

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

**APPLICATION NO. A/SK-TMT/71**

<b><u>Applicant</u></b>	: Well Leading Limited represented by Gender Consultants Limited
<b><u>Site</u></b>	: Lots 402 and 413 in D.D. 216, Long Keng, Sai Kung, New Territories
<b><u>Site Area</u></b>	: About 548.8m <sup>2</sup>
<b><u>Lease</u></b>	: Old Schedule Agricultural Lots held under Block Government Lease
<b><u>Plan</u></b>	: Approved Tai Mong Tsai and Tsam Chuk Wan Outline Zoning Plan (OZP) No. S/SK-TMT/4
<b><u>Zoning</u></b>	: “Green Belt” (“GB”)
<b><u>Application</u></b>	: Proposed Excavation of Land for Permitted Agricultural Use (Green Houses)

**1 The Proposal**

- 1.1 The applicant seeks planning permission for proposed excavation of land for permitted agricultural use on the application site (the Site). The Site falls within an area zoned “GB”. According to the Notes of OZP, ‘Agricultural Use’ is always permitted within the “GB” zone. However, the proposed excavation of land in the “GB” zone requires permission from the Town Planning Board (the Board).
- 1.2 The Site is currently vacant and covered with grass. The northern portion of the Site (Lot 402 in D.D. 216) is part of the subject of two applications (A/SK-TMT/52 and 61) of similar nature (proposed filling of land for permitted agricultural use), which were rejected by the Rural and New Town Planning Committee (the Committee) on 12.8.2016 and by the Board on review on 2.2.2018 respectively.
- 1.3 The application involves excavation of an area of about 176.86m<sup>2</sup> and about 1m in depth for building of two green houses for agricultural purpose. The size of footing of each green house is 8.15m x 10.85m. The plans submitted by the applicant are shown in **Drawings A-1 to A-3**.
- 1.4 In support of the application, the applicant has submitted the following documents:
  - (a) Application form received on 3.3.2021 **(Appendix I)**

- (b) Further Information (FI) dated 22.4.2021 providing clarifications of the application and responses to comments from government departments (accepted and exempted from publication) **(Appendix Ia)**

## **2 Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendix I** and FI at **Appendix Ia** and summarized as follows:

- (a) the applicant intends to re-cultivate the subject lots and build two green houses for farming. Excavation of land is necessary for constructing footing to strengthen the two green houses especially in typhoon season and excavation of 1m depth is the minimum requirement. The excavation area only covers the footprints of the two proposed green houses. Upon obtaining the planning approval, application to District Lands Office/Sai Kung will be made for certificate of exemption in respect of the building works, site formation works and drainage works; and
- (b) non-polluting fertilizers will be used at the green houses on the Site for promoting organic farming and to avoid polluting the water gathering ground (WGG).

## **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 under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) are relevant to this application (**Appendix II**).

## **5 Background**

The Site is not subject to any active enforcement action. The northern portion of the Site (i.e. Lot 402 in D.D. 216) was part of the subject of a previous planning enforcement case against unauthorized development involving filling of land. Enforcement Notice (EN) and Reinstatement Notice (RN) were issued to the concerned lot owners. The unauthorized development had been discontinued and Compliance Notices in relation to the EN and RN were issued in 2018.

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

The northern portion of the Site (Lot 402 in D.D. 216) is part of the subject of two applications (A/SK-TMT/52 and 61) for proposed filling of land for permitted agricultural use, which were rejected by the Committee on 12.8.2016 and by the Board on review on

2.2.2018 respectively. The two applications involve largely a same site, but were larger in areas compared with the current application. They were rejected mainly for the reasons that there was insufficient information to justify the need for filling of land for agricultural use; the applicant failed to demonstrate the proposed development would not cause adverse drainage and landscape impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone. Details of the previous applications are summarized at **Appendix III**.

