

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-TMT/68

- Applicant** : Present Choice Properties Limited
- Site** : Lot 318 S.D in D.D. 216, Wo Liu, Sai Kung, New Territories
- Site Area** : About 199.8m²
- Lease** : Old Schedule Agricultural Lot held under Block Government Lease
- Plan** : Approved Tai Mong Tsai and Tsam Chuk Wan Outline Zoning Plan (OZP) No. S/SK-TMT/4
- Zoning** : “Green Belt” (“GB”) (about 94%)
“Village Type Development” (“V”) (about 6%)
- Application** : Proposed Excavation of Land for Permitted Agricultural Use

1 The Proposal

- 1.1 The applicant seeks planning permission for proposed excavation of land (up to 0.5m in depth) for permitted agricultural use on the application site (the Site). According to the Notes of OZP, ‘Agricultural Use’ is always permitted within the “GB” and “V” zones. However, the proposed excavation of land for agricultural use in the “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site involves excavation of an area of about 92.9m² with a depth not exceeding 0.5m for erection of a proposed agricultural structure¹ (about 4.57m high) as a greenhouse to grow fruits and vegetables. The rest of the area (i.e. about 106.9m²) within the Site will be sodded and planted with fruit trees.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 15.10.2020 **(Appendix I)**

¹ The applicant is required to submit a separate and formal application for erection of the proposed agricultural structure to District Lands Officer/Sai Kung, Lands Department through Director of Agriculture, Fisheries and Conservation.

- (b) Further Information (FI) dated 24.11.2020 (**Appendix Ia**) providing responses to comments from government departments

1.4 The plans submitted by the applicant are shown in **Drawings A-1** and **A-2**.

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 dated 24.11.2020 at **Appendix Ia** and summarized as follows:

- (a) the applicant has purchased this piece of land near Wo Liu Village, Sai Kung and hopes to use it for planting purposes;
- (b) the applicant proposes to erect a single-storey greenhouse with an area of about 92.9m² and a height of about 4.57m to grow fruits and vegetables. The open area will be sodded and planted with fruit trees;
- (c) an aluminium frame will be used in order to stabilise the proposed structure and an excavation of about 0.5m in depth for a concrete base is required. As the greenhouse requires ample lighting, the ceiling and exterior walls will be clad with glass;
- (d) the Site will be fenced with 1.8m high wooden fencing;
- (e) an environmentally friendly portable toilet will be provided at the Site and the portable toilet supplier will dispose the waste water generated;
- (f) refuse will be collected weekly and transported to the refuse transfer station to ensure the Site would not generate adverse environmental health impact;
- (g) the Site is about 20m from Wo Liu Village and there is paved footpath nearby. Water and electricity installations will be easily provided;
- (h) the greenhouse will not be open to the public and all crops grown at the Site will only be for personal consumption;
- (i) in response to comments of concerned departments, the applicant will ensure that the proposed use would not pollute water gathering grounds; and will transplant the two *Aquilaria sinensis* if affected and plant fruit trees around the Site; and
- (j) the construction materials will be transported to the intersection of O Tau Village and then to the Site through footpath using a small electric locomotive.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4 Town Planning Board Guidelines

Town Planning Board Guidelines for Application for Development within “Green Belt” Zone (TPB PG-No. 10) are relevant to this application (**Appendix II**).

5 Previous Application

There is no previous application at the Site.

6 Similar Application

There is no similar application within the “GB” zone on the OZP.

7 The Site and Its Surrounding Areas (Plan A-1 to Plan A-3 and Photos on Plans A-4 and A-4b)

7.1 The Site is:

- (a) covered by dense vegetation, trees and shrubs;
- (b) moderately sloping downhill from north to south; and
- (c) accessible via an access track leading to Wo Liu Village to its north.

7.2 The surrounding areas have the following characteristics:

- (a) to its east, west and south are dense vegetation, trees and shrubs and within “GB” zone on the OZP;
- (b) to its immediate north and west is a paved access track;
- (c) to its further north is Wo Liu Village with a cluster of village houses within “V” zone on the OZP;
- (d) to its further south is a natural streamcourse; and
- (e) the nearest vehicular access is more than 200m away to the north of the Site at O Tau Village.

8 Planning Intention

- 8.1 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.
- 8.2 The planning intention of “V” zone is to designate both existing recognized and other 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 provide land for the retention and expansion of existing villages and 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 The following government departments have been consulted and their views on the application and/or the public comments received are summarized as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD):

- (a) the Site falls within Lot No. 318 S.D in D.D. 216 (“the Lot”);
- (b) the Lot is an old schedule agricultural lot held under the Block Government Lease. Under the terms of the lease, the lessee must obtain approval of Government before any buildings or structures of any description are erected or constructed on the land. If the buildings or structures are to be used for agricultural purposes, a Letter of Approval may be issued by his office through Director of Agriculture, Fisheries and Conservation (DAFC); and
- (c) if planning permission for the subject proposal is given, the applicant is required to submit a formal application for erection of the proposed agricultural structure through DAFC to his office for consideration. However, there is no guarantee that such application will be approved. Such application, if eventually approved, shall be subject to such terms and conditions as the government considers appropriate at its discretion.

