

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/265

<u>Applicants:</u>	Mr. CHEUNG Po Wing Louis, Mr. CHEUNG Kwok Keung, Mr. CHEUNG Hung Kwan, Mr. CHEUNG Kin Man and Mr. CHEUNG Shui Yeung, represented by Cheer Excel Engineering Limited
<u>Site:</u>	Lots 1090 S.A (Part), 1090 S.B (Part), 1090 S.C (Part), 1090 S.D (Part), 1090 S.E, 1090 S.F and 1090 RP (Part) in D.D. 217 and adjoining Government Land, Kau Sai San Tsuen, Sai Kung, New Territories
<u>Site Area:</u>	About 680m ² (including about 333m ² (49%) of Government Land)
<u>Lease:</u>	New Grant Agricultural Lots
<u>Plan:</u>	Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
<u>Zonings:</u>	“Village Type Development” (“V”) (About 53%) “Green Belt” (“GB”) (About 47%)
<u>Application:</u>	5 Proposed Houses (New Territories Exempted House (NTEH) - Small House)

1. The Proposal

- 1.1 The applicants, who are indigenous villagers of Kau Sai San Tsuen, seek planning permission to build 5 NTEHs (Small Houses) at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘House (NTEH only)’ within the “V” zone is a Column 1 use which is always permitted. ‘House (other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ within the “GB” zone is a Column 2 use which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is currently a sloping ground covered with grass and shrubs. It is the subject of 5 previous applications between 2003 and 2015 for the same use by the same applicants. The last application (No. A/SK-PK/220) was approved by the Rural and New Town Planning Committee (the Committee) and the permission lapsed on 4.9.2019. The development parameters of the current application are the same as the previously approved application No. A/SK-PK/220 as follows:

	Previous Approved Application No. A/SK-PK/220 (a)	Current Application No. A/SK-PK/265 (b)	Difference (% of change) (b)-(a)
Site Area	680m ²		No change
Area falling within “GB” zone	320m ²		No change
No. of NTEHs	5		No change
Built over area of each NTEH	65.03m ²		No change
Total gross floor area (GFA)	975.45m ² (on average the GFA for each NTEH is 195.09m ²)		No change
No. of storeys	3		No change
Building Height	8.23m		No change
No. of car parking spaces	0		No change

- 1.3 A tree preservation area is indicated on **Drawing A-1**, which is outside the Site and does not form part of the application. According to the applicants, the area is for indication purpose and there would be no development associated with the proposed Small Houses.
- 1.4 In view that the Site is located on a sloping ground, a Geotechnical Planning Review Report (GPRR) has been submitted by the applicants to demonstrate that the proposed development is geotechnically feasible and that adequate slope treatment measures would be implemented. Site formation will be required for the proposed development (**Drawings A-2 and A-3**).
- 1.5 The site plan, proposed site formation and section plans submitted by the applicants are at **Drawings A-1 to A-3** respectively.
- 1.6 In support of the application, the applicants have submitted the following documents:
- (a) Application form with attachments received on **(Appendix I)** 2.6.2021
 - (b) Further Information (FI) including a GPRR received on **(Appendix Ia)** 19.7.2021 (*accepted but not exempted from publication*)
 - (c) FI including clarifications on the tree preservation area **(Appendix Ib)** received on 27.8.2021 (*accepted and exempted from publication*)

2. Justifications from the Applicant

The justifications put forth by the applicants in support of the application are detailed in Part 8 of the application form. They can be summarized as follows:

- (a) the applicants are indigenous villagers of Kau Sai San Tsuen, Sai Kung and are eligible for developing Small Houses within their Village Environs ('VE');
- (b) the applicants have been waiting for more than 35 years for the approval of their Small House developments. The Site presents the last opportunity for them to build their Small Houses;
- (c) the Government has plans to launch Hiram's Highway Improvement Works project for increasing the traffic capacity to the area. The approval of the proposed five Small Houses within the 'VE' will have little traffic impact;
- (d) the Site generally complies with the Interim Criteria for assessing planning applications for NTEH/Small House development in the New Territories; and
- (e) since the approval of the previous application (No. A/SK-PK/220) by the Committee, the applications for the 5 Small Houses are yet to be approved by the District Lands Officer/Sai Kung (DLO/SK). Thus, the applicants need to seek planning permission again to develop the 5 Small Houses at the Site.

