

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

**APPLICATION NO. A/SK-HC/327**

- Applicants** : Vie Tranquille Garden Company Limited and Elegant Garden Company Limited represented by Mr. PANG Hing Yeun
- Site** : Lot 130 S.A (Part) and RP (Part) in D.D. 247, Ho Chung, Sai Kung, New Territories
- Site Area** : About 937.62m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ho Chung Outline Zoning Plan (OZP) No. S/SK-HC/11
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Excavation of Land for Permitted Agricultural Use (Greenhouses)

**1. The Proposal**

- 1.1 The applicants seek planning permission for proposed excavation of land for the construction of two greenhouses for agricultural purposes on the application site (the Site). The Site falls within an area zoned “GB” on the approved Ho Chung OZP No. S/SK-HC/11 (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Agricultural Use’ is a Column 1 use which is always permitted within the “GB” zone. However, the proposed excavation of land in the “GB” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site is flat, vacant and partly grown with wild grasses. According to the applicants’ submission, the proposed works involve land excavation of an area of 442.5m<sup>2</sup> (i.e. about 47.2% of the Site) and 1m in depth for the construction of two greenhouses (**Drawing A-1**). The two greenhouses for the cultivation of vegetables and fruits are of one storey (about 4.57m) and each covers an area of about 90m<sup>2</sup>. As such, the proposed excavation area is about 2.5 times of the footprints of the proposed greenhouses. As for the non-excavated areas, two plastic water tanks and “environmental toilets” are proposed (**Drawing A-2**).

- 1.3 The Site is the subject of a previously approved application (No. A/SK-HC/256) for proposed excavation of land for permitted agricultural use (two plastic water tanks) by different applicants at a slightly larger site with a significantly smaller excavation area. Details are at paragraph 6 below.
- 1.4 The excavation area plan and the layout plan submitted by the applicants are shown in **Drawings A-1** and **A-2** respectively.
- 1.5 In support of the application, the applicants have submitted the following documents:
  - (a) Application form with attachments received on (**Appendix I**) 25.3.2021
  - (b) Further Information (FI) including a revised (**Appendix Ia**) Geotechnical Planning Review Report (GPRR) received on 21.9.2021<sup>1</sup>  
*(accepted but not exempted from publication and recounting requirements)*
- 1.6 On 14.5.2021 and 23.7.2021, the Rural and New Town Planning Committee (the Committee) agreed to defer making a decision on the application each for two months as requested by the applicants. With the FI received on 21.9.2021, the application is scheduled for consideration by the Committee at this meeting.

## 2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the application are detailed in Part 10 of the application form at **Appendix I**. They can be summarised as follows:

- (a) the applicants specialise in cultivating flowers, vegetables and fruits and bought a piece of land in Ho Chung for cultivation purposes;
- (b) the proposed development will not pose environmental impacts to the surroundings. Organic fertilisers will be used, and all refuse will be disposed of weekly and transported to a refuse collection point. Two portable toilets and a water tank will be set up and the sewage generated will be handled by a septic service company;
- (c) a buffer distance of 10m from a nearby slope to the proposed structures is maintained;
- (d) the existing tree on the Site would not be affected by the excavation area and the proposed structures, and it would be preserved; and
- (e) planning permission for excavation of land at the Site was granted in 2016 (Application No. A/SK-HC/256). Permission has been obtained from relevant

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<sup>1</sup> The FI submission received on 21.9.2021 superseded an earlier FI submission received on 25.8.2021.

government departments to use the Site for agricultural purposes<sup>2</sup>. A fresh application has to be submitted due to the human negligence in the timely implementation of the permitted development, minor changes to the locations of proposed structures, and lapsing of the previous planning approval.

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

The applicants are the sole “current land owners” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

### 4. **Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB-PG No. 10) are relevant to this application (**Appendix II**).

