

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-TLS/57

- Applicant** : Seaworld Corporation Limited
- Site** : Government land adjoining Lot No. 1929 in S.D. 2, Fei Ha Road, Sai Kung, New Territories
- Site Area** : About 170m²
- Land Status** : Government Land
- Plan** : Approved Tseng Lan Shue Outline Zoning Plan (OZP) No. S/SK-TLS/8
- Zoning** : “Green Belt” (“GB”)
- Application** : Temporary Private Garden for a period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) as private garden of the adjoining house (House 2 of Sienna Garden) (**Plans A-1 and A-2**) on a temporary basis for a period of 3 years. The Site falls within an area zoned “GB” on the OZP. The proposed temporary private garden is neither a Column 1 nor Column 2 use within “GB” zone. According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). The Site is currently vacant while part of the Site was previously used as a private garden without valid planning permission.
- 1.2 In support of the application, the applicant has submitted application form with attachments on 29.8.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the Application Form (**Appendix I**) and summarised as follows:

- (a) the Site is adjacent to the applicant’s property, House 2 of Sienna Garden. It is not accessible from Fei Ha Road as the level of the Site is about 3 meters above Fei Ha Road (**Plan A-4a**); and
- (b) the applicant will take up the maintenance responsibility of the Site and its slopes.

3. Town Planning Board Guidelines

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

4. Compliance with the “Owner’s Consent/Notification” Requirements

As the Site involves government land only, the “owner’s consent/notification” requirement 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 GB-No.31A) is not applicable to the application.

5. Background

According to the aerial photo taken in 2017 (**Plan A-3a**), the Site was a wooded area within the “GB” zone. However, vegetation clearance has taken place as shown in the aerial photo taken in 2018 and 2019 (**Plan A-3b and A-3c**). Part of the Site was fenced off, paved and turned into a private garden without a valid planning permission. According to the latest site visit on 6.9.2019, majority of the fence wall has been demolished and part of the paved area has been removed.

6. Previous Application

The Site is subject of a previous application No. A/SK-CWBN/54 submitted by the same applicant for proposed private garden on a temporary basis for a period of 3 years received on 10.10.2018. The application was subsequently withdrawn.

7. Similar Application

There is no similar application within the “GB” zone in the vicinity of the Site.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

8.1 The Site is:

- (a) located to the immediate west of House 2 of Sienna Garden and abutting Fei Ha Road to its north;
- (b) partly fenced off (at the eastern boundary adjoining House 2 of Sienna Garden) and paved, and occupied by some concrete planters, some existing trees and vegetation and a slope (No. 11NE-B/C904); and
- (c) forms a continuous and extended part of the vegetated “GB” zone.

8.2 The surrounding areas have the following characteristics (**Plans A-2, A-3a to A-3c**):

- (a) to the north, east and south are low-rise residential development, including Helena Heights, Sienna Garden and development within Lot 1933 (No. 8 Fei Ha Road);
- (b) to the immediate west is the Right-Of-Way of Lot 1933; and
- (c) to the further west is vegetated slope zoned “GB” on the OZP.

9. Planning Intention

The planning intention of “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 outlet. 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 summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Sai Kung, LandsD (DLO/SK, LandsD):

- (a) he has no objection to the planning application;
- (b) the government land under application does not fall within any village environs boundary;
- (c) no projects would be affected by the Site;

the Site is adjacent to Lot No. 1933 in S.D. 2 and its Right-of-Way. Part of the Site encroaches upon slope feature No. 11NE-B/C904, of which the responsible party is Lot No. 1933 in S.D. 2. There is no comment on the applicant’s proposal to maintain part of the slope;

- (d) he has not received any Short Term Tenancy (STT) application for private garden purpose in respect of the Site; and
- (e) if planning permission is granted, the applicant should be reminded in the planning approval that he is required to obtain an STT for garden use on the Site from his office. Notwithstanding the grant of the planning approval by the Board, there is no guarantee that his office will grant an STT and, if granted, the STT will be subject to such terms and conditions, as his office considers appropriate.

