

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/268

<u>Applicant:</u>	Forever Sound Limited represented by Lawson David and Sung Surveyors Limited
<u>Site:</u>	Lot 1122 in D.D. 217 & Ext. (Part) and Adjoining Government Land, House B5, Habitat, Pak Sha Wan, Sai Kung, New Territories
<u>Site Area:</u>	About 107m ² (including 62m ² of Government land)
<u>Land Status:</u>	(a) Private Land (40%) – New Grant No. SK5684; and (b) Government Land (60%)
<u>Plan:</u>	Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
<u>Zoning:</u>	“Green Belt” (“GB”)
<u>Application:</u>	Temporary Private Swimming Pool and Garden for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary private swimming pool and garden at the application site (the Site) for a period of three years. The Site falls within an area zoned “GB” on the approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11 (**Plans A-1 and A-2**). According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP.
- 1.2 The Site is currently occupied by the applied use without a valid planning permission. Part of the Site is the subject of a previous application (No. A/SK-PK/126) for temporary private swimming pool for a period of three years approved by the Rural and New Town Planning Committee (the Committee) on 29.8.2003. The planning permission expired on 29.8.2006.
- 1.3 According to the applicant, the private swimming pool and garden had been in existence at the Site before the house was acquired in 2012. Subsequently,

minor works on the swimming pool have been conducted and the size and shape of the swimming pool have been altered. The applicant intends to continue using the Site as private swimming pool and garden for leisure and landscape purposes. Should this application be approved, the applicant will apply for a Short Term Tenancy (STT) from the Lands Department (LandsD) accordingly.

- 1.4 The proposal comprises a temporary private swimming pool of about 35.8m² (1.1 to 1.6m in depth) with the remaining part of the Site (i.e. 71.2m²) as garden. The filtration plant equipment will be placed near the southeastern corner of the Site. The swimming pool water would be drained through the existing stormwater drainage system after filtration. As compared to the previously approved application (No. A/SK-PK/126), there is a change in layout and slight reduction in area of 4.2m² for the swimming pool (**Plan A-2**). The layout plan and sections of the swimming pool submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 31.8.2021 **(Appendix I)**
 - (b) Planning Statement **(Appendix Ia)**
 - (c) Further information (FI) including responses to departmental comments and a Geotechnical Planning Review Report (GPRR) received on 29.12.2021 **(Appendix Ib)**
[accepted but not exempted from publication and recounting requirements]
 - (d) FI including responses to departmental comments received on 19.1.2022 **(Appendix Ic)**
[accepted and exempted from publication and recounting requirements]
- 1.6 On 29.10.2021, the Committee of the Board agreed to defer making a decision on the application for two months, as requested by the applicant, to allow time for preparation of FI in response to departmental comments. With the FIs received on 29.12.2021 and 19.1.2022, the application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Planning Statement at **Appendix Ia** and FIs (**Appendices Ib and Ic**). They can be summarised as follows:

- (a) the proposed private swimming pool and garden will not jeopardise the long-term planning intention of the “GB” zone as they are temporary in nature and no project will be affected. Temporary planning permission for swimming pool within part of the Site was previously granted by the Board in 2003;
- (b) the Site is located within an enclosed private backyard of the adjoining house which cannot be used separately other than the applicant given its location, configuration and size (**Drawing A-1**);

- (c) the proposed uses are not incompatible with the surrounding areas which are mainly low-rise, low-density residential developments. There is no significant vegetation within the Site. Adverse visual and landscape impacts due to the proposed uses are not anticipated;
- (d) the Site has no water flooding history. It should not adversely affect drainage or aggravate flooding in the area. As the swimming pool is for private use, no adverse traffic and environmental impacts on the surrounding areas are anticipated;
- (e) a GPRR is prepared to support the application, which concludes that the proposed development is considered to be feasible from geotechnical point of view. The construction would be straight forward which would unlikely pose particular problems to the surrounding area; and
- (f) an Authorised Person (AP) will be appointed to rectify the unauthorized building works (UBW) and re-construct the swimming pool under the Buildings Ordinance (BO) should the application be approved. The detailed design of the new swimming pool will be submitted to the satisfaction of the Buildings Department (BD) prior to construction.

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” requirements are not applicable to the government land portion of the Site.

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 current uses of swimming pool and garden at the Site would be subject to planning enforcement action should there be sufficient evidence.

