APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/458

Applicant Crown Ace Limited

Site Lots 382 S.A, 382 S.B, 382 S.C, 382 S.D and 382 RP in D.D. 94, No.

752, 753 and 755, Hang Tau, Sheung Shui, New Territories

Site Area 1,100 m² (about)

<u>Lease</u> Block Government Lease (demised for agricultural use)

<u>Plan</u> Approved Kwu Tung South Outline Zoning Plan No. S/NE-KTS/16

Zoning "Agriculture" ("AGR") (about 53% of the Site)

"Village Type Development" ("V") (about 47% of the Site)

Application Temporary Social Welfare Facility (Private Residential Care Home

for Persons with Disabilities) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary social welfare facility (private residential care home for persons with disabilities) (RCHD) for a period of 3 years. The Site falls within an area partly zoned "AGR" and partly zoned "V" on the Approved Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/16. According to the Notes of the OZP, 'Social Welfare Facility' is a Column 2 use within "V" zone which requires planning permission from the Town Planning Board (the Board). For the "AGR" zone, there is no provision for 'Social Welfare Facility'. Nevertheless, temporary use not exceeding a period of three years could be submitted to the Board for consideration.
- 1.2 There are 3 existing houses on the Site and it is currently used for the applied use without valid planning permission. The Site, in part or in whole, is the subject of 3 previous planning applications (No. A/NE-KTS/146, 344 and 406). The last 2 applications for the same use submitted by the same applicant as the current application were approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2013 and 2015, but both were revoked on 19.10.2015 and 4.5.2018 respectively due to non-compliance of approval condition in relation to the implementation of the proposals of emergency

vehicular access (EVA) arrangement, water supplies for fire fighting and fire service installations (FSI).

- According to the applicant's submission, the 3 existing houses on the Site for RCHD use are 3-storey (8.23m) in height with house footprint of 65.03 m² each and total gross floor area of about 585.27 m² for provision of 75 beds. It is for rehabilitation of disabled persons and ex-mental patients. The Site is accessible via a village road connecting Fan Kam Road (**Plan A-1** and **Drawing A-1**). It is estimated that the RCHD will generate 1 trip/day with a small van. The floor plans of the RCHD are at **Drawing A-2**. The applied use and development parameters of the RCHD under the current application are the same as the previous application No. A/NE-KTS/406. The RCHD operates everyday and the visiting hours are from 10 a.m. to 6 p.m. daily.
- 1.4 The drainage proposal has been implemented. The landscape proposal is at **Drawing A-3**. The FSI proposal agreed by the Fire Services Department (FSD) under the previous planning permission is at **Appendix If**.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on (**Appendix I**) 28.5.2018
 - (b) Supplementary Information dated 1.6.2018 (Appendix Ia)
 - (c) Further Information (FI) of 2 letters dated 27.6.2018 (Appendix Ib) (accepted and exempted from publication and recounting requirements)
 - (d) FI dated 29.6.2018 (Appendix Ic)
 (accepted and exempted from publication and recounting requirements)
 - (e) FI dated 5.7.2018 (Appendix Id)

 (accepted and exempted from publication and recounting requirements)
 - (f) FI dated 6.7.2018 (Appendix Ie)

 (accepted and exempted from publication and recounting requirements)
 - (g) FI dated 12.7.2018 (Appendix If)

 (accepted and exempted from publication and recounting requirements)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I** and the FI at **Appendices Ib** to **If**. They are summarised as follows:

(a) The applicant has complied with 4 of the 5 approval conditions under the previous planning permission. The applicant has appointed an Authorised Person to cope

with the remaining condition relating to FSI and the FSI proposal has been agreed by FSD. The applicant also submitted information regarding drainage and landscape to support the application. As required by Social Welfare Department (SWD), the RCHD has provided fire safety facilities such as fire extinguisher and fire blanket as interim fire safety measures and submit to SWD a certificate of FSI and equipment every year.

- (b) The RCHD has been operating on the Site since 2011 and the CoE has been issued by SWD to operate the RCHD.
- (c) The applicant has applied for funding under the Financial Assistance Scheme (FAS) of SWD for fulfilment of the buildings and fire services requirements under the RCHD licence. The applicant has submitted to SWD the engineering works and details, and the FAS application is being proceed by SWD. Once approval of the FAS application by SWD, the applicant will start the engineering and building works to provide FSI.
- (d) The operation time of the RCHD is 24 hours daily. No complaint from the neighbourhood has been received since the operation of the RCHD. To prevent disturbance to the neighbourhood, the residents are usually accompanied by the staff or relatives when they leave the RCHD and the main gate is closed at all times. The resting time of the residents is at 9 p.m.. Visitors are advised to travel to/from the Site by public transport. The applicant will protect the existing water mains within the Site.

