

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

**APPLICATION NO. A/SK-CWBS/50**

- Applicant** : Ms. Wai Cheung Wai Kwan represented by Vision Planning Consultants Limited
- Site** : Government Land (GL) adjoining Lot 210 RP in D.D. 241, Tai Wong Kung, Po Toi O, Sai Kung, New Territories
- Site Area** : About 150m<sup>2</sup>
- Land Status** : GL
- Plan** : Approved Clear Water Bay Peninsula South Outline Zoning Plan (OZP) No. S/SK-CWBS/2
- Zoning** : “Conservation Area” (“CA”)
- Application** : Temporary Private Garden for a Period of Three Years and Associated Excavation and Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission for regularising a temporary private garden for a period of three years and associated excavation and filling of land at the application site (the Site), which falls within an area zoned “CA” on the approved Clear Water Bay Peninsula South OZP No. S/SK-CWBS/2 (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years and excavation and filling of land within the “CA” zone require planning permission from the Town Planning Board (the Board).
- 1.2 The Site is currently on a vegetated slope covered with trees and partly occupied by a plant rack and a man-made staircase. Being enclosed by existing fence barrier, the Site forms part of a larger private garden serving the adjoining New Territories Exempted House (NTEH) (i.e. House G at Lot 210 RP in D.D. 241) (**Plan A-2** and **Drawing A-3**). The private garden, with an area of about 406m<sup>2</sup>

on both private lots and GL<sup>1</sup>, comprises the said vegetated slope, hard-paved area, landscaped area and staircases straddling the “CA” and “Village Type Development” (“V”)<sup>2</sup> zones on OZP which can only be accessed through the adjoining NTEH.

- 1.3 According to the applicant, excavation and filling of land of 2.16m<sup>2</sup> with 0.6m depth had been taken place for the erection of the fence barrier without planning permission (**Drawing A-2**). In addition, the applicant proposes to carry out additional excavation and filling of land for (i) the replacement, reprovision and maintenance of the existing 1.8m tall fence barrier<sup>3</sup> and (ii) potential slope stability and slope maintenance works<sup>4</sup> covering the entire Site (i.e. about 150m<sup>2</sup>) with 1.5m in depth.
- 1.4 The layout plan, location of the existing plants and fence barrier at the Site and the indicative extent of the private garden submitted by the applicant are at **Drawings A-1 to A-3**.
- 1.5 The applicant submitted a Geotechnical Planning Review Report (GPRR) to support the application. While no major geotechnical problems have been identified in the GPRR, the findings suggest that a detailed geotechnical investigation for the slope within and adjacent to the Site should be considered at the later detailed design stage. Subject to the result, minor cut and fill works on the entire slope within the Site may be required.
- 1.6 In support of the application, the applicant has submitted the following documents:
  - (a) Application Form received on 19.8.2024 (**Appendix I**)
  - (b) Supplementary Planning Statement (SPS) received on 19.8.2024 (**Appendix Ia**)
  - (c) Further Information (FI) received on 8.11.2024<sup>#</sup> (**Appendix Ib**)
  - (d) FI received on 28.11.2024\* (**Appendix Ic**)

<sup>#</sup> *accepted but not exempted from publication and recounting requirements*  
<sup>\*</sup> *accepted and exempted from publication and recounting requirements*
- 1.7 On 4.10.2024, the Rural and New Town Planning Committee (the Committee) 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 the SPS and FIs at **Appendices Ia to Ic**. They can be summarised as follows:

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<sup>1</sup> The applicant claims that the entire private garden area on GL is about 298m<sup>2</sup> (**Drawing A-3**).

<sup>2</sup> The portion of the private garden falling within the “V” zone is not the subject of this planning application.

<sup>3</sup> The existing fence barrier in the Site is supported by 24 concrete structural posts of about 0.3m in length and 0.3m in width each (**Drawing A-2**).

<sup>4</sup> According to the GPRR (**Appendix Ib**), potential slope remedial works include slope trimming or construction of mass concrete wall at the slope toe may be required subject to detailed assessment and design in the later stage.

