Long ;
 - (c) to the immediate north-west is a car-repairing workshop and open storage for car;
 - (d) to the south across the vehicular access road is Fanling Highway; and
 - (e) to the east are the application sites of Application Nos. A/FSS/230 to 232 and 213 to 217 for proposed houses (NTEH Small House) approved by the Committee between 2012 to 2015 (**Plan 2-a**).

9. <u>Planning Intentions</u>

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. Planning Assessment and Comments from Relevant Government Departments

10.1 The applications have been assessed against the assessment criteria in **Appendix III**. The assessment is summarised in the following table:

| | <u>Criteria</u> | Yes | No | <u>Remarks</u> |
|----|---|-----|----|---|
| 1. | Within "V" zone? - Application sites | | ~ | - The Sites fall entirely within the "GB" zone. |

| | | | 1 | 1 |
|----|--|----------|----------|---|
| | - Footprints of the proposed Small Houses | | ~ | |
| 2. | Within 'VE'? - Application sites | 100% | | - The Sites fall entirely within the 'VE' of Tsung Pak Long. |
| | - Footprints of the proposed Small Houses | 100% | | |
| 3. | Sufficient land in "V" zone to satisfy outstanding Small House applications and 10-year Small House demand? | | ✓ | Land required Land required to meet Small House demand in Tsung Pak Long is about 15.5 ha (equivalent to about 620 Small House sites). The total number of outstanding Small House applications for Tsung Pak Long are 60 (i.e. about 1.5 ha). The latest 10-year Small House demand forecast for the same village is 560 (i.e. about 14 ha). Land available Land available to meet 10-year Small House demand within the "V" zone of Tsung Pak Long: about 1.975 ha (equivalent to about 78 Small House sites). |
| 4. | Compatible with the planning intention of "GB" zone? | | ~ | - There is a general presumption against development within "GB" zone. |
| 5. | Compatible with surrounding area/ development? | ~ | | - The application sites are located to the south-east of the village proper of Tsung Pak Long. The proposed developments are not incompatible with the surrounding area which is rural landscape character dominated by village houses, temporary structures, car-repairing workshop and vacant / unused land. |

| ices (D of FS) eants should be serve 'New Houses – A Requirements' epartment. |
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| of Transports vation on the ses that Small : should be V" zone as far gh additional the proposed expected to be type of the "V" zone, an undesirable for similar future. The adverse traffic cantial. |
| nland North, Department no objection the public lications be on should be the applicants plement the or the Sites to ill not cause npact to the |
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| 11 | Sewerage impact? | ✓ | - Director of Environmental |
|-----|------------------------------------|---|--|
| | | | Protection (DEP) advised that in view of the small scale of the proposed developments, the applications are unlikely to cause major pollution. |
| 12. | Landscape impact? | | The Sites are covered by wild vegetation with young common trees of low amenity value but are typical vegetation found within the "GB" zone. Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has some reservations from landscape planning perspective on the grounds that the approval of the applications may attract more Small House development encroachment into the "GB" zone that leads to potential piecemeal development and removal of natural vegetation. The cumulative effect of approving such applications would result in a gradual irreversible degradation of the green belt environment. |
| 13. | Local objection conveyed by DO? | | District Officer(North), Home Affairs Department (DO(N), HAD) has consulted the locals from 23.3.2018 to 6.4.2018. The Indigenous Inhabitant Representative (IRR) of Tsiu Keng Village supported the proposals on the grounds that there is insufficient land within the "V" zone of Tsung Pak Long to meet the Small House demand and the Small House development can improve the environment as the Sites are currently occupied by abandoned and degraded structure. The incumbent North District Council (NDC) member, the Resident Representative (RR) of Tsung Pak Long and the Chairman of Sheung Shui District Rural Committee (SSDRC) had no |

| | | | comment on the applications. | |
|--|--|--|------------------------------|--|
|--|--|--|------------------------------|--|

- 10.2 Comments from the following Government departments have been incorporated in paragraph 10.1 above. Detailed comments from Government departments are at **Appendix VI**.
 - (a) District Lands Officer/North, Lands Department (DLO/N, LandsD);
 - (b) Commissioner for Transport (C for T);
 - (c) Director of Environmental Protection (DEP);
 - (d) Director of Fire Services (D of FS);
 - (e) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
 - (f) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
 - (g) District Officer(North), Home Affairs Department (DO(N), HAD);
 - (h) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD); and
 - (i) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).
- 10.3 The following Government departments have no comment on the applications:
 - (a) Commissioner of Police (C of P);
 - (b) Director of Agriculture, Fisheries and Conservation (DAFC);
 - (c) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
 - (d) Project Manager(North), Civil Engineering and Development Department (PM(N), CEDD).

