

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

**APPLICATION NO. A/SK-PK/263**

**Applicant:** Ms. IP Siu Hung

**Site:** Lots 152 S.A and 152 RP in D.D. 220 and Adjoining Government Land, Sai Kung, New Territories

**Site Area:** 1,454.94m<sup>2</sup> (including 726.51m<sup>2</sup> government land)

**Lease Status:** (a) Private Land (50.1%) - Old Schedule Agricultural Lots held under Block Government Lease  
(b) Government Land (49.9%)

**Plan:** Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11

**Zoning:** “Conservation Area” (“CA”)

**Application:** Proposed Filling and Excavation of Land for Permitted Agricultural Use

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed excavation and filling of land for permitted agricultural use on the application site (the Site). The Site falls within an area zoned “CA”. According to the Notes of the OZP, ‘Agricultural Use (other than Plant Nursery)’ is always permitted within the “CA” zone. However, the proposed excavation and filling of land in the “CA” zone require planning permission from the Town Planning Board (the Board).
- 1.2 The Site is mainly a formed flat soil ground with some remaining vegetation in the southeastern and western portions and agricultural activities are found in the eastern portion of the Site. The proposed works involve excavation of an area of 720m<sup>2</sup> and 1m in depth (western portion of the Site), and filling of an area of 428.23m<sup>2</sup> and 1.2m in height (eastern portion of the Site) for agricultural purpose (**Drawing A-2**) as well as provision of an access road of 3.5m wide and 35m long, and two parking spaces of 3m x 6m (18m<sup>2</sup>) and 4.5m x 8m (36m<sup>2</sup>) for one private car and one medium goods vehicle respectively within the Site. The area for agricultural use is about 1,200m<sup>2</sup> (**Drawing A-1**).

- 1.3 The vehicular access is proposed in the southern portion of the Site on government land connecting to Keng Pang Ha Road.
- 1.4 The location plan, site layout plan, and proposed filling and excavation plan submitted by the applicant are shown in **Drawings A-1 to A-3**.
- 1.5 In support of the application, the applicant has submitted the application form with plans dated 5.3.2021 at **Appendix I**.

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

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

the applicant purchased the two private lots of the Site with the intention to build an eco-farm for enhancing the environment, self-improvement, leisure, and providing organic produce to the market for contributing the sustainable development of agriculture in Hong Kong. To facilitate the development of the farm, it is proposed to form an access road of 3.5m wide and 35m long, as well as parking spaces for one private car and one medium goods vehicle for workers, machineries and vehicles to access the private lot portion of the Site to carry out site formation and construction works.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. The “owner’s consent/notification” requirement is not applicable on the government land portion of the Site.

## **4. Background**

Part of the Site and adjoining government land is subject to planning enforcement action against unauthorized excavation of land and filling of land (**Plan A-2**). The Site was originally a sloping ground descending from the west to the east. The western portion of the Site was found excavated for a maximum of about 3m in depth and the eastern portion filled for a maximum of about 1.5m in depth. Enforcement Notice was issued on 10.2.2021 requiring the discontinuance of the unauthorized excavation and filling of land by 17.2.2021. Reinstatement Notice requiring the removal of fill materials, backfilling and grassing of the Site will be issued in due course.

## **5. Previous Application**

There is no previous application for filling and excavation of land within the Site.

## **6. Similar Application**

There is no similar application for filling and excavation of land 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 photos on Plan A-4a to A-4c)**

7.1 The Site is:

- (a) primarily formed flat soil ground with some remaining vegetation at its southeastern and western portions, and is mainly vacant;
- (b) partially fenced with some farming activities observed at the eastern portion of the Site; and
- (c) accessible from Keng Pang Ha Road, a local track road, to the south of the Site.

7.2 The surrounding areas have the following characteristics:

- (a) hillside mature woodland with a natural water course to the north; and
- (b) to the further north and west of the Site is Ma On Shan Country Park.

**8. Planning Intention**

The planning intention of the “CA” zone is 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.

