

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

**APPLICATION NO. A/NE-KLH/578**

<b><u>Applicant</u></b>	Mr. LAM Yau-hing
<b><u>Site</u></b>	Lot 95 in D.D. 16, Lam Tsuen, Tai Po, New Territories
<b><u>Site Area</u></b>	About 1,926.6 m <sup>2</sup>
<b><u>Land Status</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11
<b><u>Zoning</u></b>	“Agriculture” (“AGR”)
<b><u>Application</u></b>	Proposed Public Utility Installation (Solar Energy System)

**1. The Proposal**

- 1.1 The applicant seeks planning permission for the proposed solar energy system on the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Kau Lung Hang OZP No. S/NE-KLH/11. According to the Notes of the OZP, the proposed solar energy system, which is regarded as a ‘Public Utility Installation’, is a Column 2 use within the “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 The proposed solar energy system will comprise 624 solar panels (1.62m x 0.992m x 0.4m (height) each) mounted on supporting-frames on ground (**Drawings A-1 to A-3**). Ancillary equipment including power convergence box, inverter, transformer, meter box, panel box and circuit will also be installed but they are not shown in the site plan/layout plan in the applicant’s submission. According to the application, no land filling is involved for the proposed development. The amount of energy to be generated would be about 180,000 – 220,000 kWh per year (totally about 5.02MWh assuming an operation period of 25 years), which will be supplied to the existing power network of CLP Power Hong Kong Limited (CLP) under the ‘Renewal Energy Feed-in Tariff Scheme’ (the FiT Scheme) for public use.
- 1.3 In support of the application, the applicant has submitted the application form with attachments on 2.10.2019 (**Appendix I**).

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

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the application form at **Appendix I**. They can be summarized as follows:

- (a) the Site was previously used for growing rice and has left vacant for over 40 years. It is suitable for installation of solar energy system and the proposed development could revitalize the Site;
- (b) the proposed development will be connected to CLP's network for electricity supply to the public. It will support the Government's initiative to reduce carbon emission from power generation via the FiT Scheme; and
- (c) the scale of the proposed development is big enough to generate renewable energy for not less than 30 households. There is support from a reputable contractor in solar energy system installation and CLP subject to approval from relevant Government departments.

## 3. **Compliance with the "Owner's Consent/Notification" Requirements**

There are four "current land owners" of the Site, including the applicant. To comply with the 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), the applicant has obtained the consent from the other three "current land owners" on the application. Detailed information would be deposited at the meeting for Members' inspection.

## 4. **The FiT Scheme**

- 4.1 The FiT Scheme is an initiative introduced by the Government under the post-2018 Scheme of Control Agreements with the two power companies for promoting the development of distributed renewable energy (RE). It aims to encourage the private sector to consider investing in RE as the power generated could be sold to the power companies at a rate higher than the normal electricity tariff to help recover the costs of investment in the RE systems and generation.
- 4.2 Any non-governmental bodies or individuals, who as customers of the relevant power company plan to install distributed RE systems at their premises in the respective power company's supply area are eligible for prescribed FiT rates from that power company as long as they have been connected to the latter's grid. To join the Scheme, an applicant may make submission direct to the relevant power company with the required documents including the preliminary layout diagram and other information of the proposed RE system. After meeting the requirements specified by the power company on technical assessment, system test and installation works, the power company will proceed to installing a smart meter in the applicant's premises to facilitate connecting the proposed RE system to the power grid. The successful applicant would be offered the FiT rate throughout the project life of the RE system until 31.12.2033. The applicant shall ensure the design, installation, operation and maintenance of the RE system comply with the applicable laws,

guidelines, and safety and technical guidelines

**5. Previous Application**

There is no previous application at the Site.

**6. Similar Application**

6.1 There is no similar application for the proposed use within the same “AGR” zone.

6.2 For other areas, the Committee, on 1.11.2019, has approved an application for solar energy system under “AGR” zone on the Approved Ting Kok OZP on a temporary basis of five years (No. A/NE-TK/649). The application was approved mainly on the considerations that development of RE is an environmental friendly initiative; the proposed development would not deprive the site of the potential for agriculture use; and no adverse impact on the surrounding areas would be incurred. Nevertheless, a temporary approval period of five years was granted with a view to allowing monitoring of the implementation progress of the solar energy system and the condition of the site.