### 5. **Background**

The western portion of the Site is the subject of a planning enforcement case against unauthorized filling of land and excavation of land (**Plans A-1 and A-2**). Enforcement Notice was issued on 11.9.2019 and Reinstatement Notice (RN) was issued on 10.1.2020 requiring the reinstatement of the concerned land. As the concerned land has not been reinstated after expiry of the RN, the concerned land owners (including one of the applicants) were prosecuted, and were convicted on 24.2.2021. Subsequently, the Site has largely been reinstated.

### 6. **Previous Application (Plans A-1 and A-2)**

The Site is the subject of a previous application (No. A/SK-HC/256) for proposed excavation of land for permitted agricultural use (two plastic water tanks) submitted by different applicants at a slightly larger site. A total area of 36m<sup>2</sup> (1m in depth) was proposed to be excavated for the installation of two plastic water tanks. Similar to the current application (No. A/SK-HC/327), two greenhouses and portable toilets at the site were proposed, but the applicants did not propose filling and/or excavation of land in relation to these structures/installations. The application was approved with conditions by the Committee on 27.5.2016 mainly on the grounds that the proposed excavation works were small in scale and would not cause substantial impact on the surrounding environment; and the proposed agricultural use was not incompatible with the planning intention of the “GB” zone. However, the proposal has not been implemented.

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<sup>2</sup> A Letter of Approval (LoA) for the erection of two greenhouses at the Site was granted by the District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) on 11.8.2016 to the applicants of Application No. A/SK-HC/256. Subsequently in 2019, a new application for LoA (hereafter the **2019 LoA Application**) for two greenhouses at revised locations within the Site was submitted by the said applicants, which is still under processing by DLO/SK, LandsD.

## 7. **Similar Application**

There is no similar application for excavation of land for agricultural use within the “GB” zone on the OZP.

## 8. **The Site and Its Surrounding Areas** (Plans A-1 and A-2, Aerial Photo on Plan A-3 and Site Photos on Plan A-4)

### 8.1 The Site is:

- (a) flat, vacant and partly grown with wild grasses. A tree is found at the northern corner of the Site;
- (b) within the water gathering grounds (WGG); and
- (c) accessible via a local track from Ho Chung Road.

### 8.2 The surrounding areas have the following characteristics:

- (a) to the north are clusters of village houses in Tin Liu;
- (b) to the immediate northeast is a vegetated slope (Slope No. 7SE-D/F57) maintained by the Water Supplies Department (WSD), and to the further northeast are densely vegetated slopes within the “Conservation Area” (“CA”) zone;
- (c) to the southeast is mainly fallow agricultural land covered by shrubs and trees within the “GB” zone, with some low-rise structures within the “Recreation” zone to the further southeast; and
- (d) to the southwest is a natural streamcourse, with densely vegetated slopes within the “CA” zone to the further west.

## 9. **Planning Intention**

- 9.1 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.
- 9.2 According to the Explanatory Statement of the OZP, as excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

## **10. Comments from Relevant Government Departments**

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

10.1.1 Comments of DLO/SK, LandsD:

- (a) the Site involves Lot 130 S.A (Part) and 130 RP (Part) both in D.D. 247 which are Old Schedule Lots described as 'Padi' under the Block Government Lease;
- (b) his Office has received an application for a LoA from different parties for erection of agricultural structures (two greenhouses) on the subject lots (i.e. the aforementioned 2019 LoA Application). It appears that the location and dimensions of the two greenhouses proposed in the planning application conform to those in the 2019 LoA application;
- (c) it is noted that there is no vehicular access arrangement in the development proposal but a portion of government land abutting Ho Chung Road has been opened up and partly paved as a vehicular access to the private land near the Site without permission from his Office. To prevent unauthorized occupation of government land, his Office will take necessary land control over the government land; and
- (d) no objection to the application subject to the following comments:
  - (i) the applicants should obtain a LoA for erection of structure(s) exclusively for agricultural purposes or Short Term Waiver for erection of structure(s) for use other than agricultural purposes on the lots from his Office;
  - (ii) any use of government land adjoining the Site should obtain prior approval from his Office; and
  - (iii) there is no guarantee that the applications for (i) and (ii) above will be approved. Any approval, if given, will be subject to rent and administrative fee and other terms and conditions as may be considered appropriate by the Government.