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

The applicants are the sole "current land owners" of the private land portion. Detailed information would be deposited at the meeting for Members' inspection. The "owner's consent/notification" requirement is not applicable to the portion of government land within the Site.

4. Assessment Criteria

The set of interim criteria for assessing planning application for NTEH/Small House development in the New Territories (the Interim Criteria) was first promulgated on 24.11.2000. 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' (the TPB Guidelines) are relevant to this application (**Appendix III**). 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 the “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;
- (c) applications for NTEH with satisfactory sewage disposal facilities and access arrangements may be approved if the application sites are in close proximity to existing villages and in keeping with the surrounding uses, and where the development is to meet the demand from indigenous villagers;
- (d) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development should not overstrain the overall provision of Government, institution and community facilities in the general area; and
- (g) any proposed development on a slope of hillside should not adversely affect slope stability.

6. Previous Applications (Plans A-1 and A-2b)

- 6.1 The Site is the subject of 5 previous applications (No. A/SK-PK/124, 159, 166, 184 and 220), of which applications No. A/SK-PK/124, 159 and 166 were rejected while No. A/SK-PK/184 and 220 were approved.
- 6.2 Applications No. A/SK-PK/124 and 159 for 6 Small Houses by 6 applicants (5 of whom are the same as the current application) and A/SK-PK/166 for 5 Small Houses (same applicants as the current application) were rejected by the Committee/the Board between 2003 and 2010 on grounds including not in line with the planning intention of the “GB” and “CA” zones, the TPB Guidelines and the Interim Criteria, insufficient information on natural terrain and other technical issues, and the setting of an undesirable precedent.
- 6.3 Applications No. A/SK-PK/184 and 220 for the development of 5 Small Houses were submitted by 5 applicants, who are the same as the current application. The site coincides with the same Site as the current application. The applications were approved by the Committee on 4.3.2011 and 4.9.2015 but lapsed in 2015 and 2019 respectively. The applications were approved as there was no significant tree within the application boundary, the layout of houses had been revised and the site formation works had been reduced. As such, the possible adverse impacts on the existing trees outside the application boundary had been minimized.

7. Similar Application

There is no similar application in the vicinity of the area.

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

8.1 The Site is:

- (a) located on a steep sloping ground covered with grass and shrubs;
- (b) located entirely within the 'VE' of Kau Sai San Tsuen; and
- (c) not connected directly to any footpath or local track.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate west and south of the Site are natural slopes with dense vegetation and mature trees;
- (b) to the north and further east of the Site are clusters of village houses within Kau Sai San Tsuen;
- (c) to the immediate east of the Site is mainly vacant area covered by some vegetation within the "V" zone; and
- (d) a steep and narrow local track, leading from Kau Sai San Tsuen Road, is located at about 20m to the northeast of the Site.

9. Planning Intention

- 9.1 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.
- 9.2 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 of the application is summarized in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	<p>Within “V” zone?</p> <p>- Footprint of the Small Houses</p> <p>- Application site</p>	<p>100%</p> <p>65%</p> <p>53%</p>		<ul style="list-style-type: none"> House No. 4 only. The remaining Houses No. 1, 2, 3 and 5 (35% within “GB” zone). The remaining 47% within “GB” zone.
2.	<p>Within ‘VE’?</p> <p>- Footprint of the NTEH/ Small House</p> <p>- Application site</p>	<p>100%</p> <p>100%</p>		<ul style="list-style-type: none"> The Site and the Small House footprints fall entirely within the ‘VE’ of Kau Sai San Tsuen. District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) has no adverse comments on the application.
3.	<p>Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?</p> <p>Sufficient land in “V” zone to meet outstanding Small House applications?</p>	<p></p> <p>✓</p>	<p>✓</p> <p></p>	<p><u>Land Required</u></p> <ul style="list-style-type: none"> Land required to meet Small House demand: about 1.85 ha (equivalent to 74 Small House sites). The outstanding Small House applications are 11¹ while the 10-year Small House demand forecast is 63². <p><u>Land Available</u></p> <ul style="list-style-type: none"> Land available to meet Small House demand: about 0.62 ha (equivalent to 24 Small House sites) (Plan A-2b).