**9. Comments from Relevant Government Departments**

9.1 The following government departments have been consulted and their views on the application 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 Lots 152 S.A and 152 RP both in D.D. 220 and the adjoining government land;
- (b) the lots are old schedule agricultural lots held under the Block Government Lease. The proposed filling and excavation of land within the lots does not constitute a breach of the lease. As no structure is proposed to be erected on the lots in the application, no

approval from his office is required;

- (c) the area of the government land is considered substantial (i.e. 726.51m<sup>2</sup>, which is about 50% of the Site). Also, the proposed works on the government land (i.e. formation of a vehicular access and two car-parking spaces) are deemed extraneous;
- (d) his office has recently received Director of Agriculture, Fisheries and Conservation's (DAFC's) referral of an application for Letter of Approval (LOA) in respect of Lot 152 S.A in D.D. 220 submitted by the landowner. The proposed agricultural structure to be erected is a one-storey storeroom (size: 9.9m<sup>2</sup> x 4.56m (H)). Circulation of the LOA application to relevant government departments for comments will be made soon;
- (e) his office received a complaint against illegal excavation of the government land on 20.1.2021. While land control action has been taken on site, on-going enforcement action in respect of the case (e.g. intended prosecution) is being considered by his office; and
- (f) despite (b) above, the subject application is not supported from the land administration point of view based on the reasons in (c) and the on-going enforcement action in (e) above.

### **Nature Conservation**

#### **9.1.2 Comments of the DAFC:**

- (a) an application for LOA to erect an agricultural structure at Lot 152 S.A in D.D. 220 was received in February 2021. The applicant proposes to operate a crop farm on Lots 152 S.A and 152 RP in D.D. 220 and erect an agricultural storeroom. Since the proposed structure is directly related to the operation of the farm, the application has been referred to the LandsD for further processing with support; and
- (b) no active farmland/farming activities were recorded at the Site during their survey in January 2020. However, their recent site visit revealed that the Site had been largely cleared of vegetation. Infilled and excavated land were both observed. As the Site falls within the "CA" zone, it is highly undesirable that works had already commenced before the application was considered.

### **Landscape**

#### **9.1.3 Comments of the Chief Town Planner / Urban Design and Landscape (CTP/UD&L):**

- (a) reservation on the application from landscape perspective;
- (b) with reference to the site photos taken on 26.3.2021, the Site is

primarily a formed flat soil ground, of which the private lot portion is partly fenced and used for farming. It is surrounded by hillside mature woodland with a natural water course to the north and local track road to the west and south. Trees of native species, such as *Litsea monopetala* (假柿木薑子), *Mallotus paniculatus* (白楸), *Claoxylon indicum* (白桐), *Machilus pauhoi* (刨花潤楠), *Ficus nervosa* (九丁樹), *Macaranga tanarius* (血桐) and *Bischofia javanica* (秋楓), generally in fair condition were observed on government land at southern portion of the Site. According to the aerial photo of 2020, the Site is located in an area of miscellaneous rural fringe landscape character predominated by extensive mature woodlands, village houses and abandoned farmlands. The proposed works for agricultural use is considered not entirely incompatible with the landscape character of the surrounding area;

- (c) when comparing the aerial photo of 2020 (**Plan A-3**) and the site photos of 2021 (**Plans A-4a to 4c**), vegetation clearance including tree removal and site formation have been carried out within the Site. Significant adverse landscape impact, in particular on the original landscape resources within the Site, has taken place. Moreover, according to the proposed layout plan, the proposed land filling and excavation, access road and parking spaces are in conflict with the remaining trees within the Site, further adverse impact on the existing landscape resources is anticipated. Having regard that there is no similar application previously approved within the same “CA” zone, there is concern that approval of the planning application may encourage similar applications to undertake vegetation clearance and site formation within the same “CA” zone prior to obtaining planning permission. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding vegetated environment; and
- (d) the applicant is advised on the following:
  - (i) to preserve the existing trees on government land as far as practicable; and
  - (ii) to note that approval of the section 16 application by the Board does not imply approval of the trees works such as pruning, transplanting and/or felling under lease. Applicant is reminded to approach relevant authority/ government department(s) direct to obtain necessary approval on tree works.