## **7 Similar Applications**

- 7.1 There are two similar applications (No. A/SK-TMT/68 and 70) within the same “GB” zone for proposed filling and/or excavation of land for permitted agricultural use on the OZP.
- 7.2 Application No. A/SK-TMT/68 was rejected by the Committee on 4.12.2020 for the reasons that 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 WGG.
- 7.3 Application No. A/SK-TMT/70 is adjacent to the west of the Site for proposed filling and excavation of land for permitted agricultural use. The application is yet to be considered by the Committee.
- 7.4 Details of the applications are summarized at **Appendix IV** and their locations are shown on **Plans A-1** and **A-2**.

## **8 The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and photos on Plans A-4a to A-4b)**

- 8.1 The Site is:
  - (a) vacant and covered with grass and some trees at the northern fringe;
  - (b) within WGG; and
  - (c) accessible via an access track leading to Sai Sha Road to its south.
- 8.2 The surrounding areas have the following characteristics:
  - (a) to its west is a vacant site covered with some vegetation and temporary structures, which is the subject of an application (No. A/SK-TMT/70) for proposed filling and excavation of land and is in process;
  - (b) to its east and south are mainly vacant land covered with vegetation with a few temporary structures;

- (c) to its north, and further west and east are dense vegetation in the same “GB” zone. A streamcourse and Long Keng Lowland Pumping Station are at its further west and south; and
- (d) the nearest vehicular access is about 30m away to the southeast of the Site.

## **9 Planning Intention**

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.

## **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/Sai Kung, Lands Department (DLO/SK, LandsD):

- (a) the Site falls within Lots 402 and 413 both in D.D. 216;
- (b) the lots are old schedule agricultural lots held under the Block Government Lease. Under the terms of the lease, the lessee must obtain the approval of Government before any buildings or structures are to be used for agricultural purposes, a Letter of Approval (“LOA”) may be issued by his office through Director of Agriculture, Fisheries and Conservation (DAFC);
- (c) a LOA application made by Well Leading Limited (i.e. the applicant) was referred to his office on 24.8.2020 by DAFC. The said application was for erecting two single-storey green houses (size: 10.85m x 8.15m x 4.37(H) each) at the lots. After circulation of the application to relevant government departments, the applicant was informed that processing of the application has been suspended as planning permission is required for the associated land filling/excavation works at the lots which fall within “GB” zone; and
- (d) if planning permission for the subject application is given, his office will reconsider the LOA application mentioned in (c) above. However, there is no guarantee that the 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.

### **Nature Conservation**

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

there is an application for LOA to erect agricultural structures at Lots 402 and 413 in D.D. 216 received in August 2020. The applicant proposes to operate a crop farm at the Site and erect two green houses to support the farming activities. Since the proposed structures are directly related to the operation of the farm, the application has been referred to the LandsD for further processing with support.

### **Environment**

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

- (a) the Site is located within lower indirect WGG, and is part of the subject of two previous applications (i.e. A/SK-TMT/52 and 61) applying for proposed filling of land for agricultural use. There were concerns on the use of fertilizer in previous applications, and the applicants had confirmed with Water Supplies Department (WSD) that no potential contamination from the use of fertilizers would occur;
- (b) in view of (a), subject to the applicant's confirmation with WSD that no contamination to WGG would occur with the use of fertilizers, he has no objection to the application in view of the small scale of the proposed works and the nature of the proposed use. The applicant is 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 the current proposal does not indicate there would be such wastewater discharge; and
- (c) no environmental complaint was recorded at the Site in the past three years.