¹ Among the 11 outstanding Small House applications, 4 of them are outside the “V” zone, none of which are covered by valid planning permission.

² The Indigenous Inhabitant Representative (IIR) of Kau Sai San Tsuen has not provided 10-year forecast in the latest Small House demand survey. The same figure in 2015 provided by the IIR of Kau Sai San Tsuen was 63.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
4.	Compatible with the planning intention of “GB” zone?		✓	<ul style="list-style-type: none"> • There is a general presumption against development within “GB” zone. • Director of Agriculture, Fisheries and Conservation (DAFC) has no comment on the application as the development parameters are the same as the previously approved application.
5.	Compatible with surrounding area/ development?	✓		Over 50% of the footprints of the proposed Small Houses fall within the “V” zone. There are a number of existing village houses to the north and further east of the Site. The proposed 5 Small Houses are considered not incompatible with the village houses in the surrounding areas (Plans A-1 and A-2a).
6.	Within WGG?		✓	Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	Director of Fire Services (D of FS) has no objection in principle to the application.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
9.	Traffic Impact?		✓	<ul style="list-style-type: none"> • Commissioner for Transport (C for T) has reservation on the application. Such type of development should be confined within the “V” zone as far as possible. 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 applications in the future. The resulting cumulative adverse traffic impact could be substantial. • Notwithstanding the above, C for T considers that the application can be tolerated on traffic grounds.
10.	Drainage Impact?		✓	Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no in-principle objection to the application.
11.	Sewerage Impact?		✓	DEP and CE/MS, DSD have no objection to the application.
12.	Landscaping Impact?		✓	Chief Town Planner/ Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning perspective as there is no significant change to the rural fringe landscape setting since the application was last approved. Significant landscape impact is not anticipated.
13.	Geotechnical Impact?		✓	Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no comment on the GPRR (Appendix Ia).

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
14.	Local objection conveyed by DO?		✓	District Officer (Sai Kung) (DO(SK), HAD) has no comment on the application.

10.2 Comments from the following government departments have been incorporated in the above paragraph. Other comments are at **Appendix IV**.

- (a) DLO/SK, LandsD;
- (b) DAFC;
- (c) CE/C, WSD;
- (d) D of FS;
- (e) C for T;
- (f) CE/MS, DSD;
- (g) DEP;
- (h) CTP/UD&L, PlanD;
- (i) DO(SK), HAD; and
- (j) H(GEO), CEDD.

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

- (a) Chief Engineer (Works), Home Affairs Department;
- (b) Chief Highway Engineer/New Territories East, Highways Department; and
- (c) Chief Building Surveyor/New Territories East 2 & Rail, Buildings Department.

11. Public Comments Received During Statutory Publication Periods

11.1 On 11.6.2021 and 27.7.2021, the application and FI were published for public inspection. During the first three weeks of the statutory public inspection periods, which ended on 2.7.2021 and 17.8.2021 respectively, a total of 71 public comments were received (**Appendices Va to Vd**). 13 comments are submitted by individuals raising objection to the application (of which 8 comments are in standard letter (sample at **Appendix Vb**)) on grounds that the proposed Small Houses are not in line with the planning intention of the “GB” zone, the proposed development will cause adverse environmental impacts due to the use of septic tanks and affect the existing trees within and adjacent to the Site, the lack of emergency vehicular access to the Site, worsening illegal parking problems, and the setting of an undesirable precedent for other indigenous villagers to exchange their own land in “GB” zone for government land.

11.2 58 comments are submitted by the village representative and indigenous villagers of Kau Sai San Tsuen raising objection to the application (of which 51 comments are in the first type of standard letter (sample at **Appendix Vc**) and 6 comments are in the second type of standard letter (sample at **Appendix Vd**)), as the applicants deprive the right for other indigenous villagers to build Small Houses on

government land since an agreement has not been made among the indigenous villagers on its allocation, and the proposed tree preservation area and septic tanks (**Drawing A-1**) would encroach onto the commenter's family agricultural area (S10793) (**Plan A-2a**).