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

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining consent from the current land owners on 25.5.2018. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is not involved in any active enforcement cases.

5. Previous Application

- 5.1 The Site, in part or in whole, is the subject of 3 previous applications (No. A/NE-KTS/146, 344 and 406). Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-2b**.
- 5.2 Part of the Site (i.e. Lot 382 S.D) mainly within "AGR" zone is the subject of planning application No. A/NE-KTS/146 for proposed house (New Territories Exempted House (NTEH) Small House), which was approved with conditions

by the Committee on 21.12.2001 mainly on the grounds of being in line with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories; proximity to village clusters; and entirely within the village 'environs' ('VE'). The construction of the NTEH has been completed, which is one of the existing houses in this application.

5.3 The whole Site is the subject of 2 planning applications No. A/NE-KTS/344 and 406 for the same use submitted by the same applicant as the current application. The 2 applications were approved with conditions by the Committee on 19.7.2013 and 4.12.2015 respectively for a period of 3 years mainly on the grounds that it could provide residential care home services to person with disabilities despite being not entirely in line with the planning intention of the "AGR" and "V" zones; the use was not incompatible with the surrounding areas; and no significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding areas were anticipated. planning permissions were subsequently revoked on 19.10.2015 and 4.5.2018 respectively due to non-compliance with the approval condition on the implementation of the proposals of EVA arrangement, water supplies for fire fighting and FSI. Other approval conditions on drainage proposal and tree preservation and landscape proposal had been complied with. The proposal of EVA arrangement, water supplies for fire fighting and FSI submitted by the applicant was agreed by the Director of Fire Services (D of FS) but the applicant failed to implement it.

6. Similar Application

There is no similar application for social welfare facility (RCHD) within the "AGR" zone, however, there is a similar planning application No. A/NE-KTS/446 within the same "V" zone in the vicinity of the Site. Details of the application is at **Appendix III** and the location is shown on **Plan A-1**. The application was approved with conditions by the Committee on 3.2.2017 mainly on the grounds that it could provide residential care home services to person with disabilities despite being not entirely in line with the planning intention of the "V" zone; the use was not incompatible with the surrounding developments; and no significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding area were anticipated.

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

7.1 The Site is:

- (a) fenced off and occupied by three 3-storey houses (one within "V" zone, one mainly within "V" zone and the remaining one mainly within "AGR" zone with planning permission) which are currently used for the applied use, known as Comfort Rehabilitation Home (Hang Tau Branch), without valid planning permission; and
- (b) accessible by a village road connecting Fan Kam Road, and a footpath at its eastern side connecting a village road leading to Hang Tau Road.

- 7.2 The surrounding areas have the following characteristics:
 - (a) immediately surrounded by orchard and active and fallow agricultural land;
 - (b) to the further north and west within "V" zone are mainly village houses; and
 - (c) to the further east and south within "AGR" zone are mainly active and fallow farmland and scattered with domestic structures.

8. Planning Intentions

- 8.1 The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- The planning intention of the "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Town Planning Board.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):
 - (a) the lots under application are Old Schedule Lots held under Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make its own arrangement for acquiring access. The Government shall accept no responsibility on such arrangement; and
 - (b) the existing 3 NTEHs on lots 382 S.B, 382 S.C and 382 S.D are covered by Building Licences No. 73/2002, 57/98 and 22/2004

respectively. The said 3 NTEHs shall not be used for any purposes other than non-industrial purposes. According to the said Building Licences, each NTEH shall not have a roofed-over area of not exceeding 65.03 m² and not more than three storeys nor exceeding a height of 8.23m.

Traffic

- 9.1.2 Comments of the Commissioner for Transport (C for T):
 - (a) he considers that the application can be tolerated from traffic engineering viewpoint; and
 - (b) the vehicular access to the Site is via a village track/private land connecting with Fan Kam Road. The village track is not under his department's management. The applicant should check the land status of the access with the lands authority, and clarify its management and maintenance responsibilities with the relevant lands and maintenance authorities accordingly.

Social Welfare

- 9.1.3 Comments of the Director of Social Welfare (DSW):
 - (a) he supports the application as planning permission is one of the conditions for the licensing of the private RCHD;
 - (b) the RCHD has been operating at the Site since 28.3.2011 before the commencement of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) in 18.11.2011. As the RCHD has not yet fully met the licensing requirements, his department has issued a CoE to the RCHD since 1.7.2012 with conditions of improvements of fire safety and building safety for full compliance with the licensing requirements, including seeking planning permission; and
 - (c) with a view to meeting the licensing requirements, the RCHD has submitted an application for the Financial Assistance Scheme (FAS) for carrying out fire safety and building safety rectification works, and has already engaged an Authorised Person as project consultant to work out the details for the funding application. It is anticipated that the vetting of the application can be completed within the coming couple of months.

