

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

**APPLICATION NO. A/NE-STK/14**

- Applicant** : Aloes Garden (HK) Limited (香港沉香園有限公司) represented by Goldrich Planners & Surveyors Limited
- Site** : Lots 1161 S.B ss.4 (Part), 1161 S.B ss.5 (Part), 1161 S.B RP (Part), 1162 S.E RP (Part), 1162 S.M RP (Part), 1164 S.E ss.10 (Part), 1164 S.E ss.11, 1164 S.E ss.12 (Part), 1164 S.E ss.14 (Part), 1164 S.E RP (Part), 1165 S.A ss.6 (Part), 1165 S.A RP (Part), 1165 S.B ss.1 (Part), 1165 S.B RP (Part), 1165 S.C ss.8 (Part), 1165 S.J ss.12 (Part), 1165 S.J ss.13 (Part), 1165 S.J RP (Part), 1165 RP (Part), 1166 S.E (Part), 1166 S.F (Part), 1166 S.K (Part), 1167 S.F (Part) and 1169 (Part) in D.D. 41, Tong To, Sha Tau Kok, New Territories
- Site Area** : 22m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Sha Tau Kok Outline Zoning Plan (OZP) No. S/NE-STK/2
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Excavation of Land (for Ground Investigation Works for Assessing the Stability of Slopes)

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed excavation of land for ground investigation works for assessing the stability of slopes at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “GB” on the approved Sha Tau Kok OZP No. S/NE-STK/2. According to the Remarks of the Notes for the “GB” zone, any excavation of land including that to effect the uses or developments as specified in Columns 1 and 2 or the uses and developments always permitted under the covering Notes requires permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the purpose of the proposed development is to carry out ground investigation (GI) works to obtain geotechnical information for assessing the stability of the slopes. Based on the findings of the ground investigation works, geotechnical engineering works on Site (including design and construction of building works such as a retaining wall to prevent further loss of soil), if necessary, will be proposed to prevent any potential landslip and safeguard the properties in the vicinity. As shown on the layout plan at **Drawing A-1**, the proposed GI works involve 4 vertical boreholes (maximum diameter of 0.8m each), 4 vertical boreholes with piezometer

(maximum diameter of 0.8m each) and 8 trial pits (about L: 1.5m x W: 1.5m x D: 3m each). The Site is accessible to Sha Tau Kok Road – Shek Chung Au via a local track. The proposed GI works will be operated from 9 a.m. to 6 p.m from Mondays to Fridays.

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

- (a) Application Form with attachments received on 10.4.2018 (Appendix I)
- (b) Further Information received on 18.5.2018 clarifying the operation hours of the proposed GI works (Appendix Ia)

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the attachment of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) the rain in past years has carried away the top soil on the nearby area, causing landslips in the vicinity. The applicant intends to investigate the situation of the existing natural slope and the need for any geotechnical engineering works on Site to prevent any potential landslide and safeguard the properties in the vicinity;
- (b) the proposed GI works had been submitted to Buildings Department (BD) for record on 1.9.2017 and no objection from Government departments had been received; and
- (c) the proposed GI works will only be operated from 9 a.m. to 6 p.m. from Mondays to Fridays and there will be no adverse geotechnical, noise, air pollution and landscape impacts arising from the proposed development under application.

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

The applicant is one of the “current land owners”. In respect of the other “current land owner(s)”, the applicant has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent / Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by notifying the other concerned landowners by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

## 4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), some of the proposed boreholes and trial pits within the Site fall within the areas of a previous enforcement case (No. E/NE-STK/22) on unauthorized filling of land and excavation of land and an active enforcement case (No. E/NE-STK/24) on unauthorized excavation of land (**Plan A-2b**). When reinstatement works for enforcement case No. E/NE-STK/22 was completed, Compliance Notice for Reinstatement Notice (RN) was issued on 27.11.2017. For enforcement case No. E/NE-STK/24, as the unauthorized excavation of land was discontinued, RN was served on 13.4.2018 requiring the notice recipients to remove the leftovers and debris and to grass the land by 13.7.2018.

## 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 (other than redevelopment) in “GB” zone. In general the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) an application for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning ground;
- (c) 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 impacts on the surrounding environment; and
- (d) any proposed development on a slope or hillside should not adversely affect slope stability.

## 6. **Previous Application**

There is no previous application for the Site.

## 7. **Similar Application**

There is no similar application for excavation of land within the “GB” zone in the vicinity of the Site in the Sha Tau Kok area.

## 8. **The Site and Its Surrounding Areas** (Plans A-1, A-2a and A-2b, A-3 and A-4a to A-4b)

8.1 The Site is:

- (a) composed of 16 locations which are on an undulating slope;
- (b) currently covered by vegetation and surrounded by graves and urn shelters;
- (c) within the area of the columbarium “Aloes Garden (沉香園)”<sup>1</sup>; and
- (d) accessible via a local track to its west leading to Sha Tau Kok Road – Shek Chung

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<sup>1</sup> - According to the List of Information on Private Columbaria (as at 29.3.2018) promulgated by Development Bureau, Aloes Garden is listed in Part B. Part B of the List of Information on Private Columbaria refers to private columbaria made known to LandsD and/or PlanD that do not fall under Part A. Part A refers to private columbaria which are in compliance with user restrictions in the land leases and the statutory town planning requirements, and are not illegally occupying Government land.