### **Landscape**

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

- (a) the Site is the subject of two previously rejected planning applications (A/SK-TMT/52 and 61) for filling of land for agriculture use on which there were reservations from landscape planning perspective. Within the same "GB" zone to the northwest of the Site, planning application No. A/SK-TMT/68 of similar nature (proposed excavation of land for permitted agricultural use) was rejected by the Committee on 4.12.2020;
- (b) with reference to the aerial photo of 2020 and the site inspection conducted by her office on 13.3.2021, the Site is a vacant scrubland

surrounded by dense secondary woodland. There are existing trees in fair to good condition, including the native wetland species *Glochidion hisutum* (厚葉算盤子), and exotic species *Achrotophonia alexandrae* (假檳榔) and *Livistona chinensis* (蒲葵), observed within the Site. The Site is located in an area of settled valleys landscape character predominated by 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) according to the submitted layout plan, the proposed excavation area, which is the footprint of the proposed greenhouses, is in conflict with some existing *Livistona chinensis* (蒲葵), which is a common species and no significant landscape impact is anticipated in this regard. However, unauthorized filling of land was observed in 2014 and with reference to aerial photos of 2015 to 2019, removal of vegetation, site formation and erection of the temporary structure were undertaken within the Site over the years. Adverse landscape impact within the Site has taken place;
- (d) given that there is no similar application previously approved within the same “GB” zone, there is concern that approval of the planning application may encourage other similar applications to undertake vegetation clearance and site modification prior to obtaining planning approval in the vegetated “GB” zone. The cumulative impact of which would result in general degradation of the landscape quality of the surrounding environment of the “GB” zone. Hence, she has reservation on the application from landscape planning perspective; and
- (e) the applicant should 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.

### **Water Supply**

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

- (a) this application is similar to a precedent case No. A/SK-TMT/61 in vicinity of the Site. For both of these cases the application sites are all within lower indirect WGG;
- (b) no objection to the application subject to the submission of relevant documents by the applicant demonstrating that the use of the proposed fertilizers would not cause any material increase in pollution effect to the WGG;

- (c) the applicant should be reminded to observe at all times the following conditions in protecting the WGG against pollution, and failing which he/she would be liable for prosecution as per relevant ordinances/regulations:
  - (i) no pesticide shall be used within the WGG;
  - (ii) the imported fill materials to be used for filling up the Site shall not cause any material increase in pollution effect to the WGG;
  - (iii) no discharge of eluent from the watchman's shed and the agricultural buildings to the WGG is allowed; and
  - (iv) fertilizers to be used shall be submitted to WSD for approval.

### **Drainage**

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

no adverse comments on the application on the condition 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 impacts or nuisance to the adjoining areas.

### **Traffic**

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

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

### **Building Matters**

#### 10.1.8 Comments of the Chief Building Surveyor/Hong Kong West, Buildings Department (CBS/HKW, BD):

no comments under the Buildings Ordinance (BO) on the application. The applicant's attention shall be drawn to the following preliminary comments under the BO:

- (a) all non-exempted site formation, building, drainage works are subject to compliance with BO;
- (b) AP must be appointed for the works referred to (a) above;
- (c) unless the proposed site abuts on a specified street complying with the requirements under Building (Planning) Regulations (B(P)R) 18A(3) and not less than 4.5m wide, the development intensity of the site should be determined by the Building Authority under B(P)R 19(3);

- (d) the means of obtaining access to the proposed building from a street should be clarified to demonstrate compliance of B(P)R 5;
- (e) emergency vehicular access complying with B(P)R 41D shall be provided for all buildings in the site;
- (f) for unauthorized building works (UBW), if any, erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with this department's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW, if any on site under BO; and
- (g) detail comments will be given during General Building Plans submissions stage.

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

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (b) Chief Engineer (Works), Home Affairs Department (HAD);
- (c) District Officer/Sai Kung, HAD;
- (d) Director of Fire Services; and
- (e) Director of Electrical and Mechanical Services.

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

11.1 On 12.3.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 7.4.2021, seven public comments were received from Designing Hong Kong Limited, Kadoorie Farm & Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, a Sai Kung District Council member, and three individuals objecting to the application (**Appendix V**).