**7. The Site and Its Surrounding Areas (Plans A-1, A-2, photos on Plans A-3, A-4 and A-4)**

7.1 The Site is:

(a) currently vacant, and covered mainly by weeds and trees. A vacant temporary structure and ruins are found near the southern and northern boundary of the Site respectively; and

(b) not accessible by vehicles. A footpath runs close to the southern boundary of the Site.

7.2 The surrounding areas are predominantly rural in character with active/fallow agricultural land, temporary structures for domestic uses and scattered tree groups.

**8. Planning Intention**

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

## 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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of Lot. No. 95 in D.D. 16, Lam Tsuen, Tai Po which is held under the Block Government Lease demised for agricultural purpose. No structure shall be erected on the lot without the prior approval from LandsD;
- (c) a recent inspection revealed that one temporary structure was found on the Site without the prior approval from LandsD. The applicant is required to clear the structure on the Site immediately. Otherwise, appropriate enforcement action will be taken in due course;
- (d) should the application be approved by the Board, the lot owners are required to submit an application for a Short Term Waiver (STW) to LandsD if they wish to erect any structure on the Site. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered appropriate; and
- (e) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto.

### Environment

9.1.2 Comments of the Secretary for the Environment (SEN):

- (a) development of RE is an important part of Government's effort in combating climate change. Increasing the use of RE, a zero-carbon energy, can help decarbonise Hong Kong's electricity generation sector, which contributes to about two-thirds of the carbon emissions in the Territory. Hence, promoting the development of RE has been an integral part of Hong Kong's decarbonisation strategy;
- (b) SEN's policy is for the Government to take the lead in developing RE where technically and financially feasible and to create conditions that are conducive to community participation. For the private sector, SEN and the power companies have

introduced the FiT Scheme, providing financial incentives which can encourage the private sector to invest in distributed RE. A series of measures to facilitate and support members of the public in developing RE has also been introduced; and

- (c) despite SEN's effort mentioned above, due to objective factors including, inter alia, topographical constraints, the RE potential in Hong Kong is modest and most RE installations developed/ to be developed under the FiT Scheme are of relatively small scale. As such, he strongly supports the development of RE systems, especially larger-scale systems such as the one proposed under the current application as they would be better able to meaningfully contribute to increasing the use of RE in Hong Kong.

9.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) in view of the nature and scale of the proposed development, he has no objection to the application; and
- (b) the applicant should strictly comply with relevant pollution control ordinances, including Waste Disposal Ordinance and Water Pollution Control Ordinance, and to implement appropriate pollution control measures to minimise any potential environmental impacts during construction of the project. Reference could be made to the relevant publications/guidelines including:
  - Recommended Pollution Control Clauses for Construction Contracts; and
  - Professional Persons Environmental Consultative Committee Practice Notes No. 1/94 – Construction Site Drainage.

Agriculture

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

the Site is overgrown with weeds. Nevertheless, there are active agricultural activities in the vicinity and agricultural infrastructure such as footpath and water source is available. The Site possesses potential for agricultural rehabilitation. As such, the application is not supported from agricultural point of view.

Landscape and Visual

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

- (a) has some reservations on the application from the landscape planning and visual perspectives;
- (b) numbers of existing mature trees including *Aleurite moluccana*

(石栗), *Artocarpus heterophyllus* (菠蘿蜜), *Citrus maxima* (柚), *Clausena lansium* (黃皮), *Michelia x alba* (白蘭), *Dimocarpus longan* (龍眼), *Psidium guajava* (番石榴) and *Sterculia monosperma* (蘋婆) in good to fair condition are found within the Site. It appears that the proposed development is in direct conflict with these trees. Adverse landscape impact on existing landscape resources within the Site is anticipated;

- (c) noting that the Site is located on terraced topography, the proposed development may involve site formation and/or slope works. With no related information such as formation level or extent of slope works, adverse impact arising from site formation and/or slope works to existing landscape resources and landform cannot be ascertained;
- (d) the Site is in close proximity to the natural hillslopes linking to Lam Tsuen Country Park and there is no existing vehicular access leading to the Site, the direct and indirect adverse impact arising from the proposed development to the landscape resources within and adjacent to the Site and the Lam Tsuen Country Park cannot be ascertained;
- (e) the Site is situated in an area of rural landscape character comprising scattered tree groups, temporary structures and farmland. Given the nature of the proposed use and building height (i.e. 0.4m), the proposed development is not entirely compatible with the surrounding environment. Furthermore, the scale of proposed structure would be quite extensive, which would lead to a change to the visual landscape of the surrounding environment. There is lack of information in the submission on how the applicant would attempt to address the overall visual impact on the surrounding environment; and
- (f) in view that the Site is not bounded by prominent public frontage, should the Board approve the application, it is considered unnecessary to impose any condition for submission and implementation of landscaping proposal.