Environmental

- 9.1.4 Comments of the Director of Environmental Protection (DEP):
 - (a) in view of the nature and scale of the social welfare facility, it

will unlikely cause major pollution; and

(b) it is noted that the septic tank and soakaway (STS) system is existing facilities. Given the nature of temporary use, and there is no existing public sewer in the vicinity of the Site, which is outside Water Gathering Ground, the applicant is reminded that STS system may be acceptable provided that all relevant requirements in the Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" issued by his department are met. The applicant should be reminded to observe relevant pollution control legislations such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc. during operation stage of the development. In particular, there is a water course near the site boundary (Drawing A-3). applicant advised put to in place precautionary/pollution control measures to prevent any pollution of nearby natural stream/water courses.

Drainage

- 9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) he has no objection in-principle to the application from the public drainage point of view; and
 - (b) should the application be approved, the following conditions should be included in the planning permission:
 - (i) the submission of a condition record of the existing drainage facilities on the Site within 3 months from the date of planning approval to the satisfaction of his department; and
 - (ii) the existing drainage facilities shall be maintained at all time and rectified if found inadequate/ineffective during the planning approval period.

Landscape

- 9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
 - (a) he has no objection to the application from landscape planning point of view;
 - (b) with reference to aerial photo of 4.4.2017, the Site is situated in an area of rural landscape character, comprising of some villages,

farmlands and tree groups as well as Fanling Golf Course. The applied use is considered not incompatible with the surrounding landscape character. The Site is currently occupied by 3 blocks of 3-storey houses with a number of existing trees and some shrubs planting to the east and south of the Site. Significant changes or disturbances to the existing landscape resource and character arising from the applied use are not anticipated;

- (c) when comparing the tree preservation and landscape proposal (**Drawing A-3**) with the site photos, it appears that the location of some existing plants does not tally with the site conditions, i.e. a few of conifers located in 'Greenzone' of the Site are missing in the landscape proposal; and
- (d) should the application be approved, a condition should be included to request the applicant to submit and implement a tree preservation and landscape proposal.

Building Matters

- 9.1.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
 - (a) there is no record of approval by the Building Authority for the buildings/structures existing at the Site and his department is not in a position to offer comments on their suitability for the use related to the application;
 - (b) noting that the application involves NTEHs, DLO/N should be in a better position to comment on the application; and
 - (c) the advisory comments are at **Appendix V**.

Agriculture and Nature Conservation

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

considering that the Site has been paved, the existing NTEHs on the Site have been developed for some time and applications for the same applied use were approved by the Board, he has no strong view on the application from agriculture and nature conservation point of view.

Fire Safety

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

he has no in-principle objection to the application subject to fire service installations and water supplies for fire fighting being provided to the satisfaction of his department. He has no comment on the existing interim fire safety measures for the existing RCHD. EVA arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by the Buildings Department. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans from the relevant authority.

Water Supply

- 9.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):
 - (a) he has no objection to the application;
 - (b) existing water mains are located within the Site and will be affected; and
 - (c) the advisory comments are at **Appendix V**.

District Officer's Comments

- 9.1.11 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):
 - (a) he has consulted the locals from 7.6.2018 to 26.6.2018;
 - (b) the Chairman of the Sheung Shui District Rural Committee (SSDRC), the North District Council (NDC) member of the subject constituency and the Resident Representative of Hang Tau have no comment on the application; and
 - (c) the Indigenous Inhabitant Representatives (IIR) of Hang Tau object to the application mainly on the grounds that villagers are disturbed by the residents when passing by the RCHD and there is noise nuisance from the RCHD in the mid-night.
- 9.2 The following Government departments have no comment on the application:
 - (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
 - (b) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 5.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 26.6.2018, a total of 2 comments submitted by members of the general public were received. Amongst them, one commenter (**Appendix IVa**) indicates support to the application with the reason of convenient for the needed, and another commenter (**Appendix IVb**) states

