

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKP/1

<u>Applicant</u>	: Mr. James Herbert Stewart represented by Masterplan Limited
<u>Site</u>	: Government Land (GL) adjoining Lot 369 in D.D. 255, Pak Tam Au, New Territories
<u>Site Area</u>	: About 326m ²
<u>Land Status</u>	: GL
<u>Plan</u>	: Approved To Kwa Peng and Pak Tam Au Outline Zoning Plan (OZP) No. S/NE-TKP/2
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Proposed Temporary Private Garden for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary private garden for a period of three years at the application site (the Site) falling within an area zoned “V” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land and building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board)⁽¹⁾. The Site is partly hard-paved and partly covered by vegetation (**Plan A-4**).
- 1.2 The Site is accessible via a local track leading to Pak Tam Road (**Plan A-2**). According to the applicant, the proposed temporary private garden adjoins a house owned by the applicant (i.e. House No. 16 at Pak Tam Au on **Plan A-2**). The garden consists of two single-storey sheds (2m (L) x 3m (W) x 2m (H) each) for garden storage use, and a covered area of 67m² by an aluminium louvered shading canopy abutting House No. 16 (with a height of 2.56m), resulting in a

⁽¹⁾ According to the covering Notes of the OZP, no action is required to make the use of any land or building which was in existence immediately before the first publication in the Gazette of the notice of the draft development permission area (DPA) plan on 7.1.2011 conform to the OZP, provided such use has continued since it came into existence. Any material change of such use or any other development (except minor alteration and/or modification to the development of the land or building in respect of such use which is always permitted) must be always permitted in terms of the OZP or in accordance with a permission granted by the Board. The Site was previously covered by a Short Term Tenancy (STT) for private garden use since 1990 but was already terminated in 2014.

total floor area of about 79m²⁽²⁾ (**Drawing A-1**). The garden also involves filling of land of about 28m² (about 8.6% of the Site) with concrete of about 0.67m in depth so as to extend the existing raised platform at the northern portion of the Site for accommodating two private car parking spaces (5m (L) x 2.5m (W) each) (**Drawing A-2**). A mature tree at the southern portion of the Site will be retained (**Plan A-4**) and no tree felling will be involved. The garden will be for sole use by the applicant and fenced for security and privacy reasons. The layout plan, land filling plan and previous STT plan submitted by the applicant are shown in **Drawings A-1 to A-3** respectively.

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

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|-----|--|------------------------|
| (a) | Application Form with supplementary information (SI) received on 28.8.2024 and 9.9.2024 respectively | (Appendix I) |
| (b) | Supporting Planning Statement (SPS) received with SI on 28.8.2024 and 9.9.2024 respectively | (Appendix Ia) |
| (c) | Further Information (FI) received on 4.10.2024 and 7.10.2024* | (Appendix Ib) |
| (d) | FI received on 14.10.2024* | (Appendix Ic) |
| (e) | FI received on 14.11.2024* | (Appendix Id) |

**accepted and exempted from publication and recounting requirements*

1.4 On 25.10.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's request to defer making a decision on the application for two months.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Application Form, SPS, SI and FIs at **Appendices I to Id**, as summarised below:

- (a) the Site was previously used as a garden covered by STT No. 751 with a larger site area of about 380m² (**Drawing A-3**) from 1990 to 2014, which was terminated by the previous owner of House No. 16. The applicant was informed by the Lands Department (LandsD) that planning permission would be needed before re-applying for the STT. The site area under the current application is not excessive, which is smaller than the previous STT;
- (b) there are other STTs granted for garden use adjoining New Territories Exempted Houses (NTEHs) at Pak Tam Au, such as House No. 14 (**Drawing A-1**) with STT No. 1727. The proposed use meets all LandsD's basic requirements for STT;
- (c) the Site is located outside village 'environs' and is unlikely to be used for NTEH. There is no alternative use and future plan for other purpose at the Site, while the proposed temporary private garden could be terminated anytime when another

⁽²⁾ The total floor area of 79m² comprises the proposed two storage sheds of 12m² and the proposed shading canopy of 67m².

use arises;

- (d) no additional sewage will arise from the proposed garden use, while the applicant will be responsible for management and maintenance of the garden area; and
- (e) the applicant has made submissions (**Appendices Ic and Id**) to demonstrate that the proposed use would not cause material increase in pollution effect within upper indirect Water Gathering Grounds (WGG).

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

As the Site involves GL 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. 31B) are not applicable to the application.

4. Background

The Site is currently not subject to any active planning enforcement action.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application for private garden use within the same “V” zone on the OZP.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

7.1 The Site is:

- (a) partly hard-paved and partly covered by vegetation (**Plans A-3 and A-4**); and
- (b) accessible via a local track leading to Pak Tam Road (**Plan A-2**).

7.2 The surrounding areas are predominantly rural in character comprising village houses, densely vegetated slopes, fallow agricultural land and unused land (**Plans A-1 to A-3**). To its southeast is a small cluster of village houses at Pak Tam Au. To its west and further northeast are Sai Kung West Country Park and Sai Kung East Country Park. To its north and south are densely vegetated slopes, fallow agricultural land and unused land.

8. Planning Intention

The planning intention of the “V” zone is primarily 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.

9. Comments from Relevant Government Departments

9.1 Apart from the government department as set out in paragraph 9.2 below, other government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices II and III** respectively.

