

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-CWBN/58

- Applicant:** CLP Power Hong Kong Limited (CLP) represented by Kum Shing (K.F.) Construction Company Limited
- Site:** Government Land in D.D. 238, Clear Water Bay, Sai Kung, New Territories
- Site Area:** About 33m²
- Land Status:** Government Land
- Plan:** Approved Clear Water Bay North Outline Zoning Plan (OZP) No. S/SK-CWBN/6
- Zoning** “Conservation Area” (“CA”)
- Application:** Proposed Public Utility Installation (LV Poles, Underground Cable and Overhead Cable) and Excavation and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed public utility installation (LV poles, underground cable and overhead cable) and associated excavation and filling of land at the application sites (the Sites). The proposal includes the installation of five 10m high poles, two 18m and 10m long 380V underground cables and a 127m long overhead cable. The proposed excavation of land is about 33m² with a depth of 1.5m for erection of five poles (1m x 1m each) and laying of two sets of underground cables (18m x 1m and 10m x 1m). The cable trenches will be backfilled to ground level. The Sites fall within an area zoned “CA” on the approved Clear Water Bay North OZP No. S/SK-CWBN/6 (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘public utility installation’, and excavation and filling of land within the “CA” zone require planning permission from the Town Planning Board (the Board).
- 1.2 In support of the application, the applicant has submitted the following documents:
- (a) Application form and attachments received on **(Appendix I)**
10.7.2019

- (b) Further Information (FI) received on 22.8.2019 and 23.8.2019 (accepted and not exempted from publication) **(Appendix Ia)**
- (c) FI received on 25.11.2019 and 28.11.2019 (accepted and exempted from publication) **(Appendix Ib)**
- (d) FI received on 9.1.2020 (accepted and exempted from publication) **(Appendix Ic)**
- (e) FI received on 16.3.2020 (accepted and exempted from publication) **(Appendix Id)**

1.3 The location plans, section plan and tree survey plans submitted by the applicant are shown in **Drawings A-1 to A-4e**.

1.4 On 18.10.2019 and 17.1.2020, the Rural and New Town Planning Committee (the Committee) agreed to defer its consideration on the application as requested by the applicant for submission of FI. The applicant submitted FIs as indicated in paragraph 1.2 above.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments of the application form and FI submissions in **Appendices I, Ia, Ib to Id**. They can be summarized as follows:

- (a) a new electricity supply application for three areas (four private lots), which are used as farms and accessible via Hang Hau Wing Lung Road, has been received by CLP (**Plan A-2**). Since the existing LV power networks do not cover the lots, which fall within “CA” zone, installation works of new LV poles within “CA” zone is unavoidable. The farms are currently using solar energy and diesel generators for electrical supply. However, diesel generators are not environmentally friendly and the efficacy is not enough to serve the three areas. The new LV poles and underground cables will connect to the nearby LV power network and provide sufficient electricity power to the applicant. The electricity supply will be used for lighting system, air condition system and three phase pumping system for all concerned lots;
- (b) the proposed installation is considered the most suitable method for power supply with less excavation area. Works area will be reinstated according to the existing road condition; and
- (c) as stated in the tree survey (**Appendix Ic**), 18 trees with two dead trees are found in the Sites. There are no rare species and tree with cultural, historic or conservation value in the Sites. To avoid the impact to the plants and trees, Tree Protection Zone (TPZ) will be defined before work. No excavation shall be done within the TPZ which shall be in 1.5m minimum to 10 times of Diameter at Breast Height. There will be no pole erection and stay erection inside the TPZ.

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

As the Sites involve government land only, the “owner’s consent/notification” requirements 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 PG-No.31A) are not applicable to the application.

4. Background

A very small portion of one of the Sites (i.e. Pole 5 and the adjacent underground cables) encroaches into the area used as a farm to the southeast across the local track which was subject to an enforcement case against unauthorised excavation and filling of land (case no. CEP/E/SK-CWBN/42) (**Plan A-2**). An Enforcement Notice (EN) and a Reinstatement Notice (RN) were issued on 16.4.2018 and 28.3.2019 respectively. As the site has not been reinstated upon expiry of the RN, prosecution action may be followed. Meanwhile, as new unauthorised filling and excavation of land were undertaken thereat, another Enforcement Notice (case no. CEP/E/SK-CWBN/53) (**Plan A-2**) was issued on 5.5.2020 requiring the discontinuance of the unauthorised filling and excavation of land by 12.5.2020. Besides, to the immediate south of Poles 1 to 4 is a farm with temporary structures within private lots which are partly subject to an enforcement case against unauthorised excavation and filling of land (case no. CEP/E/SK-CWBN/49) (**Plan A-2**). EN was issued on 15.7.2019. RN was issued on 24.7.2019. As the site has not been reinstated upon expiry of the RN, prosecution action may be followed.

5. Previous Application

Some of the Sites are the subject of a previous application No. A/SK-CWBN/50 for proposed Public Utility Installation (LV Poles, Underground Cables and Overhead Cable) and Excavation and Filling of Land received on 12.10.2018 (**Plan A-2**). The application was subsequently withdrawn.