that Hang Tau Village object to the application mainly on the grounds that the applied use causes environmental pollution, traffic impact on village road, and brings different kinds of people to the village.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary social welfare facility (RCHD) for a period of 3 years on the Site with 3 existing NTEHs. It is already in operation. The Site falls partly within "AGR" zone (about 53%) and partly within "V" zone (about 47%). Although the applied use is not in line with the planning intention of the "AGR" and "V" zone, DAFC has no strong view on the application from agriculture and nature conservation point of view as the Site has been paved and the existing NTEHs on the Site have been developed for some time, and it could provide residential care home services to disabled persons and ex-mentally ill persons who are in need of residential care service.
- DSW supports the application. He advises that the RCHD at the Site has been in service since March 2011 before the commencement of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) on 18.11.2011. As the RCHD has not yet fully met the licensing requirements, the RCHD has issued a CoE since 2011 by SWD with conditions of improvements of fire safety and building safety for full compliance with the licensing requirements, and obtaining planning permission is part of the conditions of the CoE. SWD is now processing the FAS application submitted by the applicant for seeking funding assistance to carry out improvement works, and will complete vetting of the application within few months.
- The residential nature of the RCHD within the existing NTEHs is not incompatible with the surrounding developments which are predominantly rural in nature with village houses, domestic structures, and active and fallow agricultural land in the vicinity. CTP/UD&L, PlanD has advised that significant changes or disturbances to the existing landscape resource and character arising from the applied use are not anticipated. In view of the scale and nature of the applied use, it is anticipated that the applied use would not cause significant adverse traffic, environmental, sewerage, drainage and fire safety impacts on the surrounding area. Relevant Government departments consulted including C for T, DEP, CE/MN, DSD and D of FS have no adverse comment on the application.
- The previous planning applications No. A/NE-KTS/344 and 406 for the same use submitted by the same applicant as the current application were approved for a period of 3 years with conditions by the Committee in 2013 and 2015 mainly on the grounds that it could provide residential care home services to person with disabilities despite being not in line with the planning intention of the "AGR" and "V" zones; the use was not incompatible with the surrounding areas; and no significant adverse traffic, environmental, drainage, sewerage, fire safety and landscape impacts on the surrounding areas were anticipated. There has been no material change in the planning circumstance within the Site and its surrounding areas since the last approved application No.

A/NE-KTS/406. Approval of the current application is in line with the previous decision of the Committee.

- 11.5 Although the previous planning approval Application No. A/NE-KTS/406 was revoked on 4.5.2018 due to non-compliance of the approval condition on the implementation of the proposals of EVA arrangement, water supplies for fire fighting and FSI, the applicant has complied with other approval conditions in relation to drainage, tree preservation and landscape, and the FSI proposal has been agreed by D of FS. Interim fire safety equipment is provided in the premises as required by SWD. D of FS has no in-principle objection to the application. As stated in paragraphs 9.1.3 and 11.2 above, the applicant has submitted a FAS application to SWD for carrying out fire safety and building safety rectification works and the FAS application will be completed within According to the applicant, once approval of the FAS application by SWD, he will start the relevant works to provide FSI. Should the Committee decide to approve the application, shorter compliance periods are recommended to monitor the progress of compliance of approval conditions. The applicant would be advised that should he fail to comply with the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- There is one local objection as conveyed by DO(N). Of the 2 public comments received, one raised objection to the application mainly on the grounds of environment and traffic impacts as well as nuisance to villagers. In this regard, relevant Government departments' comments and planning assessments as stated in paragraphs 11.3 and 11.4 above are relevant. The applicant has clarified that the main gate is closed at all times and the resting time of the residents is at 9 p.m..

12. Planning Department's Views

- Based on the assessment made in paragraph 11 and having taken into account the local views and public comments mentioned in paragraphs 9.1.11 and 10, the Planning Department considers that the temporary social welfare facility (private residential care home for persons with disabilities) could be tolerated for a period of 3 years.
- Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years up to 20.7.2021. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the existing drainage facilities shall be maintained at all time and rectified if found inadequate/ineffective during the planning approval period;
- (b) the submission of a condition record of the existing drainage facilities on

site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.10.2018;

- (c) the submission of tree preservation and landscape proposals within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 20.10.2018;
- (d) in relation to (c) above, the implementation of tree preservation and landscape proposals within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 20.1.2019;
- (e) the submission of proposal of fire service installations and water supplies for fire fighting within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.10.2018;
- (f) in relation to (e) above, the implementation of proposal of fire service installations and water supplies for fire fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.1.2019;
- (g) if the above planning condition (a) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (h) if any of the above planning conditions (b), (c), (d), (e) or (f) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

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

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

previous planning permissions granted to the applicant under Applications No. A/NE-KTS/344 and 406 were revoked due to non-compliance with approval condition. Approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning applications for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control.

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 approve the application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I Application Form with Attachments received on 28.5.2018

Appendix Ia Supplementary Information dated 1.6.2018

Appendix Ib FI dated 27.6.2018 **Appendix Ic** FI dated 29.6.2018 Appendix Id FI dated 5.7.2018 Appendix Ie FI dated 6.7.2018 **Appendix If** FI dated 12.7.2018 **Appendix II Previous Applications Appendix III Similar Application** Appendices IVa to IVb **Public comments** Appendix V **Advisory Clauses**

Drawing A-1 Vehicular Access Arrangement Plan

Drawing A-2 Floor Plan

Drawing A-3 Landscape Proposal Plan A-1 Location Plan

Plans A-2a and 2b
Plan A-3
Plans A-4a to A-4c
Site Plans
Aerial Photo

PLANNING DEPARTMENT JULY 2018