

**APPLICATION FOR PERMISSION  
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/TP/650**

<b><u>Applicants</u></b>	Mr. CHAN Harry and Mr. CHAN Kwok Chu represented by Mr. HUI Kwan Yee
<b><u>Site</u></b>	Lots 353 S.A, 353 S.B, 370 and 371 in D.D. 32 and adjoining Government land, Ha Wong Yi Au, Tai Po, New Territories
<b><u>Site Area</u></b>	About 162m <sup>2</sup> (including Government land of 22m <sup>2</sup> )
<b><u>Lease</u></b>	Lots 353 S.A and 353 S.B in D.D. 32 - Block Government Lease (demised for agricultural use) Lots 370 and 371 in D.D. 32 - Block Government Lease (demised for house use (0.01 acre))
<b><u>Plan</u></b>	Draft Tai Po Outline Zoning Plan (OZP) No. S/TP/27
<b><u>Zoning</u></b>	“Green Belt” (“GB”)
<b><u>Application</u></b>	Proposed Two Houses (New Territories Exempted Houses (NTEHs) – Small Houses)

**1. The Proposal**

- 1.1 The applicants, claim to be indigenous villagers of Sheung Wong Yi Au/ Ha Wong Yi Au<sup>1</sup>, seek planning permission to build two NTEHs (Small Houses) on the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH only)’ use within the “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 Details of each of the proposed Small House developments are as follows:

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

<sup>1</sup> The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advises that their eligibilities of Small House grants have yet to be ascertained.

- 1.3 Layout of the two proposed Small Houses with septic tanks is shown on **Drawing A-1**. According to the site formation plans (**Drawings A-2 and A-3**), the proposed development will involve site formation works cutting into the adjoining natural slope to the south and erection of a 4.6m high retaining wall to the north.
- 1.4 The Site is the subject of two previous applications (No. A/TP/589 and 602) submitted by the same applicants, which were rejected by the Rural and New Town Planning Committee (the Committee) on 7.8.2015 and 13.5.2016 respectively. The current application is same as the previous applications with no change in site boundary, Small House footprints and the proposed development parameters.
- 1.5 In support of the application, the applicants have submitted an application form with attachments on 10.5.2018 (**Appendix I**).

## **2. Justifications from the Applicants**

The justifications put forth by the applicants in support of the application are detailed in Part 9 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the Site adjoining the village cluster and located at hillside would not be developed for passive recreational use;
- (b) the applicants have employed professional agents to design site formation and landscape proposals. With the implementation of such proposals, the overall landscape quality and slope stability of the Site would be enhanced;
- (c) the Site is registered as house lots in the Land Registry and Small House development on the Site is reasonable. It was wrongly excluded from the village 'environs' ('VE') and such mistake is being clarified with the concerned department; and
- (d) the applicants have employed professional surveyors to prepare a report on the 'VE' of Wong Yi Au Village to prove that the Site is within 'VE'.

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

The applicants are the sole "current land owners" of the private lots. Detailed information would be deposited at the meeting for Members' inspection. For the Government land included in the application, the "owner's consent/notification" requirements are not applicable.

## **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. The latest set of Interim Criteria promulgated on 7.9.2007 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 "Green Belt" 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 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 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 Site is the subject of two previous applications No. A/TP/589 and 602 submitted by the same applicants for two proposed Small Houses. These applications were rejected by the Committee on 7.8.2015 and 13.5.2016 respectively mainly for reasons of being not in line with the planning intention of the "GB" zone; not complying with the Interim Criteria in that more than 50% of the application site and the proposed Small House footprints were located outside the 'VE' and the "Village Type Development" ("V") zone of a recognised village, and would cause adverse landscape and geotechnical

impacts on the surrounding areas; not in compliance with TPB PG-No. 10 in that the proposed developments would affect existing natural landscape and slope stability; and setting of undesirable precedent.

- 6.2 Compared with the previous applications, there is no change in the site boundary, Small House footprints and major development parameters under the current application.
- 6.3 Details of the previous applications are summarized at **Appendix III**.