Environment

- 9.1.2 Comments of the Director of Environmental Protection (DEP):

- (a) no comment on the application; and
- (b) there is no record of environmental complaint found in the past three years at the Site.

Landscape

9.1.3 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) reservations on the application from landscape planning perspective;
- (b) with reference to the aerial photo of 2019, the Site is fully covered by existing tree groups. The Site is situated in an area of settled valleys landscape character dominated by dense woodland surrounding the Site, and some village houses are located to the northeast of the Site. The proposed development is considered not entirely incompatible with the landscape setting in proximity;
- (c) according to site visit, the Site is covered by woodland with a mix of native young and mature trees. Two nos. of *Aquilaria sinensis*, which are protected species under Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586, in sapling size are found at the northwestern portion of the Site. There is no vehicular access road or proper footpath connected to the Site;
- (d) although the applicant states in the application that no tree felling would be involved in the proposed development, it is noted that over half of the site area is proposed to be excavated to a depth of about 0.5m for the erection of an agricultural structure for greenhouse, and the rest of the site area is proposed to be sodded and planted with fruit trees. Removal/Transplanting of existing trees, including the two nos. of *Aquilaria sinensis*, within the Site are anticipated. In view that no information on existing trees and their proposed treatments is provided in the application and the FI dated 24.11.2020, the potential landscape impact to the woodland cannot be reasonably ascertained;
- (e) noting that no vehicular access to the Site is available, formation of temporary and/or permanent access road from Sai Sha Road to the Site may be required during the construction stage for delivery of building materials and machinery. The existing landscape resources in the surrounding areas would probably be affected if construction of the aforementioned access road is required, and this would cause further adverse impact on the existing woodland; and
- (f) in view that the Site is not facing any prominent public frontage and there are existing trees in the surrounding areas, a landscape condition is considered not required should the application be approved by the Board.

Nature Conservation

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

- (a) no strong view against the application from agricultural point of view; and
- (b) DAFC received an application for Letter of Approval for erecting agricultural structure at the Site in October 2020 and the application is under processing. The applicant proposes to operate a crop farm on Lots 122 S.A, S.B, R.P., 190 S.A, R.P., 315, 318 S.D and 341 all in D.D. 216 and erect 7 greenhouses and an agricultural storeroom. One of the greenhouses (Lot 318 S.D in D.D. 216) is located at the Site. The Site possesses a potential for agricultural rehabilitation.

Drainage

9.1.5 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

provided that adequate stormwater drainage collection and disposal facilities will be provided in connection with the proposed development to deal with the surface runoff of the Site or the same flowing on to the Site from the adjacent areas without causing any adverse drainage impact to the areas or nuisance to the adjoining areas, he has no adverse comment to the application from a drainage maintenance viewpoint.

Water Supply

9.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) the Site is within the upper indirect water gathering grounds (WGG). There are risks of contamination to the WGG. In order to safeguard the raw water quality, the applicant shall provide a risk assessment report to prove and demonstrate to the satisfaction of WSD that there is no material increase in pollution effect resulting from the proposed use. In particular, the applicant shall provide evidences and/or control measures to ensure that the following conditions are met:
 - i. no discharge of foul water or effluent into adjoining land, storm water drain, channel, stream or river course is allowed. Such foul water or effluent shall be collected and disposed of outside WGG;
 - ii. all solid waste and sludge from the application site shall be disposed of properly outside WGG;

- iii. the use and storage of pesticides/herbicides, toxicants, chemical solvents, larvicidal oil, rodenticide, tar and petroleum oil are strictly prohibited within WGG;
 - iv. no chemicals including fertilizers and detergents shall be used/stored without the prior approval from the Water Authority;
 - v. oil leakage and spillage shall be prevented within WGG at all times;
 - vi. the agricultural structure, if any, shall be located away from any water courses as far as possible. Agricultural structures, including but not limited to compost sheds and structures for storage of fertilizers and wastes, shall be water-tight; and
 - vii. during the erection of any agricultural structure, no earth and other construction materials which may cause contamination to WGG are allowed to be stockpiled or stored on site. Furthermore, all excavated or filled surfaces shall be protected from erosion and siltation to any water course shall be prevented within WGG. All construction spoils shall be contained and protected; and effluent containing spoils shall be disposed of after siltation;
- (b) in addition to the above requirements, the applicant also needs to observe and follow the conditions on “Control of Construction Activities” during construction, in particular, conditions (j) to (m) regarding the use and maintenance of portable toilets;
 - (c) in response to the FI submitted by the applicant on 24.11.2020, it is noted that the applicant is undertaking the use of organic fertilizers on site and the applicant agrees to follow WSD’s comments to ensure not to pollute the WGG. However, the applicant has yet to propose practical mitigation measures and/or present evidences to support their undertaking. The applicant should be expected to provide a detailed risk assessment in addressing the various requirements as set out above; and
 - (d) for provision of water supply to the Site, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD’s standards.