Urban Design and Visual

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

- (a) according to the submission, the proposed use would not involve the erection of any structure on the Site. The Site is located on a vegetated slope adjacent to Sienna Garden Block 2, and is of a higher elevation than Fei Ha Road to the immediate north. It is surrounded by low-rise houses to its north, east and south. A green knoll is found to the west of the Site; and
- (b) it is noted that part of the Site is screened off by buffer planting along Fei Ha Road. Considering the proposed use and the characters of the surroundings, it is anticipated that the proposed use would not impose significant adverse visual impact.

Landscaping

10.1.3 Comments of the CTP/UD&L, PlanD:

- (a) she has reservation on the application from landscape planning perspective;
- (b) the Site is located on government land abutting Fei Ha Road. The landscape character of the Site is the rural area surrounded by dense vegetation within the “GB” zone. No noticeable development is found within the “GB” zone, except there are many low-rise houses in the corresponding “R(C)3”, “R(C)4”, “R(C)5” and “R(C)6” zones along Fei Ngo Shan Road and Fei Ha Road;
- (c) according to the aerial photo of 2017, dense vegetation including some existing trees along the edge of the application boundary were observed. However, according to the aerial photo of January 2019, it appears that some of the existing trees within the Site were removed. According to site inspection conducted on 4.10.2019, part of the Site is already paved with some planters and wild vegetation. A large existing tree (approx.10m crown spread) in the middle of the Site was found withered. Landscape impact has taken place;
- (d) comments from the landscape planning perspective are as follows:
 - (i) approval of this application would set an undesirable precedent to encourage similar vegetation removal prior to obtaining planning permission. The accumulative effect of piecemeal developments will cause adverse impact on the landscape resource and character of the area and resulting in gradual degradation and irreversible change to the “GB” zone;

- (ii) no information on landscape proposal such as proposed trees/ shrubs species and spacing is given. The overall landscape quality of the proposed development cannot be ascertained; and
- (e) the applicant is advised that approval of planning application does not imply approval of tree works such as felling, transplanting or pruning under lease. The applicant is reminded to approach relevant authority/government department(s) direct to obtain necessary approval on tree works.

Drainage

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

provided 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 onto the Site from the adjacent areas without causing any adverse drainage impacts or nuisance to the adjoining areas, he has no in-principle objection to the application from a drainage maintenance viewpoint.

Building Matters

10.1.5 Comments of the Chief Building Surveyor/ NTE2 & Rail, Buildings Department (CBS/NTE2 & Rail, BD):

- (a) he has no in-principle objection under the Buildings Ordinance (BO) on the application subject to the following comments:
 - (i) the land status of the subject government land in future should be clarified. Unless an instrument to be granted by LandsD so that land would come under the definition of “leased land” under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Building Authority (BA) may not be able to process plans for the works on that land and structure thereon as building works on unleased government land are outside the jurisdiction of the BO by virtue of BO s. 41(1)(ba);
 - (ii) all unauthorised building works/structures, if any, should be removed according to the provisions of the BO;
 - (iii) AP must be appointed to coordinate all non-exempted building works on leased land, which are subject to compliance with the BO; and
 - (iv) the granting of the planning approval should not be construed as an acceptance of the unauthorised structures on Site under the BO. Enforcement action may be taken to effect the removal of all authorised works in the future.

Nature Conservation

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

the Site is same as the subject site of a previous application (no. A/SK-TLS/54). The Site was partly fenced off and occupied as private garden earlier, and partly a slope vegetated with common native tree species. He has no strong view on the application from the nature conservation perspective.

Geotechnical

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

(a) it is noted that the proposed temporary private garden encroaches on the existing man-made slope of feature no. 11NE-B/C904, which is currently maintained by Lot No. 1933 in S.D. 2; and

(b) since the proposed temporary garden will include the said slope, the applicant should demonstrate to DLO/SK, LandsD that the slope stability is up to current safety standard in the future land application.

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

- (a) Commissioner for Transport (C for T);
- (b) Director of Environmental Protection (DEP);
- (c) Director of Fire Services (D of FS);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD);
- (e) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (f) Chief Engineer (Works), Home Affairs Department (CE(Works), HAD); and
- (g) District Officer/Sai Kung, Home Affairs Department (DO/SK, HAD).