9.2 The following government department objects to the application:

Land Administration

9.2.1 Comments of the District Lands Officer/Tai Po (DLO/TP), LandsD:

- (a) he objects to the application;
- (b) the Site is on unleased and unallocated GL in D.D. 255. Any occupation of GL without the Government’s prior approval is not allowed;
- (c) the GL within the Site has been illegally occupied by unauthorised structures without any permission. Any occupation of GL without Government’s prior approval is an offence under Cap. 28. LandsD objects to the application since there is illegal occupation of GL which regularisation would not be considered according to the prevailing land policy. The illegal occupation of GL should be immediately ceased and the unauthorised structures should be removed. His office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;
- (d) the following irregularities not covered by the application have been detected by this office:

there are unauthorised structures on adjoining private Lot 369 in D.D. 255. The lot owner should immediately rectify the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without further notice;
- (e) there is no Small House application at the Site received so far;
- (f) there is no guarantee to the grant of a right of way to the Site or

approval of emergency vehicular access thereto;

- (g) the applicant should revise the site boundary to exclude a lamppost thereon (**Plan A-2**);
- (h) the proposed covered area amounting to an area of 67m² for use as shading and protection from rain is considered excessive, which the proposal is unreasonable; and
- (i) detailed advisory comments are set out at **Appendix III**.

10. Public Comments Received During Statutory Publication Period

On 13.9.2024, the application was published for public inspection. During the statutory public inspection period, four public comments from individuals were received. Two supporting comments (**Appendix IVa**) consider that the proposed use will bring positive impacts to the village with enhanced environment and safety, and an additional car parking space, while the Site currently does not involve any use. Two objecting comments (**Appendix IVb**) query the actual use of the parking lots and sheds which are not for the purpose of garden use; the possibility of granting STT after the lapse of previous STT; no restoration of the Site after the termination of previous STT; utilisation of GL for private enjoyment without approval; suitability of the Site for private garden at designated WGG; adverse drainage impacts and flooding risk; nuisance created by air-conditioners, solar panels and pipe works of House No. 16; affected usage of local track; potential impacts on topography and stability of the Site with no impact assessment; potential loss of greenery; and blockage of natural sunlight.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary private garden for a period of three years at the Site zoned “V” on the OZP (**Plan A-1**). The proposed temporary private garden use is not in line with the planning intention of the “V” zone, which is primarily intended for development of Small Houses by indigenous villagers and to provide land considered suitable for village expansion. As advised by DLO/TP, LandsD, there is no Small House application at the Site received so far.
- 11.2 According to DLO/TP, LandsD, the previous STT for private garden use covering the Site since 1990 had already been terminated in 2014 (**Drawing A-3**). The proposed private garden under the current application comprises a number of new structures including two garden sheds of 12m², a shading canopy of 67m² amounting to the footprint of adjoining House No. 16, as well as two parking spaces for private cars of about 25m² with associated filling of land of about 28m², and will be fenced up along the site boundary (**Drawings A-1 and A-2**). In particular, the proposed large-size shading canopy with 2.3m to 3.9m in width extending from the house and the proposed private garden involving solely GL of about 326m² for private enjoyment of garden and car parking spaces for private use are considered excessive and unjustified in terms of size and scale. There is no strong planning justification in the submission for a departure from the planning intention of “V” zone, even on a temporary basis.

- 11.3 The proposed use is not considered incompatible with the surrounding areas which are predominantly rural in character mainly comprising village houses, densely vegetated slopes, fallow agricultural land and unused land (**Plans A-1 to A-3**). The Site is located within the upper indirect WGG. The applicant has made submissions (**Appendices Ic and Id**) to demonstrate that the proposed use would not cause material increase in pollution effect within upper indirect WGG, and the Chief Engineer/Construction of Water Supplies Department has no objection to the application, subject to imposition of approval conditions on the submission of a risk assessment report on contamination of WGG and the implementation of mitigation measures identified therein.
- 11.4 DLO/TP, LandsD objects to the application, considering that the GL within the Site has been illegally occupied by unauthorised structures without any permission, there are unauthorised structures erected on the Site, and the covered area of about 67m² for use as shading and protection from rain is considered excessive and unreasonable. Other relevant government departments consulted have no adverse comments on or no objection to the application.
- 11.5 Regarding the public comments on the application as detailed in paragraph 10, government departments' comments and the planning assessments above are relevant. For the concerns on the nuisance arising from the adjoining House No. 16, they are not relevant to the proposed use at the Site.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department does not support the application for the following reason:

the proposed use is not in line with the planning intention of the "V" zone, which is to provide land primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

- 12.2 Alternatively, 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 three years until 10.1.2028. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.7.2025;
- (b) in relation to (a) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.10.2025;

- (c) in relation to (b) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the submission of a fire service installations proposal 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 10.7.2025;
- (e) in relation to (d) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 10.10.2025;
- (f) the submission of a risk assessment report on contamination of Water Gathering Grounds within **6** months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 10.7.2025;
- (g) in relation to condition (f) above, the implementation of mitigation measures identified therein within **9** months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 10.10.2025;
- (h) if any of the above planning condition (a), (b), (d), (e), (f) or (g) 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; and
- (i) if the above planning condition (c) 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.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

14. Attachments

Appendix I	Application Form with SI received on 28.8.2024 and 9.9.2024 respectively
Appendix Ia	SPS received with SI on 28.8.2024 and 9.9.2024 respectively
Appendix Ib	FI received on 4.10.2024 and 7.10.2024
Appendix Ic	FI received on 14.10.2024
Appendix Id	FI received on 14.11.2024
Appendix II	Government Departments' General Comments
Appendix III	Recommended Advisory Clauses
Appendices IVa and IVb	Public Comments
Drawing A-1	Layout Plan submitted by the Applicant
Drawing A-2	Land Filling Plan submitted by the Applicant
Drawing A-3	Previous STT Plan submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2025**