6. Similar Application

- 6.1 There is one similar application for proposed public utility installation in the vicinity within the same “CA” zone on the OZP.
- 6.2 Application No. A/SK-CWBN/37 for proposed Public Utility Installation (Pole with transformer, pillar box and underground cables) and excavation of land within areas zoned “V”, “GB” and “CA” (consisting 20%, 43% and 37 % of the site area respectively) to the southwest of the Sites was approved with conditions by the Committee on 22.1.2016 mainly on the grounds that the proposed works are essential installation for supplying electricity for the village house development in Ng Fai Tin; no tree felling is involved in the proposal; and no adverse impacts are anticipated.
- 6.3 Details of the similar application are summarized at **Appendix II** and the locations are shown on **Plan A-1**.

7. The Sites and Their Surrounding Areas (Plans A-1 to A-3 and Photos in Plans A-4a to 4c)

7.1 The Sites:

- (a) are located in the midst of the “CA” zone;
- (b) the proposed poles and the underground cables (except a part on an existing track) are on natural slopes covered by shrubs and grasses; and
- (c) are accessible by a local track connecting to Hang Hau Wing Lung Road.

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate south of Poles 1 to 4 is partly vacant and partly occupied by active farming with temporary structures within private lots. The area to the south of Pole 5 and the proposed cable location is mostly vacant;
- (b) to the north and southwest are vegetated slopes within the “CA” zone; and
- (c) to the further southwest are low-rise residential development and village houses of Ng Fai Tin.

8. Planning Intention

The planning intention of the “CA” zone 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 Site of Special Scientific Interest or 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 and public comments are summarized as below:

Land Administration

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

- (a) no objection to the application;
- (b) the applicant is required to submit an Excavation Permit

application for their Excavation Layout Plan (Extension of Excavation Permit has been issued previously concerning different locations in the vicinity). Subject to obtaining planning approval, DLO/SK will issue an Excavation Permit to the applicant for the proposed works related to this planning application;

- (c) the proposed public utility installation and excavation works for the captioned planning application fall mainly on government land. As a small portion of one of the Sites encroaches Lot No. 17 in D.D. 238 (**Plan A-2**), the applicant should seek consent from the land owner for the private land affected; and
- (d) as Government Short Term Tenancy No. STTSX883 and Government Land Licence No. S12038 are affected, the applicant is required to consult the concerned Tenant and Licence respectively prior to commencement of works.

Traffic

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

- (a) no in-principle objection from traffic engineering viewpoint; and
- (b) the access road leading to the Sites (i.e. Hang Hau Wing Lung Road) is not managed by the Transport Department. The applicant should clarify the management and maintenance responsibilities of the access road with the relevant lands and maintenance authorities accordingly.

Urban Design

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

the application involves erection of public utility installation (LV poles, underground cables and overhead cable) and excavation and filling of land on a hill near a local track connecting to Hang Hau Wing Lung Road. Considering the small scale of the utility installation and character of the surroundings, it is anticipated that the proposed public utility installation would not impose significant adverse visual impact.

Landscape

9.1.4 Comments of CTP/UD&L, PlanD:

- (a) no objection to the application from the landscape planning point of view;
- (b) with reference to the planning statement and record of site visit, some existing trees of native species are identified in the

proximity of the Sites. Nevertheless, no tree is affected by the proposed works as stated in the application. With the consideration of limited space of the Sites, it is not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent;

- (c) the applicant is reminded to approach relevant authority/ government department(s) direct to obtain the necessary approval on tree works such as felling, transplanting or pruning under lease; and
- (d) the applicant should not conduct excavation works near the existing trees and should make reference to the following links on Development Bureau's guidelines on proper tree care during construction:
 - Pictorial Guide for Tree Maintenance: https://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf
 - Handbook on Tree Management: https://www.greening.gov.hk/en/tree_care/Handbook_on_Tree_Management.html
 - Tree Care during Construction: https://www.greening.gov.hk/.../pdf/tree_care/Tree_Care_during_Construction_e.pdf.

Nature Conservation

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

Considering that a *Gnetum luofuense* in the vicinity would unlikely be affected by the proposed works and the applicant has committed to protection of the plant, he has no in-principle objection to the application.

Risk Aspect

9.1.6 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) he has no particular comment on the application from electricity supply safety aspect; and
- (b) the applicant should observe the Electricity Supply Lines (Protection) Regulation and the "Code of Practice on Working near Electricity Supply Lines" established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer's Comments

9.1.7 Comments of the District Officer/Sai Kung, Home Affairs Department:

the District Council member of Hang Hau East Constituency and Village Representatives of Pan Long Wan object to the application due to the grounds that the proposed works would affect the future expansion and feng-shui of the Burial Grounds and the ecological environment of the surrounding; and there are suspected illegal land excavation works and land occupation in the surrounding, whilst the Chairman of Hang Hau Rural Committee and the Chairman of Sai Kung Area Committee have no comment on the application.