11. <u>Public Comments Received During Statutory Publication Period</u>

- 11.1 The applications were published for public inspection from 16.3.2018 and ended on 6.4.2018. During the statutory public inspection period, 4 public comments were received for each of the applications.
- 11.2 One member of NDC supported the applications on the grounds that the proposed Small Houses will benefit villagers and one member of NDC indicated that he has no comment on the applications (**Appendices VIIa** to **Vb**).
- 11.3 Kadoorie Farm & Botanic Garden Corporation (**Appendix VIIc**) and a public (**Appendix VIId**) objected to the applications on the following grounds:
 - (a) the proposed Small House developments are incompatible with the planning intention of "GB" zone and character of the area;
 - (b) Cumulative effect of approving such applications would result in general degradation of the natural environment in the area;
 - (c) there is still land available within the "V" zone of Tsung Pak Long; and
 - (d) approval of the application would set an undesirable precedent for similar applications within the "GB" zone.

12. Planning Considerations and Assessments

Planning Intention

12.1 The Sites fall entirely within "GB" zone (**Plan A-1a**). The proposed developments 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 general resumption against development within this zone.

Demand and Supply of Land for Small House Development

12.2 The Sites are entirely within the 'VE' of Tsung Pak Long. According to the DLO/N, LandsD record, the total number of outstanding Small House application in Tsung Pak Long is 60 while the 10-year Small House demand forecast for the concerned village is 560. Based on the latest estimated by the Planning Department, about 1.975 ha (or equivalent to about 78 Small House sites) of land are available within the "V" zone of Tsung Pak Long which cannot fully meet the 10-year Small House demand forecast in the long run but is sufficient to meet the 60 outstanding Small house applications (**Plan A-2b**). It is considered more appropriate to concentrate the proposed Small house developments within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructure and services.

Land Planning Context

12.3 The Sites are situated in an area predominantly rural in character surrounded by village houses, temporary structures, vehicle repair workshop and vacant / unused To the east of the Sites are a cluster of Small Houses approved by the land. Committee under Application Nos. A/FSS/230 to 232 and 213 to 217 between 2012 The proposed Small House developments are considered not to 2015. incompatible with the surrounding areas (Plan A-2a and Plan A-3). Nevertheless, CTP/UD&L, PlanD has some reservations on the application from landscape planning perspective. The proposed development would lead to potential piecemeal development and removal of more natural vegetation within the "GB" While permissions were granted for Small House applications adjacent to zone. the Sites, the cumulative effect of such would result in a gradual irreversible degradation of the green belt environment. The proposed Small House development at the Site of Application No. A/FSS/266 would affect a section of an existing footpath which forms the only access to the temporary domestic structures to the east of the Sites (Plan A-2a). However the applicants have not proposed any measure to address the issue. C for T has reservation from traffic engineering point of view and considers the Small house development should be confined within the "V" zone. Although additional traffic generated by the proposed development is not expected to be significant, such type of development outside the "V" zone, if permitted, will set an undesirable precedent case for similar application in the future. The resulting cumulative adverse traffic impact could be substantial. Other Government departments consulted, including CE/MN, DSD, DAFC and D of FS have no comment on or no objection to the applications.

Interim Criteria

12.4 According to the TPB PG-No.10, an application for new development in the "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. For the current applications, there are no exceptional circumstances or strong grounds to justify the applications.

Previous applications

12.5 There are 2 previous applications (Application Nos. A/FSS/94 and 155) each covering both of the Sites (i.e. lot 1543A S.A and lot 1543A RP) for a Small house development. Both applications were rejected by the Committee on 7.11.1997 and 7.11.2003 respectively before the promulgation of Interim Criteria on 7.9.2007 mainly on the grounds that the applications were not in line with the planning intention of the "GB" zone; land was still available within the "V" zone of Tsung Pak Long in meeting the demand for Small House development; and the proposed development would set an undesirable precedent for similar applications in the area.