## 7. Similar Applications

- 7.1 There are 12 similar applications for NTEH/Small House development in the vicinity of the Site within the same “GB” zone since the first promulgation of the Interim Criteria on 24.11.2000.
- 7.2 Five applications (No. A/TP/398, 399, 400, 404 and 405) involving three sites were rejected by the Committee in 2008 mainly for the reasons of being not in line with the planning intention of “GB” zone; having adverse landscape impact on the surrounding areas as it would involve clearance of natural vegetation; and setting of undesirable precedent. Subsequently, applications No. A/TP/409, 422 and 423 for the same three sites were approved with conditions by the Committee in 2008 and 2009 mainly on the grounds that the concerns on landscape and tree preservation had been satisfactorily addressed; the majority of the proposed Small House footprint fell within the ‘VE’; and there was a general shortage of land within “V” zone in meeting the Small House demand at the time of consideration. Afterwards, the applicant of Application No. A/TP/422 submitted a fresh application (No. A/TP/540) as the previous planning permission lapsed on 23.5.2013. Application No. A/TP/540 was approved with conditions by the Committee on 3.1.2014 mainly on consideration that there was no change in the planning circumstances since the previous approval was granted.
- 7.3 There is another application (No. A/TP/581) approved with conditions by the Committee in 2015 mainly for the reasons that more than 50% of the proposed Small House footprint fell within the “V” zone; and there was a general shortage of land within “V” zone in meeting the Small House demand at the time of consideration.
- 7.4 For the two rejected applications (No. A/TP/421 and 584), the former was rejected by the Board on review in 2009 and the latter by the Committee in 2015 mainly for the reasons of being not in line with the planning intention of “GB” zone; having adverse landscape impact on the surrounding areas; and setting of undesirable precedent. Application No. A/TP/421 was also rejected since the application site was located outside both the ‘VE’ and “V” zone of a recognised village.
- 7.5 Details of the above similar applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1 and A-2a**.

**8. The Site and its Surrounding Areas (Plans A-1, A-2a, and photos on Plans A-3 and A-4)**

8.1 The Site is:

- (a) vacant, hard paved and currently used for parking of vehicles;
- (b) located at the foot of a hill slope at the southern fringe of Ha Wong Yi Au; and
- (c) accessible via a local track.

8.2 The surrounding areas are predominantly rural in character with existing village houses including the Wong Yi Au village proper to the north. To the south of the Site is a stretch of natural slope covered by dense vegetation and woodland.

**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 application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarized in the following table:

	<b><u>Criteria</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Remarks</u></b>
1.	Within “V” zone? - Footprint of the Small Houses - Application site	-	100%	- The Site and footprint of the proposed Small Houses fall entirely within the “GB” zone.
2.	Within village ‘environs’ (‘VE’)? - Footprint of the Small Houses - Application site	-	100%	- The Site and footprint of the proposed Small Houses fall entirely outside the ‘VE’. - The District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) does not support the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3.	Sufficient land in “V” zone to satisfy outstanding Small House applications and 10-year Small House demand?		✓	<ul style="list-style-type: none"> <li>- Land required to meet Small House demand in Ha Wong Yi Au: about 5.05 ha (or equivalent to 202 Small House sites). The outstanding Small House applications are 15<sup>2</sup> while the 10-year Small House demand forecast for the same village is 210.</li> <li>- Land available within the “V” zone to meet Small House demand of the village concerned: about 0.59 ha (or equivalent to 23 Small House sites) <b>(Plan A-2b)</b>.</li> </ul>
4.	Compatible with the planning intention of “GB” zone?		✓	<ul style="list-style-type: none"> <li>- There is a general presumption against development within the “GB” zone.</li> <li>- The Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application as the Site is vacant.</li> </ul>
5.	Compatible with surrounding area/development?	✓		<ul style="list-style-type: none"> <li>- The proposed Small Houses are not incompatible with the surrounding areas which are predominantly rural in character occupied by village houses and dense tree groups.</li> </ul>
6.	Within WGGs?		✓	
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and Emergency Vehicular Access (EVA)?		✓	<ul style="list-style-type: none"> <li>- The Director of Fire Services (D of FS) has no in-principle objection to the application.</li> </ul>
9.	Traffic impact?	✓		<ul style="list-style-type: none"> <li>- The Commissioner for Transport (C for T) in general has reservation on the application but considers the application only involves development of two Small Houses could be tolerated unless it is rejected on other grounds.</li> </ul>
10.	Drainage impact?	✓		<ul style="list-style-type: none"> <li>- The Chief Engineer/Mainland North, Drainage Services Department</li> </ul>