- According to the Private Columbaria Licensing Board, no application for Licence/Exemption/Temporary Suspension of Liability (TSOL) has been received from Aloes Garden.

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8.2 The surrounding areas have the following characteristics:

- (a) concrete walls are found to the north of the Site (**Plans A-3 and A-4a**);
- (b) to the north and south are permitted burial grounds (**Plan A-2a**);
- (c) to its east and west are fallow agricultural land; and
- (d) to the southeast of the Site is a workshop.

## **9. Planning Intention**

The planning intention of the “GB” zone in the Sha Tau Kok area 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 following Government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

10.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site falls within 24 lots which are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access; and
- (b) the lots are also within the area of the columbarium “Aloes Garden (沉香園)” (**Plan A-2a**), which is incorporated into Part B of the List of Information on Private Columbaria in Development Bureau (DEBV)’s website as at 29.3.2018. It is found that there are suspected unauthorized urn shelters and a concrete wall erected within part of the lots. This office reserves the rights to take necessary enforcement action against the aforesaid suspected unauthorized urn shelters.

### **Geotechnical**

10.1.2 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) he has no comment on the application; and
- (b) noting that the proposed ground investigation works involve only private land, the land owners/ responsible person for the Site should employ suitable professionals to ensure the adequacy of the scope of the ground

investigation works for assessment of the stability of slope and design of any necessary slope upgrading works.

### **Landscape**

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

- (a) provided that there is a genuine need for the ground investigation works, she has no objection to the application from landscape planning perspective;
- (b) according to the latest aerial photo of 2017, the Site is situated in an area of rural landscape character predominantly comprising of graves and vegetated areas with trees (**Plan A-3**);
- (c) the recent site record photos reveal that the Site is on an undulating slope, partly covered with wild grasses and the rest with bare soil. No existing trees can be found within the Site. Adverse landscape impact arising from the proposed works is not anticipated; and
- (d) should the application be approved, approval condition requiring the reinstatement of grass area is recommended.

### **Traffic**

10.1.4 Comments of the Commissioner for Transport (C for T):

- (a) he has no comment on the application from traffic engineering point of view; and
- (b) according to the applicant, the proposed GI works will be operated from 9 a.m. to 6 p.m. from Mondays to Fridays. The applicant should be reminded that no construction vehicles are allowed to use the North District roads at the peak hours (7:00 a.m. - 9:00 a.m. and 5:00 p.m. - 7:00 p.m.).

### **Agricultural and Nature Conservation**

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

- (a) he has no adverse comment on the application;
- (b) it is noted that the Site is between burial grounds, dominated by grasses and some trees are recorded in the vicinity of the Site; and
- (c) should the application be approved, the applicant is reminded to perform good site practice and avoid causing any unnecessary damage to the trees nearby.

### **Environment**

10.1.6 Comments of the Director of Environmental Protection (DEP):

- (a) he has no comment on the application given the small scale of works;

- (b) should the application be approved, the applicant should be advised to strictly observe all relevant pollution control ordinance such as Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc., and relevant regulations, and guidelines during the course of the proposed works. In particular, care should be taken to avoid any pollution of nearby water courses due to the proposed GI works; and
- (c) there was no substantiated environmental complaint received in the past three years.

### **Drainage**

#### 10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, the applicant should be reminded of the followings when the proposed works is carried out in the vicinity:
  - (i) all stormwater falling or flowing onto the works area and work site should be properly intercepted and conveyed to the nearest stream course or drainage channel;
  - (ii) the applicant should exercise extreme care when working in the vicinity of any existing drainage works in order not to disturb, interfere with or cause damage to them. Any blockage or damage to the said works due to the applicant's activities in the area shall be made good to his satisfaction at the resources of his project. Free flow condition of the adjacent public drains, sewers, channels and watercourse should be maintained at all time during and after the works; and
  - (iii) his experience in drainage maintenance reveals that during rainstorm, public drains are often blocked by silt and building debris. Such materials are washed down from nearby construction sites for which adequate preventive measures have not been taken by the site management, thereby causing flooding of the neighbouring areas and possibly damage to properties and loss of life. Therefore, the applicant should be reminded that his site staff will take all necessary preventive measures in the course of the proposed works to avoid blockage of the nearby drainage system; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Building Matters**

#### 10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) he has no comment on the application;

- (b) relevant Forms BA4 (Notice of Appointment of Authorized Person and/or Registered Structural Engineer and/or Registered Geotechnical Engineer), BA10 (Notice of Appointment of Registered Contractor, Notice of Commencement of Building Works or Street Works and Undertaking by Registered Contractor) and Supervision Plan (for site monitoring) were submitted to his Department on 1.9.2017; and
- (c) the applicant is reminded that before any new building works (including site formation works, slope works, etc.) are to be carried out on Site, prior approval and consent from his department should be obtained, otherwise they are Unauthorized Building Works (UBWs).