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

- (a) Head (Geotechnical Engineering Office), Civil Engineering and Development Department;
- (b) Chief Engineer (Works), Home Affairs Department;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Chief Engineer/Mainland South, Drainage Services Department;
- (e) Chief Building Surveyor/NTE2 & Rail, Buildings Department;
- (f) Chief Engineer/ Construction, Water Supplies Department; and
- (g) Director of Fire Services.

10. Public Comments Received During Statutory Publication Periods

On 19.7.2019 and 3.9.2019, the application and FI were published for public inspection. During the three weeks of the statutory public inspection periods, which ended on 9.8.2019 and 24.9.2019, six public comments were received from the Hong Kong Bird Watching Society, Designing Hong Kong Limited and three individuals of the public (**Appendix III**) objecting to and raising concerns on the application with similar grounds: the proposed development is not in line with the planning intention of the "CA" zone; the proposed development is considered as 'destroy first, develop later' case that serves the areas which have been subject to unauthorised development, road construction and site formation; the proposed utility installation would destruct government land to benefit eco-vandalism and private development and facilitate further unwarranted development in the "CA" zone; the proposed works would lead to loss of natural habitat; alternative routes for the installation with less impacts shall be chosen; no strong justification to approve the application; and setting an undesirable precedent.

11. Planning Considerations and Assessments

11.1 The application is to seek planning permission for proposed public utility installation (LV poles, underground cable and overhead cable) and excavation and filling of land within an area zoned "CA" on the approved Clear Water Bay Peninsula North OZP. The planning intention of the "CA" zone 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. 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. As claimed by the applicant, the proposed installation will provide electricity for the three areas (**Plan A-2**) used as farms. Although agricultural use is permitted in “CA” zone, public utility installation, and excavation and filling of land will require permission from the Board. The applicant has not provided any information on the proposed farm use. In addition, the areas mentioned by the applicant only involve 3 small plots of land, there is no information to demonstrate why such scale of public utility installation with 5 LV poles and 2 underground cables (10m and 18m in length) is required for the proposed farm use. The applicant fails to provide strong planning justification that the proposed installation is essential infrastructure project with overriding public interest which warrants a departure from the planning intention of “CA” zone.

- 11.2 The Sites are located partly on natural slope covered with shrubs and grasses, and partly on the existing local track. As claimed by the applicant, the proposed works will not affect the existing trees in the vicinity of the Sites. TPZ will be defined before work and no pole erection and stay erection will be located inside the TPZ. CTP/UD&L of PlanD has no objection to the application from landscape planning point of view. Besides, DAFC has no in-principle objection to the application considering that the *Gnetum luofuense* in the vicinity would unlikely be affected by the proposed works and the applicant has committed to protection of the plant. It should however be noted that some of the areas as indicated by the applicant to be served by the proposed installation are subject to enforcement cases of unauthorised excavation and filling of land respectively and no planning application has been received for the subject areas.
- 11.3 Relevant government departments have no objection to or no comment on the application on technical aspects.
- 11.4 There is one similar application partly within the same “CA” zone, and partly within “GB” and “V” zones on the OZP which was approved by the Committee with the grounds that the proposed works are essential installation for the village house development, and no tree felling and adverse impacts are anticipated. However, the Site under the current application falls entirely on “CA” zone and the applicant fails to provide sufficient information in the submission to demonstrate that the proposed works are essential installations serving permitted uses in the area. Approval of this application would set an undesirable precedent for other similar applications within the “CA” zone. The cumulative effect of approving similar applications would result in a general degradation of the natural environment.
- 11.5 Regarding the six public comments objecting to the application which mainly related to the planning intention of “CA” and impacts on the landscape and natural habit, the assessments in paragraphs 11.1 and 11.3 above are relevant.

12. Planning Department's Views

12.1 Based on the assessment made in paragraph 11 and taking into account the public comments in paragraph 10, the Planning Department does not support the application for the following reasons:

- (a) the proposed installation is not in line with the planning intention of the "Conservation Area" ("CA") zone which is primarily 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 within this zone. The applicant fails to demonstrate that the proposed installation is essential infrastructure project with overriding public interest; and
- (b) approval of the application would set an undesirable precedent for other similar applications within the "CA" zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 15.5.2024, 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 advisory clauses at **Appendix IV** are also suggested for member's reference.

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 reason(s) 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 condition(s) and advisory clause(s) to be attached to the permission, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application form and attachments received on 10.7.2019
Appendix Ia	Further Information received on 22.8.2019 and 23.8.2019
Appendix Ib	Further Information received on 25.11.2019 and 28.11.2019
Appendix Ic	Further Information received on 9.1.2020
Appendix Id	Further Information received on 16.3.2020
Appendix II	Similar Application

Appendix III	Public Comments
Appendix IV	Advisory Clauses
Drawings A-1 to A-2	Location Plan
Drawing A-3	Section Plan
Drawings A-4a to 4e	Tree Survey Plans
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos

**PLANNING DEPARTMENT
MAY 2020**