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

- (a) Chief Engineer (Works), Home Affairs Department (CE(Works), HAD);
- (b) District Officer/Sai Kung, HAD;
- (c) Commissioner for Transport (C for T);
- (d) Director of Fire Services (D of FS); and
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD).

10 Public Comments Received During Statutory Publication Period

On 23.10.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 13.11.2020, four public comments from Hong Kong Bird Watching Society, Kadoorie Farm & Botanic Garden Corporation, World Wide Fund For Nature Hong Kong and one individual were received. All commenters object to the application on the grounds that the proposed development is not in line with the planning intention of the “GB” zone; the proposal would lead to a direct loss in natural features and cause a lot of vegetation clearance and tree felling; and approval of the case would set an undesirable precedent to future similar applications in the “GB” zone (**Appendix III**).

11 Planning Considerations and Assessments

11.1 The application seeks planning permission for excavation of land (up to 0.5m in depth) for erection of a proposed agricultural structure of 4.57m in height (which is subject to separate approval by LandsD and AFCD) for permitted agricultural use at the Site. The Site falls mainly within an area zoned “GB” (about 94%) with a minor portion within the “V” zone (about 6%). 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. Whilst agricultural use is always permitted within the “GB” and “V” zones, excavation of land within “GB” zone is subject to planning permission as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment.

11.2 DAFC advises that an application for Letter of Approval for erecting an agricultural structure at the Site has been received in October 2020 and is under processing. The Site possesses a potential for agricultural rehabilitation and he has no strong view against the application from agricultural point of view. However, CTP/UD&L, PlanD has reservations on the application from landscape planning perspective, noting that with reference to the aerial photo of 2019, the Site is fully covered by existing tree groups. Moreover, site visit revealed that the Site is covered by woodland with a mix of native young and mature trees. Two *Aquilaria sinensis*, which are protected species under Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586, in sapling size are found at the northwestern portion of the Site. Although the applicant states in the application that no tree felling would be involved in the proposed development and in the FI that the two *Aquilaria sinensis* will be transplanted if they are affected by the excavation of land, it is noted that over half of the site area is proposed to be excavated to a depth of about 0.5m for the erection of an agricultural structure for greenhouse, and the rest of the site area is proposed to be sodded and planted with fruit trees. Removal of existing trees, including the two *Aquilaria sinensis*, within the Site is anticipated. Information on existing trees and their proposed treatments have not been provided and the potential landscape impact to the woodland cannot be reasonably ascertained. The proposed

excavation of land is not in line with TPB PG-No. 10 in that the applicant fails to demonstrate that the proposed excavation will not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse impact on the surrounding environment.

- 11.3 CE/Construction, WSD states the Site is within the upper indirect WGG and the proposed excavation of land for agricultural use and the associated erection of agriculture structure as a greenhouse may pose risks of contamination to the WGG. In order to safeguard the raw water quality, the applicant shall provide a risk assessment report to prove and demonstrate to the satisfaction of WSD that there is no material increase in pollution effect resulting from the proposed use. The applicant has not submitted a risk assessment or proposed practical mitigation measures regarding the impact on the WGG. As such, the proposed excavation of land at the Site is not in line with TPB PG-No. 10 in that the applicant fails to demonstrate that there will not be adverse impact on water quality within the WGG.
- 11.4 For the public comments objecting to the application, the assessments in paragraphs 11.1 to 11.3 above are relevant.

12 Planning Department's Views

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

the application is not in line with the Town Planning Board Guidelines for Development within Green Belt Zone in that the proposed excavation of land for agricultural use would involve clearance of natural vegetation which will adversely affect the natural landscape of the area; and no risk assessment has been submitted to demonstrate that the proposed excavation of land would not generate adverse impact on water quality within the water gathering ground.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 4.12.2024, 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 condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition

the submission of a risk assessment report and implementation of such measures regarding the impact on the water gathering ground prior to the commencement of the excavation of land to the satisfaction of the Director of Water Supplies or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**

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), if any, to be attached to the permission, and the date when the validity of the permission should expire.

14 Attachments

Appendix I	Application form received on 15.10.2020
Appendix Ia	Further Information dated 24.11.2020
Appendix II	Town Planning Board Guidelines for Application for Development within “Green Belt” Zone (TPB PG-No. 10)
Appendix III	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plans submitted by the applicant
Drawing A-2	Excavation Area Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**