<sup>2</sup> Among the 15 outstanding Small House applications, 8 of them fall within the “V” zone and 7 straddle or outside the “V” zone. For those 7 applications straddling or being outside the “V” zone, none of them have obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>(CE/MN, DSD) has no in-principle objection to the application from public drainage point of view.</p> <ul style="list-style-type: none"> <li>- Approval condition on submission and implementation of drainage proposal is required.</li> </ul>
11.	Sewerage impact?		✓	<ul style="list-style-type: none"> <li>- The Director of Environmental Protection (DEP) has no objection to the application.</li> </ul>
12.	Landscape and visual impacts?	✓		<ul style="list-style-type: none"> <li>- The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&amp;L, PlanD) has some reservations on the application from the landscape planning perspective.</li> <li>- The Site, located on a slope at the fringe of adjacent woodland, is proposed to be cut and filled for the construction of a building platform with reinforced concrete retaining wall of about 4.6m high for the Small House development. Adverse impact arising from site formation and slope works to the adjacent woodland is anticipated.</li> <li>- It is apparent that vegetation had been cleared within the Site in 2014 prior to submission of the application. Approval of the application would set an undesirable precedent to encourage unauthorized removal of vegetation and attract similar developments in the "GB" zone, the cumulative effect of which would result in degradation of landscape character and cause adverse landscape impact to the area.</li> <li>- The 4.6m high retaining wall may give rise to visual concern in the existing rural and natural setting.</li> </ul>
13.	Geotechnical impact?	✓		<ul style="list-style-type: none"> <li>- The Head of Geotechnical Engineering Office, Civil Engineering &amp; Development Department (H(GEO), CEDD) advises that the Site is overlooked by steep natural hillside and meets the</li> </ul>

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
				<p>alert criteria for a natural terrain hazard study (NTHS). Moreover, the Site has been modified by unauthorized site formation works and is located within an existing feature no. 7SW-B/DT44.</p> <p>- The applicants should submit a Geotechnical Planning Review Report (GPRR), which includes an assessment of the geotechnical feasibility of the proposed development, and address the scope of geotechnical investigation of the unauthorized site formation works and existing feature(s) and any associated remedial/slope upgrading works that may be required.</p>
14.	Local objections conveyed by District Officer?		✓	

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 & Landscape, Planning Department;
- (e) Chief Engineer/ Mainland North, Drainage Services Department;
- (f) Director of Agriculture, Fisheries and Conservation;
- (g) Director of Fire Services;
- (h) Chief Engineer/ Construction, Water Supplies Department;
- (i) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (j) Director of Electrical and Mechanical Services.

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

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



## **11. Public Comments Received During Statutory Publication Period (Appendix VI)**

On 18.5.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, eight public comments were received from Designing Hong Kong Limited, WWF-Hong Kong, Kadoorie Farm and Botanic Garden Corporation, Landjustice, The Hong Kong Bird Watching Society and three individuals. Six public comments object to the application mainly on the grounds of being not in line with the planning intention of the “GB” zone; not complying with TPB PG-No. 10; causing adverse water quality, sewerage and landscape impacts on the surrounding areas; involving suspected land formation and tree felling activities; and no impact assessment has been carried out. For the remaining two public comments, concerns on the Small House policy were raised.

## **12. Planning Considerations and Assessments**

- 12.1 The Site falls entirely within the “GB” zone. The proposed Small Houses are not in line with the planning intention of “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 application as the Site is vacant.
- 12.2 According to DLO/TP, LandsD’s record, the total number of outstanding Small House applications for Ha Wong Yi Au Village is 15 while the 10-year Small House demand forecast for the same village is 210. Based on the latest estimate of Planning Department, about 0.59 ha (or equivalent to about 23 Small House sites) of land is available within the subject “V” zone. As the proposed Small House footprints fall entirely outside the ‘VE’ of the village concerned, DLO/TP, LandsD does not support the application.
- 12.3 The Site, located on a slope at the fringe of adjacent woodland, is currently vacant and hard paved (**Plans A-1 and A-4**). The surrounding areas are predominantly rural in character occupied by village houses to the north and dense woodland to the immediate south. CTP/UD&L, PlanD has some reservations on the application from the landscape planning point of view as the proposed development would involve substantial site formation works (**Drawings A-2 and A-3**) including slope cutting and erection of a 4.6m high retaining wall, and adverse impact arising from site formation and slope works to the adjacent woodland is anticipated. Moreover, it is apparent that vegetation had been cleared within the Site in 2014 prior to submission of the application. Approval of the application would set an undesirable precedent to encourage unauthorized removal of vegetation and attract similar developments in the “GB” zone, the cumulative effect of which would result in degradation of landscape character and cause adverse landscape impact to the area. Besides, the proposed 4.6m high concrete wall on three sides of the Site may give rise to visual concern in the existing rural and natural setting. However, there is no information in the submission to illustrate any treatment/mitigation measures for the proposed retaining wall, and hence the potential visual impact of the retaining wall cannot be ascertained.