11.2 The commenters object to the application mainly on the grounds of suspected “destroy first, build later” case; irreversible impact to the landscape of the area; setting an undesirable precedent for other landowners to legitimize unauthorized development; and setting an undesirable precedent for other future similar applications within the “GB” zone, which would lead to general degradation of the rural landscape and environment of the area.

## **12 Planning Considerations and Assessments**

12.1 The application seeks planning permission for proposed excavation of land (about 176m<sup>2</sup> and 1m in depth) for building of two green houses at the Site for agricultural purpose. The Site falls within an area zoned “GB”. 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 “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 applicant has submitted layout plans showing the green houses proposed (**Drawings A-2 and A-3**). According to the applicant, the proposed excavation of land is necessary for construction of footing to strengthen the two green houses especially in typhoon season and excavation of 1m depth is the minimum requirement. DAFC advises that an application for LOA to erect agricultural structures at the Site was received in August 2020, and the application has been referred to LandsD for further processing with support. The proposed excavation of land is necessary for constructing the footing of the green houses and the excavation area covering the footprints of the green houses only is considered not unreasonable.
- 12.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective as unauthorized filling of land was observed in 2014 and with reference to aerial photos of 2015 to 2019, removal of vegetation, site formation and erection the temporary structure were undertaken within the Site over the years. Adverse landscape impact within the Site has taken place. There are concerns that approval of the planning application may encourage other similar applications to undertake vegetation clearance and site modification prior to obtaining planning approval in the vegetated “GB” zone. However, CTP/UD&L also advises that the proposed excavation areas would affect some existing trees of a common species and no significant landscape impact is anticipated in this regard.
- 12.4 The two previous applications (No. A/SK-TMT/52 and 61) involving part of the Site were rejected by the Committee for the reasons that there was insufficient information to justify the need for filling of land for agricultural use; the applicant failed to demonstrate the proposed development would not cause adverse drainage and landscape impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone. Compared with the previous applications No. A/SK-TMT/52 and 61 in which filling of land of 1,520m<sup>2</sup> and 2,200m<sup>2</sup> respectively were proposed, the scale of the proposed excavation of land of about 176.86m<sup>2</sup> for building of two green houses in this submission is substantially smaller. The applicants of the previous applications had also not provided detailed information on the agricultural use proposed at the site.
- 12.5 On technical aspect, DSD has no comment on the application in terms of drainage aspect. While WSD and EPD raise concerns on the types of fertilizers to be used so as not to cause pollution effect to the WGG, both of them have no objection to the application subject to no contamination to the WGG arising from the use of fertilizers. The applicant has indicated that non-polluting fertilizers will be used at the green houses on the Site for promoting organic farming and to avoid polluting the WGG. In this connection, relevant approval condition and advisory clauses are suggested in paragraph 13.2 below. Other concerned government departments have no adverse comments on the application.

- 12.6 There are public comments objecting to the application. The assessments in paragraphs 12.1 to 12.5 above are relevant.

### **13 Planning Department's Views**

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department has no objection to the application.
- 13.2 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 document(s) that the use of fertilizer(s) on the Site will not cause any material increase in pollution effect to the water gathering ground 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 VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:
- (a) the applicant fails to demonstrate that there is a need for excavation of land for agricultural use at the Site; and
  - (b) approval of the application would set an undesirable precedent for similar applications within the "Green Belt" zone. The cumulative effect of approving such similar proposals would result in a general degradation of the environment and bring about adverse impact on landscape of the area.

### **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 3.3.2021
<b>Appendix Ia</b>	FI dated 22.4.2021
<b>Appendix II</b>	Town Planning Board Guidelines for Application for Development within “Green Belt” Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)
<b>Appendix III</b>	Previous Applications
<b>Appendix IV</b>	Similar Applications
<b>Appendix V</b>	Public Comments
<b>Appendix VI</b>	Advisory Clauses
<b>Drawings A-1 to A-3</b>	Location Plan, Layout Plan, and Elevation 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-4b</b>	Site Photos

**PLANNING DEPARTMENT  
APRIL 2021**