## **Environment**

### **9.1.4 Comments of the Director of Environmental Protection (DEP):**

- (a) no objection to the proposed agriculture use within the private lot. Attention should be drawn to Item Q.1, Part 1, Schedule 2 of the Environmental Impact Assessment Ordinance (EIAO), which says *all projects including new access roads, railways, sewers, sewage*

*treatment facilities, earthworks, dredging works and other building works partly or wholly in an existing or gazette proposed country park or special area, a conservation area would constitute a Designated Project (DP). In this connection the proposed access road with parking spaces would constitute a DP under the EIAO and the applicant is reminded to follow the statutory EIA process and an Environmental Permit is required for its construction and operation; and*

- (b) there was one substantiated environmental complaint in the past 3 years. The complaint was received in January 2021 concerning formation of an access road within “CA” zone without an Environmental Permit and prosecution is under consideration.

### **Drainage**

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

no in-principle objection to the application from a drainage maintenance viewpoint provided that:

- (a) adequate stormwater drainage collection and disposal facilities will be provided in connection with the proposed development to deal with the surface runoff of the captioned 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;
- (b) all the proposed works including site formation works situated at 3m away from the nearby streamcourse; and
- (c) sand, silt and cementitious materials shall be prevented from being washed down into the natural streamcourse.

### **Traffic**

#### **9.1.6 Comments of the Commissioner for Transport (C for T):**

as the traffic impact during excavation process is not significant, the application is considered tolerable on traffic ground.

### **Water Supply**

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

- (a) no objection to the application. However, existing water mains as shown in the sketches enclosed in the application are in close proximity to the proposed lot and is likely to be affected. The grantee/applicant is required to either divert or protect the water mains found on site;

- (b) water supply is available for the Site. However water mains in vicinity of the Site would not be able to support provision of standard pedestal hydrant; and
- (c) detailed comments regarding diversion or protection of water mains are at **Appendix III**.

### **Geotechnical**

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

- (a) according to their records, there were suspected unauthorized site formation works within and in the vicinity of the Site in February 2021; and
- (b) there are slopes/retaining walls with height greater than 6m within 6m of the Site. The Site meets the Criteria 1(ii) in the GEO Advice Note for Planning Applications under Town Planning Ordinance (CAP. 131). A Geotechnical Planning Review Report (GPRR) in support of the planning application is required.

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

- (a) Director of Fire Services (D of FS);
- (b) Chief Engineer (Works), Home Affairs Department (HAD);
- (c) District Officer (Sai Kung), HAD; and
- (d) Director of Electrical and Mechanical Services.

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

- 10.1 On 12.3.2021, the application submitted by the applicant was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 7.4.2021, eight public comments were received from World Wide Fund for Nature Hong Kong, Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited, a Sai Kung District Council member, and four individuals objecting to the application (**Appendix II**).
- 10.2 The commenters object to the application mainly on the grounds of suspected “destroy first, build later” case; not in line with the planning intention of “CA” zone; setting an undesirable precedent for other landowners to legitimize unauthorized development; a large portion of the Site is government land; no signs of genuine farming activities; and no information to show that the proposed development would not bring adverse environment and landscape impacts to the area.

## **11. Planning Considerations and Assessments**

- 11.1 The application seeks planning permission for proposed excavation (about 720m<sup>2</sup> and 1m in depth) and filling of land (about 428.23m<sup>2</sup> and 1.2m in height) for permitted agricultural use on the Site. The Site falls within an area zoned “CA”. The planning intention of the “CA” zone is intended 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. Whilst agricultural use is always permitted within the “CA” zone, in view of the conservation value of the area within this zone, filling and excavation of land within this zone is subject to planning permission to ensure it would not cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. The applicant has not provided details of the agricultural use of the Site to support the need for the proposed excavation and filling of land, and substantial parts of the proposed excavation and filling of land are for provision of access road and car parking spaces, but not for agricultural uses. The proposed excavation and filling works are not in line with the planning intention of the “CA” zone. The applicant fails to provide strong justification for a departure from the planning intention of the “CA” zone.
- 11.2 The Site is primarily a formed flat soil ground and surrounded by hillside mature woodland with a natural water course to the north. According to CTP/UD&L, trees of native species generally in fair condition are observed on government land at southern portion of the Site. With reference to the aerial photo of 2020, the Site is located in an area of miscellaneous rural fringe landscape character predominated by extensive mature woodlands, village houses and abandoned farmlands. The proposed works for agricultural use is considered not entirely incompatible with the landscape character of the surrounding area.
- 11.3 CTP/UD&L, however, has reservation on the application from landscape perspective. When comparing the aerial photo of 2020 (**Plan A-3**) and the site photos of 2021 (**Plans A-4a to 4c**), vegetation clearance including tree removal and site formation have been carried out within the Site. Significant adverse landscape impact, in particular on the original landscape resources within the Site, has taken place. Moreover, according to the proposed layout plan, the proposed land filling and excavation, access road and parking spaces are in conflict with the remaining trees within the Site, further adverse impact on the existing landscape resources is anticipated. Having regard that there is no similar application previously approved within the same “CA” zone, there is concern that approval of the planning application may encourage similar applications to undertake vegetation clearance and site formation within the same “CA” zone prior to obtaining planning permission. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding vegetated environment. DAFC also advises that the Site has been largely cleared of vegetation and infilled and excavated land are observed. It is considered highly undesirable that works have already commenced before the application is considered.
- 11.4 The Site is subject to planning enforcement action and land control action. The