- 12.4 H(GEO), CEDD advises that the Site has been modified by unauthorized site formation works and is located within an existing slope feature no. 7SW-B/DT44. In addition, the Site is overlooked by steep natural hillside and meets the Alert Criteria requiring a NTHS. The applicants should submit a GPRR which includes an assessment of the geotechnical feasibility of the proposed development, and address the scope of geotechnical investigation of the unauthorized site formation works and existing feature(s) and any associated remedial/slope upgrading works that may be required. CE/MN, DSD is also concerned that the stability of the existing slope may be affected if the proposed Small Houses are approved. Besides, C for T in general has reservation on the application and considers that such type of development should be confined within the "V" zone as far as possible, however the application involves construction of two Small Houses only could be tolerated unless it is rejected on other grounds. Other Government departments consulted including CE/MN of DSD, CE/C of WSD, D of FS and CHE/NTE of HyD have no objection to/ no adverse comment on the application.
- 12.5 The application does not comply with the Interim Criteria (**Appendix II**) in that the proposed Small House footprints are located entirely outside the 'VE' and the "V" zone (**Plan A-2a**), and the proposed Small Houses would cause adverse landscape and geotechnical impacts on the surrounding areas. Moreover, while land available within the "V" zone (about 0.59 ha or equivalent to about 23 Small House sites) (**Plan A-2b**) is insufficient to fully meet the future Small House demand, it is capable to meet the 15 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. Amongst others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting has been put on the number of outstanding Small House applications provided by LandsD. In this regard, it is considered more appropriate to concentrate the proposed Small House developments within the "V" zone for more orderly development pattern, efficient use of land and provision of infrastructures and services. Furthermore, the proposed Small House developments do not comply with TPB PG-No. 10 as they would involve clearance of existing natural vegetation affecting the existing natural landscape and adversely affect slope stability.
- 12.6 The Site is the subject of two previous applications (No. A/TP/589 and 602) submitted by the same applicants for the same use, which were rejected by the Committee on 7.8.2015 and 13.5.2016 respectively mainly for reasons of being not in line with the planning intention of the "GB" zone; not in compliance with the Interim Criteria in that more than 50% of the application site and the proposed Small House footprints were located outside the 'VE' and the "V" zone of a recognized village; not in compliance with TPB PG-No. 10 in view of adverse impacts on the existing natural landscape and slope stability; and setting of undesirable precedent. There is no change in the planning circumstances since the rejection of these previous applications.
- 12.7 There were 12 similar applications for NTEH/Small House developments within the same "GB" zone. The current application is similar to the two applications No. A/TP/421 and 584 which were rejected mainly for the reasons of being not in line with the planning intention of "GB" zone; having adverse

landscape impact on the surrounding areas; and setting of undesirable precedent. It is also similar to Application No. A/TP/421 in that the application site was located outside both the 'VE' and "V" zone of a recognised village.

- 12.8 Regarding the public comments objecting to the application mainly on the grounds of being not in line with the planning intention of "GB" zone, adverse environmental, landscape and sewerage impacts, setting of undesirable precedent, lack of impact assessment and unauthorized site formation works, 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 comments mentioned in paragraph 11, 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 "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 in the submission for a departure from the planning intention;
  - (b) the application does not comply with the Town Planning Board Guidelines No. 10 for 'Application for Development within "Green Belt" zone under section 16 of the Town Planning Ordinance' in that the proposed development will affect the existing natural landscape and adversely affect slope stability;
  - (c) the proposed development does not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories in that over 50% of the proposed Small House footprints are located outside the 'VE'/'V" zone of a recognized village, and would cause adverse landscape and geotechnical impacts on the surrounding areas;
  - (d) land is still available within the "V" zone of Ha Wong Yi Au which 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; and
  - (e) the approval of the application would set an undesirable precedent for similar applications within the "GB" zone. The cumulative effect of approving such applications would result in a general degradation of the natural environment in the area.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 6.7.2022, 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 provision of septic tanks, as proposed by the applicants, at locations to the satisfaction of the Director of Lands or of the Town Planning Board;
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) the submission of a Geotechnical Planning Review Report and 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 are attached at **Appendix VII**.

**14. Decision Sought**

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

**15. Attachments**

Appendix I	Application form and attachments received on 10.5.2018
Appendix II	Interim Criteria for Consideration of Application for NTEH/Small House in New Territories
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Government departments' detailed comments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses

Drawings A-1 to A-3	Drawings submitted by the applicant
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

**PLANNING DEPARTMENT  
JULY 2018**