6. Previous Application

Part of the Site is the subject of a previous application No. A/SK-PK/126 for temporary private swimming pool for a period of three years. The previous application was approved by the Committee of the Board on a temporary basis of three years on 29.8.2003 mainly on the grounds that the swimming pool will not cause any significant impact on the existing natural character of the “GB” area, and the swimming pool is for private leisure use which will unlikely cause any nuisance to the nearby residents.

The details of the application are at **Appendix III**.

7. Similar Application

There is a similar application (No. A/SK-PK/111) within the same “GB” zone. It involves a proposed temporary private swimming pool approved by the Committee on 21.12.2001 with conditions including submission of landscaping proposals and geotechnical assessment. As no submissions for compliance with the relevant planning conditions were received by the specified date, the planning permission was revoked on 21.6.2002. The details of the application are at **Appendix IV**.

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

8.1 The Site is:

- (a) currently a private swimming pool and garden at the enclosed backyard of the adjoining house (i.e. House B5, Habitat, Pak Sha Wan);
- (b) fenced off from the adjacent private gardens to its north and south and landscaped slope to its east.

8.2 The surrounding areas have the following characteristics:

- (a) mainly rural in character occupied by low-rise and low-density residential developments and recreational uses;
- (b) to the immediate east is a slope feature maintained by the Highways Department (HyD) while to the further east is Hiram’s Highway; and
- (c) to the immediate north and south are private gardens of the nearby houses.

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 are summarised as follows:

Land Administration

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

- (a) no objection to the application;
- (b) the Site consists of Lot No. 1122 & Ext. (“the Lot”) and the adjoining government land in D.D. 217. The Lot was granted by way of an Extension Letter dated 13.9.1975. The said Extension Letter provides that no structure, other than such structures including boundary walls and fences, as may approved in writing by the Secretary for the New Territories (now the Director of Lands), shall be erected within the extension area and the extension area shall not be used for any purpose other than for pleasure garden purpose only, and shall not be taken into account for the purpose of calculating coverage limitations;
- (c) the government land within the Site was previously covered by STT SX2971 for private garden purpose only. Due to the change of ownership of House No. B5 Habitat, the STT SX2971 was terminated in 2010;
- (d) the current registered owner of House B5 (i.e. the applicant of this application) applied for STT for private garden purpose on the government land within the Site. The proposed STT application was rejected in 2018 as no valid planning permission has been obtained;
- (e) with reference to the tenancy plan of the ex-STT SX2971, the swimming pool within the Site changed from irregular shape to rectangular shape; and
- (f) if the application is approved, the applicant is required to submit fresh STT and Short Term Waiver applications for the Site.

Traffic

10.1.2 Comments of the Commissioner for Transport (C for T):

no comment on the application.

10.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

no comment on the application including the proposed works on slope feature 7SE-D/C86 (**Plan A-2**) from highways maintenance point of view. The Site falls outside of the boundary of Hiram’s Highway Improvement Stage 2 Project.

Environment

10.1.4 Comments of Director of Environmental Protection (DEP):

in view of the small scale and nature of the proposed development, the proposed uses will unlikely cause major pollution.

Landscape

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

- (a) according to the aerial photo of 2020, the Site is used as a private garden with a swimming pool. No tree or significant vegetation is observed within the site boundary;
- (b) the Site is situated in an area of miscellaneous rural fringe landscape character predominated by low-rise residential houses and tree groups. The proposed development is considered not entirely incompatible with the landscape setting of the surrounding environment; and
- (c) as compared with the proposed layout with that of the last approved application and the aerial photos taken between 2003 and 2020, it is noted that the layout of the swimming pool has been modified in 2013 while no direct conflict on the existing landscape resources has been observed arising from the current proposal. In view that no significant adverse landscape impact due to the proposed development is anticipated, she has no objection to the planning application from landscape planning perspective.

Drainage

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

- (a) the Site is within an area where neither public drainage nor sewerage connection is available in the vicinity at present;
- (b) no in-principle objection to the application from drainage maintenance viewpoint on the condition that adequate stormwater drainage facilities will be provided in connection with the proposed swimming pool without causing any adverse drainage impacts or nuisance to the adjoining areas; and
- (c) the lot owner shall be responsible for the maintenance of his completed drainage works and, if required in the future by DLO/SK, LandsD, the relocation of such works.