### **District Officer's Comments**

10.1.9 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) there is a Permitted Burial Ground (PBG) located in the vicinity of the Site (**Plan A-2a**);
- (b) his office has no record of those graves falling outside the PBG;
- (c) he has consulted the locals from 20.4.2018 to 4.5.2018 on the application;
- (d) the Resident Representative (RR) of Tong To supports the application as the proposed GI works would ensure safety of the residents, indigenous villagers and tomb sweepers;
- (e) the Chairman of Sha Tau Kok District Rural Committee and the Indigenous Inhabitant Representative (IIR) of Tong To object to the application mainly on the grounds that the graves in the permitted burial grounds and private lots would be affected by the proposed works; permission should be obtained from the relevant Government departments and landowners prior to the proposed works; and the loss of soil at the Site was manmade in which the area was substantively being excavated previously;
- (f) the IIR of San Tsuen has no comment on the application; and
- (g) the incumbent North District Council member of the subject constituency and the RR of San Tsuen did not reply to the consultation.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), NDO, CEDD);
- (b) Chief Highway Engineer/New Territories East, Highway Department (CHE/NTE, HyD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Director of Fire Services (D of FS); and
- (e) Director of Food and Environmental Hygiene Department (D of FEH).

## **11. Public Comments Received During Statutory Publication Period**

On 17.4.2018, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix II**). The Chairman of Sheung Shui District Rural Committee and the incumbent North District Council member have no comment on the application. The Sha Tau Kok District Rural Committee and the Indigenous Inhabitant Representative (IIR) of Tong To object to the application mainly on the grounds that the graves in the permitted burial grounds and private lots would be affected by the proposed works; permission should be obtained from the relevant Government departments and landowners prior to the proposed works; and the loss of soil at the Site was manmade in which the area was substantively being excavated previously.

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

12.1 The Site falls within an area zoned “GB” which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl. There is a general presumption against development within this zone. According to the applicant, the proposed excavation of land involving 8 boreholes and 8 trial pits is to assess the stability of the slopes at the Site so as to ensure the public safety in the surrounding area. The proposed operation, on a total area of about 22 m<sup>2</sup>, is small in scale and will not involve any tree felling. According to TPB Guidelines (TPB-PG NO. 10), consideration on whether the proposed development on a slope or hillside would adversely affect slope stability is relevant. In this regard, H(GEO) of CEDD has no comment on the application. The landowners/ responsible person for the Site should be advised to employ suitable professionals to ensure the adequacy of the scope of the ground investigation works for assessment of the stability of slope and design of any necessary slope upgrading works, if needed.

12.2 The Site is in an area of rural landscape character comprising graves and vegetated areas with trees to the west across the local access road (**Plan A-2a**). To the north and south of the Site are permitted burial grounds for indigenous villagers. The Site is located in a generally remote area far away from domestic structures or other sensitive users. It would be unlikely that the proposed excavation of land would cause adverse environmental, ecological or landscape impact on the surrounding areas. Relevant Government departments including DAFC, CTP/UD&L of PlanD, DEP, H(GEO) of CEDD, CE/MN of DSD and C for T have no adverse comment on the application. To address the concerns raised by CTP/UD&L of PlanD, relevant approval condition requiring the reinstatement of grass area to minimize the impacts arising from the proposed ground investigation works is recommended.

12.3 Regarding the applicant’s claim that the proposed GI works had been submitted to BD for record on 1.9.2017, CBS/NTW of BD acknowledges receipt of such submission. Regarding the application, he has no comment on the proposed GI works. He advises that based on the findings of the GI works on Site, should there be any new building works (including site formation works, slope works, etc.) to be carried out on Site, prior approval and consent from his department should be obtained. Otherwise they would be considered as Unauthorized Building Works.

12.4 Regarding the adverse public comments objecting the application mainly on grounds that the graves in the permitted burial grounds and private lots would be affected by the proposed works; permission should be obtained from the relevant Government departments and landowners prior to the proposed works; and the loss of soil at the Site



was manmade in which the area was substantively being excavated previously. The Government departments' comments and the planning considerations and assessments above 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 has no objection the application.

13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.6.2022, 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 Condition

- upon completion of the ground investigation works, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

#### Advisory Clauses

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

13.3 There is no strong reason to recommend rejection of the application.

### **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 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.

14.3 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**

<b>Appendix I</b>	Application Form received on 10.4.2018
<b>Appendix Ia</b>	Further Information received on 18.5.2018
<b>Appendix II</b>	Public Comments
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Location of Proposed Ground Investigation Works
<b>Plan A-1</b>	Location Plan
<b>Plan A-2a</b>	Site Plan
<b>Plan A-2b</b>	Enforcement Cases on Site

**Plan A-3**                    Aerial Photo  
**Plans A-4a and 4b**    Site Photos

**PLANNING DEPARTMENT**  
**JUNE 2018**