### **Agriculture and Nature Conservation**

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

- (a) he cannot support the application from agricultural and nature conservation perspectives as there is a lack of information regarding the purpose of the proposed excavation under application and details of the agricultural activities to be conducted at the Site, as well as the need for excavating land for permitted agricultural use (greenhouses); and
- (b) an application for a LoA for erecting agricultural structures at the Site was received in 2019 by different parties (i.e. the 2019 LoA Application). Having considered the proposal, it was recommended to LandsD in November 2019 for further processing and approval.

### **Water Supply**

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

- (a) he cannot support the application;
- (b) as the Site is located within WGG, the applicants are required to provide a risk assessment report to demonstrate to WSD that there is no material increase in pollution effect resulting from the proposed development. However, no risk assessment report has been submitted for WSD's consideration; and
- (c) detailed comments are at **Appendix III**.

### **Environment**

#### 10.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) no objection to the application subject to the applicants' confirmation with WSD that no contamination to WGG would occur with the use of fertilisers. The applicants are reminded that any use of fertilisers is subject to agreement by WSD, as the authority of WGG; and
- (b) the applicants are reminded that any wastewater discharge with fumigant (a form of pesticide spray to control disease causing organism) or pesticide into the nearby watercourse is prohibited under the Water Pollution Control Ordinance, even though it is noted that the current proposal has no indication of such wastewater discharge.

## **Landscape**

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

- (a) no objection to the application from landscape planning perspective;
- (b) the Site is located on a vacant land partly grown with wild grasses and an existing fruit tree is found at the northern corner of the Site. The Site is located in an area of settled valley landscape character predominated by woodlands, small houses and vacant lands with some open storage yards in the proximity. The proposed works for agricultural use are considered not entirely incompatible with the landscape character of the surrounding rural fringe setting. With reference to the information submitted by the applicants, the proposed works area has no direct conflict with the existing tree. Significant adverse landscape impact arising from the proposed works is not envisaged; and
- (c) with reference to the layout plan (**Drawing A-2**), the proposed excavation area is larger than footprint of the greenhouse. The applicants should clarify if the concerned areas would be backfilled with appropriate materials, such as the excavated materials.

## **Drainage**

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

- (a) it is noted that the proposed excavation area is located in very close proximity to an existing streamcourse (**Plan A-2**) which is a key drainage to convey stormwater runoff from the upstream catchment; and
- (b) no in-principle objection to the application from the drainage maintenance viewpoint provided that:
  - (i) 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 impacts or nuisance to the adjoining areas; and
  - (ii) all the proposed works including site formation are situated at 3m away from the top of the bank of the nearby streamcourse.

### **Building Matters**

- 10.1.7 Comments of the Chief Building Surveyor/New Territories East (2) and Rail, Buildings Department (CBS/NTE2 & Rail, BD):

no in-principle objection to the application under the Buildings Ordinance (BO). Detailed comments are at **Appendix III**.

### **Geotechnical**

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

- (a) no comment on the application and the GPRR (**Appendix Ia**); and
- (b) the applicants are reminded to make necessary submissions to LandsD and/or BD for approval if any existing slope could affect or be affected by the proposed works (if any) in accordance with the provisions of the BO.

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

- 10.1.9 Comments of the District Officer (Sai Kung), Home Affairs Department (DO(SK), HAD):

- (a) no comment on the application; and
- (b) there is no facility maintained by his Office in the vicinity of the Site and no works and/or projects of his Office will be affected by the proposal.

- 10.2 The following government departments have no objection to or no comment on the application:

- (a) Commissioner for Transport (C for T);
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Director of Fire Services; and
- (d) Chief Engineer (Works), HAD.

## **11. Public Comments Received During Statutory Publication Periods (**Appendix IV**)**

On 9.4.2021, 3.9.2021 and 5.10.2021, the application and FI were published for public inspection. During the statutory publication periods, a total of six public comments were received from World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited, Kadoorie Farm and Botanic Garden Corporation (submitted twice) and an individual (submitted twice) all objecting to/raising concern on the application mainly on the grounds of suspected “destroy first, development later” case; not in line with the planning intention of “GB” zone; generating adverse impacts on the nearby streamcourse; and setting of an undesirable precedent.