Similar applications

- 12.6 A similar application (No. A/FSS/193) for Small House development was rejected by the Committee in 11.6.2010 mainly for the reason of not complying with the Interim Criteria as both the application site and footprint of the proposed Small House fell entirely outside the 'VE' of Tsung Pak Long.
- 12.7 There are 14 similar applications (No. A/FSS/192, 207, 213, 214, 215, 216, 217, 228, 229, 230, 231, 232, 243 and 244) approved by the Committee between 2010 and 2015 mainly on the grounds that these applications generally complies with the Interim Criteria and the TPG PG-No. 10 in that the application sites were in close proximity to the village proper of Tsung Pak Long; there was insufficient land to meet the Small House demand; the proposed development would not induce significant adverse impact on the surrounding areas and relevant Government departments have no adverse comment on or no objection to these applications. There has been a major change in planning circumstances of the area since the approval of latest similar applications in 2015 as the land available in Tsung Pak Long is sufficient to meet the demand of outstanding Small House application under the current planning applications.
- 12.8 The Board has adopted a prudent approach in considering Small House applications in recent years and considered more appropriate to concentrate Small House development close to the village cluster / "V" zone for more orderly development pattern, efficient use of and provision of infrastructures and services. For the concern applications, there is still land available in the "V" for Small House development. The approval of the applications would result in further proliferation of Small House development in the "GB" zone.

Public comments

12.9 Four public comments were received for each of the applications from two members of NDC, Kadoorie Farm & Botanic Garden Corporation and a public

during the statutory publication period. Two members of NDC supported or had no comments on the applications. The Kadoorie Farm & Botanic Garden Corporation and a public objected to the applications mainly on the grounds that the proposed developments are not in line with the planning intention of the "GB" zone; cumulative effect of approving such applications would result in general degradation of natural environment; there is still land available within the "V" zone of Tsung Pak Long; and approval of the applications would set undesirable precedent. In this regard, comments of the concerned government departments and the planning assessment above are relevant.

13. <u>Planning Department's Views</u>

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department <u>does not support</u> the applications for the following reasons:
 - (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 justification in the submission for a departure from the planning intention;
 - (b) the proposed development is not in line with the Town Planning Board Guidelines No. TPB PG-No.10 for 'Application for Development within "GB" Zone' in that there are no exceptional circumstances or strong planning grounds to justify the applications;
 - (c) land is still available within the "V" zone of Tsung Pak Long where land is primarily intended for Small House development. It is considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services; and
 - (d) approval of the application will set an undesirable precedent for other similar applications within the "GB" zone. The cumulative effect of approving such applications will result in a general degradation of the landscape character of the area.
- 13.2 Alternatively, should the Committee decide to approve the applications, it is suggested that the permission shall be valid until <u>4.5.2022</u>, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

(a) the provision of septic tank, as proposed by the applicant, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and

(b) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at Appendix VIII.

14. <u>Attachments</u>

| Appendix I | Application Form for Application No. A/FSS/266 with attachments received on 8.3.2018 |
|----------------------------|---|
| Appendix II | Application Form for Application No. A/FSS/267 with attachments received on 8.3.2018 |
| Appendix IIa | Supplementary Information to clarify the location of the Sites received on 9.3.2018 |
| Appendix III | Relevant Interim Criteria for Assessing Planning Applications for NTEH/Small House Development in the New Territories (promulgated on 7.9.2007) |
| Appendix IV | Previous s.16 Applications |
| Appendix V | Similar s.16 Applications Within/Partly Within the Same "Green |
| | Belt" Zone on the Approved Fanling/Sheung Shui Outline Zoning Plan No. S/FSS/22 |
| Appendix VI | Detailed Comments from Relevant Government Departments |
| Appendices VIIa to VIId | Public Comments |
| Appendix VIII | Recommended Advisory Clauses |
| Drawing A-1 | Proposed Small House Layout Plan for Application No. A/FSS/266 |
| Drawing A-2 | Proposed Small House Layout Plan for Application No. A/FSS/267 |
| Plan A-1 | Location Plan |
| Plan A-2a | Site Plan |
| Plan A-2b | Estimated Amount of Land Available within the "V" zone for Small House Development |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

PLANNING DEPARTMENT MAY 2018