Building Matters

10.1.7 Comments of the Chief Building Surveyor/Hong Kong East & Heritage, Buildings Department (CBS/HKE&H, BD):

no in-principle objection under the BO to the application subject to the following comments:

- (a) all building works including construction of swimming pool on leased land are subject to compliance with the BO and allied regulations. AP must be appointed to coordinate all building works;
- (b) there is no building plan approved by the Building Authority (BA) regarding the existing swimming pool. As such, the existing swimming pool is considered as an UBW against which enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as necessary; and
- (c) the granting of any planning approval should not be construed as an acceptance of any existing building works or UBW, if any, on the Site under the BO.

Geotechnical

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

no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) District Officer/Sai Kung, Home Affairs Department (HAD);
- (c) Chief Engineer (Works), HAD;
- (d) Director of Fire Services; and
- (e) Director of Agriculture, Fisheries and Conservation.

11. Public Comments Received During Statutory Publication Period

On 7.9.2021 and 4.1.2022, the application and the FI were published for public inspection. During the first three weeks of the statutory public inspection periods, two comments were received from the same individual objecting to the application (**Appendix V**). The objection grounds include that the proposed uses are not serving the planning intention of "GB" zone, there will be adverse environmental impact caused by the evaporation of chemically treated water and loss of green cover, government land should not be for private use, and approval of the application would encourage similar applications on the "GB" zone.

12. Planning Considerations and Assessments

- 12.1 The temporary private swimming pool and garden under application fall within an area zoned “GB” on the OZP. 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 outlets. There is a general presumption against development within this zone. Although the swimming pool and garden under application are not in line with the planning intention of the “GB” zone, given their temporary nature, the long-term planning intention of the “GB” zone would not be jeopardised.
- 12.2 The Site is situated in an area of miscellaneous rural fringe landscape character predominated by low-rise residential houses and tree groups. The proposed development is considered not entirely incompatible with the landscape setting of the surrounding environment. As there is no tree or significant vegetation observed within the Site, significant adverse landscape impact due to the proposed development is not anticipated. CTP/UD&L of PlanD and DAFC have no objection to/no comment on the application.
- 12.3 There is a slope feature maintained by HyD to the immediate east of the Site. The applicant has submitted a GPRR in support of the application, which demonstrates that the proposed development is considered to be feasible from geotechnical point of view (**Appendix Ib**). H(GEO) of CEDD and CHE/NTE of HyD have no objection to/no comment on the application.
- 12.4 Since the swimming pool and garden are for private use and small in scale, significant adverse traffic, drainage, sewerage, environmental and water supply impacts are not anticipated. Relevant departments consulted including C for T, CE/MS of DSD, DEP, and CE/C of WSD have no objection to or no adverse comment on the application. Should the application be approved, relevant approval condition as recommended by concerned department is suggested in paragraph 13.2 below. In this regard, the application is generally in compliance with TPB PG-No. 10.
- 12.5 Part of the Site is the subject of a previous application for temporary private swimming pool use approved by the Committee in 2003. As compared to the previously approved application (No. A/SK-PK/126), there is a change in layout and slight reduction in area of 4.2m² for the swimming pool. There have been no major changes in planning circumstances at the Site and in the surroundings since the previous approval was granted. According to the applicant, should this application be approved, an application for a STT from LandsD will be made, and an AP will be appointed to rectify the UBW and re-construct the swimming pool under the BO. DLO/SK of LandsD and CBS/HKE&H, BD have no objection to the application.
- 12.6 Regarding the public comments objecting to 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 considers that the temporary private swimming pool and garden could be tolerated for a period of three years.

13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of three years until 18.2.2025. The following approval condition and advisory clauses are also suggested for Members' reference:

Approval Condition

the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services 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 reason for rejection is suggested for Members' reference:

the development 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 outlet. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from such planning intention.

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 received on 31.8.2021
Appendix Ia	Planning Statement
Appendix Ib	FI received on 29.12.2021

Appendix Ic	FI received on 19.1.2022
Appendix II	Town Planning Board Guidelines for Application for Development within “Green Belt” zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)
Appendix III	Previous Application
Appendix IV	Similar Application
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Sections of Swimming Pool
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

PLANNING DEPARTMENT
FEBRUARY 2022