Site was originally a sloping ground descending from the west to the east. The western portion of the Site was found excavated for a maximum of about 3m in depth and the eastern portion filled for a maximum of about 1.5m in depth. Planning enforcement action against unauthorized excavation of land and filling of land is in progress and an Enforcement Notice was issued on 10.2.2021. DLO/SK, LandsD advises that the area of the government land in the application is considered substantial (726.51m<sup>2</sup> (about 50%)), and the proposed formation works of a vehicular access and two car-parking spaces on government land are deemed extraneous. Land control action has also been taken on the Site against illegal excavation of the government land, and an on-going enforcement action in respect of the case (e.g. intended prosecution) is being considered. In this regard, DLO/SK does not support the application from land administration point of view.

- 11.5 DEP advises that in accordance to Item Q.1, Part 1, Schedule 2 of EIAO, the proposed access road with parking spaces would constitute a DP and an Environmental Permit is required for its construction and operation. However, no Environmental Permit is obtained for the proposed works and for the associated provision of access road and parking spaces to demonstrate that the proposal would have no adverse impact on the environment. DEP is considering prosecution on one recent substantiated environmental complaint received on the Site concerning formation of an access road within “CA” zone.
- 11.6 According to H(GEO), CEDD, there are slopes/retaining walls with height greater than 6m within 6m of the Site. The Site meets the Criteria 1(ii) in the GEO Advice Note for Planning Applications under Town Planning Ordinance (CAP. 131) which requires submission of GPRR to support the application. However, no GPRR has been submitted in support of the application.
- 11.7 Other relevant government departments consulted, including CE/Construction, WSD, CE/MS of DSD, C for T, and D of FS, have no adverse comment on / no objection to the application on technical aspects.
- 11.8 Regarding the public comments objecting to the application, the assessments in paragraphs 11.1 to 11.7 above are relevant.

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

- 12.1 Based on the assessment made in paragraph 11 and taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
  - (a) the proposed development is not in line with the planning intention of the “CA” zone which 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. The applicant fails to provide strong justification in the submission for a departure from the planning intention;

- (b) the applicant fails to demonstrate that the development under application would not have adverse environmental and landscape impacts on the surrounding area; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “Conservation Area” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 30.4.2025, 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 condition of approval and advisory clauses are also suggested for Members’ reference:

Approval Condition

submission of a 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 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 reasons 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 conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

**14. Attachments**

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| <b>Appendix I</b>   | Application form dated 5.3.2021  |
| <b>Appendix II</b>  | Public comments  |
| <b>Appendix III</b> | Detailed comments of the Chief Engineer/Construction,<br>Water Supplies Department |
| <b>Appendix IV</b>  | Advisory clauses   |
| <b>Drawing A-1</b>  | Location Plan submitted by the applicant   |
| <b>Drawing A-2</b>  | Site Layout Plan submitted by the applicant  |

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| <b>Drawing A-3</b>         | Proposed Filling and Excavation Plan submitted by the applicant |
| <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 A-4c</b> | Site Photos   |

**PLANNING DEPARTMENT  
APRIL 2021**