- (a) the Site has been physically separated from the rest of the “CA” zone by an local access road. The applied private garden with a roadside fence barrier is an interim measure to regularise the existing garden function of the Site and to provide a functional buffer between the adjoining NTEH and the local access for public safety and environmental hygiene reasons;
- (b) the future excavation and filling of land would serve to replace, reprovide or maintain the existing fence barrier which had been already formed at the Site and necessary slope repair/maintenance works subject to detailed design;
- (c) all existing on-site vegetation and trees will be retained in-situ provided that the removal and re-provision of the existing fence barrier, the removal of damaged/dead tree(s) in poor condition, and slope stability works (subject to detailed slope stability assessment) would not be required at a later stage;
- (d) upon approval of the planning application, the applicant would re-submit a Short Term Tenancy (STT) application<sup>5</sup> to the Lands Department (LandsD) to include the Site and the adjoining GL for private garden use; and
- (e) the applicant commits to undertake proper monitoring, management and maintenance of all existing on-site vegetation and trees at her own expenses during the future STT period.

### **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 within the “CA” zone on the OZP.

### **7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and**

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<sup>5</sup> According to LandsD, the STT application for private garden purpose to regularise the illegal occupation of the Site and the GL adjoining the NTEH was rejected on 24.6.2024.

site photos on **Plans A-4a and A-4b**)

7.1 The Site:

- (a) is located on a vegetated slope enclosed by an existing fence barrier along the northern, eastern and southern site boundaries;
- (b) is being part of a private garden covered by vegetation and trees with a plant rack and man-made staircase serving the adjoining NTEH; and
- (c) is solely accessible on foot through the gate from the adjoining NTEH via a staircase. The NTEH can be accessed through a local track branching off from Tai Au Mun Road.

7.2 The surrounding areas are of coastal uplands and hillsides landscape character predominated by a village cluster (namely Cala d'Or) surrounded by dense woodland in the "CA" zone and natural coastline of Clear Water Bay in the "Coastal Protection Area" zone to its further north and east. To its immediate west is a piece of GL zoned "V" forming remaining portion of the private garden serving the adjoining NTEH, which is covered by a vegetated slope, paved area, landscaped area and staircases. To its immediate east across the fence barrier along the eastern boundary of the Site is a local track branching off from Tai Au Mun Road.

## 8. **Planning Intention**

8.1 The planning intention of the "CA" zone is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.

8.2 As stated in the Explanatory Statement (ES) of the OZP, excavation or filling of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. In view of the conservation value of the area within this zone, permission from the Board is required for such activities.

## 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 in **Appendices II** and **III** respectively.

9.2 The following government department has concern on the application:

## **Landscape**

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

- (a) with reference to the aerial photo of 2023, the Site is situated in area of coastal uplands and hillsides landscape character predominated by woodland with village houses. The Site is an elongated strip of GL in “CA” zone located adjacent to the “V” zone. According to the site photos taken in September 2024, the Site is a sloping ground covered by trees and vegetation. In addition, man-made boundary fencing is observed along the eastern boundary of the Site;
- (b) she has concern that the proposed excavation and filling of land of 150m<sup>2</sup> (i.e. the entire site area) up to 1.5m would have damaged any tree and vegetation cover in-situ and further deteriorate the overall landscape quality of the surrounding area, which is opposite to the applicant’s intention to protect and conserve the existing vegetation/trees; and
- (c) other advisory comments are at **Appendix III**.

## **10. Public Comments Received During Statutory Publication Periods**

10.1 On 27.8.2024 and 15.11.2024, the application was published for public inspection. During the statutory publication periods, a total of seven public comments were received, including six comments submitted by the Kadoorie Farm and Botanic Garden Corporation, World Wide Fund For Nature Hong Kong, Village Representative of Po Toi O and an individual objecting to the application, and another individual expressing concern on the illegal occupation of GL at the Site (**Appendix IV**).

10.2 Six objecting comments object to the application mainly on the following grounds:

- (a) the applicant’s claim to retain all existing on-site vegetation and trees in-situ seems to be inconsistent with the extensive excavation and filling of land proposed, which would likely have an adverse impact on the vegetation cover;
- (b) the applicant has not sufficiently explained the scale of the proposed excavation and filling works of the entire site to a depth of about 1.5m in relation to the future maintenance and/or replacement of the existing fence barrier;
- (c) privatisation of “CA” zone for unapproved private garden use should not be tolerated;
- (d) the application is not in line with the planning intention of the “CA” zone; and
- (e) the approval would set a precedent for similar applications for private garden use in this “CA” zone and encourage illegal occupation of GL.