11. Public Comments Received During Statutory Publication Period

On 6.9.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.9.2019, eight public comments were received from the Hong Kong Bird Watching Society, Owner Incorporation of Helena Heights, the World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited, two residents of the adjoining residential development and two individuals of the public (**Appendix III**). They object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the "GB" zone, there is a lack of strong justification for a departure from this planning intention; unauthorized vegetation clearance and site formation works

may have been undertaken; the proposed development does not comply with TPB Guidelines No. 10 in that passive recreational uses refer to that for public enjoyment; government land shall not be privatised for private benefit; this is a suspected case of an unauthorized use on government land, and approval of the application will set an undesirable precedent for other similar applications, with all the “Destroy First, Build Later” applications undermining the planning intention of the “GB” zone; the applicant fails to provide technical information to demonstrate no adverse drainage and landscape impacts to the surrounding area; the proposed development will render adverse traffic and environmental impacts to the surrounding during construction period; and there is a concern on the liability of slope maintenance and the management of the private garden.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary private garden for a period of 3 years on the Site which is a piece of government land falling within the “GB” zone. The application is not in line with the planning intention of the “GB” zone which 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. There is no strong planning justification provided in the submission to merit a departure from the planning intention, even on a temporary basis.
- 12.2 According to TPB PG-No. 10, new development within the “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The Site is a piece of government land. There are no exceptional circumstances or strong planning justification for the applicant to privatise this piece of government land for a private garden for his sole enjoyment. The Site forms a continuous and extended part of the vegetated “GB” zone which has a rural landscape character and is surrounded by dense vegetation within the “GB” zone. As shown in the aerial photos (**Plans A-3a** and **A-3b**), the Site was covered by dense vegetation including some existing trees in 2017, but vegetation clearance was taken place in 2018 and it was turned into a private garden without valid planning permission. According to **Plans A-4a** and **A-4b**, the private garden use was discontinued while part of the Site is still paved with some planters and covered with wild vegetation. As advised by CTP/UD&L, a large existing tree (approx.10m crown spread) in the middle of the Site was found withered and landscape impact has taken place. She has reservation on the application from landscape planning perspective for no information on landscape proposal is given in the application and overall landscape quality of the proposed development cannot be ascertained. Approval of the application would set an undesirable precedent to encourage similar vegetation removal prior to obtaining planning permission. The cumulative effect of piecemeal developments will cause adverse impact on the landscape resource and character of the area and resulting in gradual degradation and irreversible change to the “GB” zone.
- 12.3 While there is no similar application for private garden within the “GB” zone on the OZP in the vicinity and concerned government departments have no objection to the application, approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The

cumulative effect of approving such similar applications will cause adverse impact on the landscape resource and character of the area and resulting in gradual degradation and irreversible change to the “GB” zone. As vegetation clearance has taken place as stated in paragraph 12.2 above, approval of the application could be construed as condoning to the “Destroy First, Build Later” approach.

- 12.4 The public comments received are against the application, mainly on the grounds that the proposed development is not in line with the planning intention of the “GB” zone, there is a lack of strong justification for a departure from the planning intention, non-compliance with TPB Guidelines No. 10, and setting an undesirable precedent for other “Destroy First, Build Later” applications. In this regard, the assessment in paragraphs 12.1 to 12.3 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 does not support the application for the following reasons:

- (a) the application is not in line with the planning intention of the “Green Belt” (“GB”) zone which 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. There is no strong justification in the submission for a departure from the planning intention even on a temporary basis;
- (b) the application does not meet the TPB Guidelines No. 10 for ‘Application for Development within “GB” Zone’ in that there are no exceptional circumstances to justify the application;
- (c) approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such similar applications will cause adverse impact on the landscape resource and character of the area and resulting in gradual degradation and irreversible change to the “GB” zone.

- 13.2 Alternatively, should the Rural and New Town Planning Committee (the Committee) decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years up to 18.10.2022. The following approval condition and advisory clauses are also suggested for Members’ reference:

Approval condition

upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

The recommend advisory clauses are attached at **Appendix IV**.

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 period of which the permission should be valid on a temporary basis.
- 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

Appendix I	Application form and attachments received on 29.8.2019
Appendix II	The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “Green Belt” Zone under section 16 of the Town Planning Ordinance
Appendix III	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Site Plan submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3c	Aerial Photos (2017, 2018 and 2019)
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2019**