12. Planning Considerations and Assessments

- 12.1 The application is for proposed development of 5 Small Houses at the Site which falls partly within an area zoned "V" (about 53%) and partly within an area zoned "GB" (about 47%) on the OZP. 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.
- 12.2 Regarding the Interim Criteria (**Appendix II**), according to DLO/SK, LandsD's record, the total number of outstanding Small House applications for Kau Sai San Tsuen is 11 while the 10-year Small House demand forecast is 63. Based on the latest estimate by the Planning Department, about 0.62 ha of land (equivalent to 24 Small House sites) is available within the "V" zone concerned. While land available within the "V" zone is insufficient to meet the future Small House demand, land is available within the "V" zone to meet the outstanding 11 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. As such, 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. Nevertheless, more than 50% of the Site falls within the "V" zone and the footprint of the proposed Small Houses falls entirely within the 'VE' of Kau Sai San Tsuen. Besides, the Site is the subject of a previous application No. A/SK-PK/220, which was submitted by the same applicants and approved by the Committee on 4.9.2015, although the planning permission lapsed in 2019. There has been no change in planning circumstances in the area since the last approval given by the Committee. Therefore, sympathetic consideration may be given to the application.
- 12.3 The Site is located within the 'VE' of Kau Sai San Tsuen. There are a number of existing village houses to the north and further east of the Site (**Plans A-2a and A-2b**). The proposed development is not incompatible with the surrounding environment. DAFC has no comment on the application since the development parameters are the same as the previous application. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective as there is no significant change to the rural fringe landscape setting since the application was last approved. Significant landscape impact is not anticipated. Concerned departments including CE/MS, DSD and DEP have no adverse comments on or objection to the application. Although C for T has reservation on the application, she considers that the application can be tolerated on traffic grounds. The

proposed Small Houses are not anticipated to result in adverse drainage, sewerage, environmental and traffic impacts on the surrounding areas.

- 12.4 H(GEO), CEDD has no comment on the GPRR submitted by the applicants (**Appendix Ia**). A relevant approval condition to require the implementation of the necessary landslide mitigation measures identified in the GPRR is suggested in paragraph 13.2 below should the application be approved.
- 12.5 Regarding the objections raised in the public comments related to the planning intention of the “GB” zone and environmental and traffic impacts, the planning considerations and assessments in paragraphs 12.1 to 12.3 above are relevant. Regarding the concerns on allocation of government land among indigenous villagers, land matter is to be considered by LandsD at land grant stage. As regards to the comment on the proposed tree preservation area and septic tanks encroaching onto the commenter’s family agricultural area, it is noted that the Site does not encroach onto the Licence area of S10793 (**Plan A-2a**) and the applicants clarify that the tree preservation area is for indication purpose and the application will not affect this area (**Appendix Ib**).

13. Planning Department’s View

- 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 has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 10.9.2025, 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 suggested for Members’ reference:

Approval Conditions

- (a) the provision of septic tanks, as proposed by the applicants, at a location to the satisfaction of the Director of Lands or of the Town Planning Board; and
- (b) the implementation of the necessary landslide mitigation measures identified in the Geotechnical Planning Review Report to the satisfaction of the Director of Civil Engineering and Development or of the Town Planning Board.

Advisory Clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Member’s reference:
- (a) the proposed development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban

development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong justification in the submission for a departure from such planning intention; and

- (b) land is still available within the “V” zone of Kau Sai San Tsuen for Small House development. It is considered more appropriate to concentrate the proposed Small Houses within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 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 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 applicant.

15. Attachments

Appendix I	Application form with attachments received on 2.6.2021
Appendix Ia	FI received on 19.7.2021
Appendix Ib	FI received on 27.8.2021
Appendix II	Relevant Revised Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (promulgated on 7.9.2007)
Appendix III	Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)
Appendix IV	Comments from relevant government departments
Appendices Va to Vd	Public Comments
Appendix VI	Advisory Clauses
Drawing A-1	Site Plan submitted by the applicants
Drawing A-2	Site Formation Plan submitted by the applicants
Drawing A-3	Section Plan submitted by the applicants
Plan A-1	Location Plan
Plans A-2a & A-2b	Site Plans
Plan A-3	Aerial Photo
Plan A-4	Site Photos