## 11. Planning Considerations and Assessments

- 11.1 The application is to regularise the temporary private garden for a period of three years and associated excavation and filling of at the Site which fall within an area zoned “CA” on the OZP (**Plan A-1**). The planning intention of the “CA” zone is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted. Temporary use or development of any land or building not exceeding a period of three years and excavation and filling land within the “CA” zone require planning permission from the Board.
- 11.2 The Site is a vegetated slope covered with trees and enclosed by an existing fence barrier currently used as a private garden with excavation and filling of land taken place without planning permission. Solely on GL, the Site forms part of a larger private garden straddling “CA” and “V” zones serving the adjoining NTEH (**Plan A-2** and **Drawing A-3**) which can only be accessed from the adjoining NTEH. According to the applicant, the existing private garden is to provide a functional buffer for the adjoining NTEH from the adjoining local track for public safety and environmental hygiene reasons but she did not substantiate on how the private garden serving a single NTEH could effectively address the issues. There is no strong planning justification in the submission for a departure from the planning intention of the “CA” zone, even on a temporary basis.
- 11.3 The Site is a sloping ground covered by trees and vegetation and located in an area of coastal uplands and hillsides landscape character predominated by woodland with village houses (**Plans A-1** and **A-3**). CTP/UD&L, PlanD has concern that the proposed excavation and filling of land of 150m<sup>2</sup> (i.e. the entire site area) up to 1.5m for the purpose as mentioned in paragraph 1.3 above would have damaged any tree and vegetation cover in-situ and further deteriorate the overall landscape quality of the surrounding area, which is opposite to the applicant’s intention to protect and conserve the existing vegetation and trees. Moreover, the existing village cluster adjoining the Site is surrounded by dense woodland in the same “CA” zone (**Plans A-1** and **A-3**). Approval of the current application would allow proliferation of private garden use within the “CA” zone solely serving individual village house, and setting an undesirable precedent for other similar applications within the same “CA” zone thereby frustrating its planning intention. The cumulative effect of approving such similar applications would further deteriorate the landscape quality and result in a general degradation of the environment of the area.
- 11.4 Excavation and filling of land of 2.16m<sup>2</sup> with 0.6m depth had already been taken place at the Site for the erection of the fence barrier (**Drawing A-2**). In addition, the applicant proposes to carry out further excavation and filling of land for the replacement, reprovision and maintenance of the existing fence barrier and potential slope stability and slope maintenance works covering the entire Site of about 150m<sup>2</sup> with 1.5m in depth. According to the ES of the OZP, excavation and

filling of land in “CA” zone may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. In this regard, the Chief Engineer/Mainland South of Drainage Services Department and Director of Environmental Protection have no adverse comment on the application. The Head of Geotechnical Engineering Office, Civil Engineering and Development Department has no adverse comment on the submitted GPRR and noted that the applicant claimed that necessary site formation or slope remedial works may need to be carried out to enhance the stability of the existing slope at the Site.

- 11.5 Regarding the public comments received objecting to and expressing concern on the application as summarised in paragraph 10 above, the planning assessments in paragraphs 11.1 to 11.4 above are relevant.

## **12. Planning Department’s Views**

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

- (a) the applied use with associated excavation and filling of land is not in line with the planning intention of the “Conservation Area” zone which is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes. There is a general presumption against development in this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate that the applied use with associated excavation and filling of land would not generate adverse landscape impact to the existing vegetation and trees on the application site and further deteriorate the overall landscape quality of the surrounding area.

- 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 20.12.2027. The Recommended Advisory Clauses are 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), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

**14. Attachments**

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| <b>Appendix I</b>        | Application Form received on 19.8.2024                        |
| <b>Appendix Ia</b>       | SPS received on 19.8.2024                                     |
| <b>Appendix Ib</b>       | FI received on 8.11.2024                                      |
| <b>Appendix Ic</b>       | FI received on 28.11.2024                                     |
| <b>Appendix II</b>       | Government Departments' General Comments                      |
| <b>Appendix III</b>      | Recommended Advisory Clauses                                  |
| <b>Appendix IV</b>       | Public Comments   |
| <b>Drawing A-1</b>       | Layout Plan   |
| <b>Drawing A-2</b>       | Location of the Existing Plants and Fence Barrier at the Site |
| <b>Drawing A-3</b>       | Indicative Extent of the Entire Private Garden                |
| <b>Plan A-1</b>          | Location Plan   |
| <b>Plan A-2</b>          | Site Plan   |
| <b>Plan A-3</b>          | Aerial Photo  |
| <b>Plans A-4a and 4b</b> | Site Photos   |

**PLANNING DEPARTMENT  
DECEMBER 2024**