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

- 12.1 The application is to seek planning permission for proposed excavation of land (about 442.5m<sup>2</sup> in area and 1m in depth) for the erection of two greenhouses, which is a permitted agricultural use within the “GB” zone 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. Whilst agricultural use is always permitted within the “GB” zone, excavation of land within the “GB” zone is subject to planning permission to ensure that it would not cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment.
- 12.2 The Site is flat, vacant and partly grown with wild grasses. CTP/UD&L, PlanD considers that the proposed works for agricultural use is not entirely incompatible with the landscape character of the surroundings, and significant adverse landscape impact arising from the proposed works is not envisaged. However, it is noted that the proposed excavation area (about 442.5m<sup>2</sup> and 1m in depth) covers about 47.2% of the Site or 2.5 times of the footprints of the proposed greenhouses, and there is no information in the application to justify the extent of the proposed excavation. Furthermore, DAFC does not support the application from agricultural and nature conservation perspectives as there is a lack of information regarding the purpose of the proposed excavation under application and details of the agricultural activities to be conducted at the Site, as well as the need for excavating land for permitted agricultural use (greenhouses).
- 12.3 The Site is located within WGG. DEP indicates that the applicants should confirm with WSD that no contamination to WGG would occur with the use of fertilisers, while CE/Construction, WSD advises that the applicants should submit a risk assessment report to demonstrate that there is no material increase in pollution effect resulting from the proposed development. As no risk assessment report is submitted by the applicants, CE/Construction, WSD does not support the application. As such, the proposed excavation of land at the Site is not in line with TPB-PG No. 10 in that the applicants fail to demonstrate that there would not be adverse impacts on the water quality within WGG.
- 12.4 Other concerned government departments, including C for T, CE/MS of DSD and H(GEO) of CEDD, have no objection to or no adverse comment on the application.
- 12.5 There is a previous application (No. A/SK-HC/256) for proposed excavation of land for permitted agricultural use involving a total excavation area of 36m<sup>2</sup> and 1m in depth for permitted agricultural use (plastic water tanks), which was approved with conditions by the Committee mainly on the grounds that the proposed excavation works were small in scale and would not cause substantial impact on the surrounding environment. The circumstances of the current application are different from those of the previously approved application as the current application involves a significantly larger excavation area of about 442.5m<sup>2</sup>, the applicants fail to justify the need for the proposed

excavation of land for agricultural use, and the current application is not in line with TPB-PG No. 10 in that the applicants fail to demonstrate the proposed excavation of land would not generate adverse impacts on the water quality within WGG.

- 12.6 Regarding the public comments objecting to/raising concerns on the application, the departmental comments in paragraph 10 above and assessments in paragraphs 12.1 to 12.5 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 does not support the application for the following reasons:

- (a) the applicants fail to justify the need for the proposed excavation of land for agricultural use at the application site; and
- (b) the application is not in line with the Town Planning Board Guidelines No. 10 for Application for Development within Green Belt Zone in that the applicants fail to demonstrate that the proposed excavation of land would not generate adverse impact on the water quality within the water gathering grounds.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 12.11.2025, 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 advisory clauses are also suggested for Members' reference:

#### Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

### **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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 14.3 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.

**15. Attachments**

<b>Appendix I</b>	Application form received on 25.3.2021
<b>Appendix Ia</b>	FI received on 21.9.2021
<b>Appendix II</b>	Town Planning Board Guidelines No. 10 for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance
<b>Appendix III</b>	Detailed departmental comments
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Advisory Clauses
<b>Drawing A-1</b>	Excavation area plan
<b>Drawing A-2</b>	Layout plan
<b>Plan A-1</b>	Location plan
<b>Plan A-2</b>	Site plan
<b>Plan A-3</b>	Aerial photo
<b>Plan A-4</b>	Site photos

**PLANNING DEPARTMENT  
NOVEMBER 2021**