### Traffic

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

- (a) no in-principle objection to the application from traffic engineering point of view; and
- (b) the footpath next to the Site is not under Transport Department's management. He suggests that the land status, management and maintenance responsibilities of the footpath should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

### Drainage

#### 9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) has no objection in principle to the application from public drainage viewpoint;
- (b) should the application be approved by the Board, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent areas;
- (c) there is no existing DSD maintained public drain available for connection in the area. The applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) public sewerage are not available near the Site; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant lot owners should be sought.

### Water Supply

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

- (a) the Site is located within the upper indirect water gathering grounds (WGG) and there is a risk of contamination to WGG due to installation/ maintenance/ operation of the proposed solar energy system. In order to safeguard the raw water quality in WGG, the applicant shall submit sufficient information/ justification/ assessment report to prove and demonstrate to the satisfaction of the Water Authority that there is no material increase in pollution or erosion arising from the proposed development. In particular, the requirements as set out in **Appendix II** shall be met; and
- (b) as the applicant does not submit sufficient information/ justification/ risk assessment report to prove and demonstrate to the satisfaction of the Water Authority that there is no material

increase in pollution effect within WGG resulting from the proposed development, he has reservation on the application; and

- (c) for provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### Building Matters

9.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) no objection to the application; and
- (b) as a matter of general principle, the installation of solar panels requires the submission to the Building Authority for approval under the Buildings Ordinance (BO) unless the proposal satisfies the criteria as specified in the minor works control system. The applicant should observe the advice of BD as detailed in **Appendix II**.

### Fire Safety

9.1.10 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs for his approval. In addition, the applicant should also be advised that:
  - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
  - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.



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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager/North, Civil Engineering and Development Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (d) Director of Electrical and Mechanical Services;
- (e) Director of Health; and
- (f) District Officer/Tai Po, Home Affairs Department;

## **10. Public Comments Received During Statutory Publication Period (Appendix III)**

On 11.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments were received from The Hong Kong Bird Watching Society, Designing Hong Kong Limited, WWF-Hong Kong and an individual raising objection to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; leading to a loss in arable land; potential agricultural, environmental, ecological and landscape impacts; and setting undesirable precedent.

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

- 11.1 The application is for a solar energy system on a site zoned “AGR” on OZP. The proposed development involves the installation of 624 solar panels mounted on supporting-frames on ground throughout the whole Site, which would deprive the Site of the opportunity for agricultural use. The proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Since agricultural infrastructure such as road access and water source is available and the Site possesses potential for agricultural rehabilitation, DAFC does not support the application. There is no strong planning justification in the submission for a departure from the planning intention.
- 11.2 According to the proposal, the electricity to be generated will be supplied to the existing power network of CLP for public use under the FiT Scheme. SEN supports the development of RE systems especially larger-scale systems such as the one proposed under the current application. DEP has no objection to the application and advises the applicant to strictly comply with relevant pollution control ordinances and to implement appropriate pollution control measures to minimize any potential environmental impacts during construction. DEMS has no comment on the application from regulatory services perspective. Despite no adverse comments are raised from relevant Government departments on the objective of the proposed development to generate RE, there is no information in the applicant’s submission to demonstrate that he has formally applied to the CLP to join the FiT Scheme and whether CLP would consider it technically feasible and acceptable to

connect its power network with the proposed solar energy system.

- 11.3 The Site is situated in an area of rural landscape character comprising scattered tree groups, temporary structures and active/fallow farmland with no vehicular access. The proposed development would be in direct conflict with the existing mature trees in the Site, which are in good to fair condition. Adverse landscape impact on existing landscape resources within the Site is anticipated. Also, the Site is in close proximity to the natural hillslopes linking to Lam Tsuen Country Park. The direct and indirect adverse impact arising from the proposed development to the landscape resources within and adjacent to the Site and the Lam Tsuen Country Park cannot be ascertained. Furthermore, the scale of the proposed structures would be rather extensive which would lead to a change to the visual landscape of the surrounding environment. There is lack of information in the applicant's submission to address the overall visual impact on the surrounding environment. As such, CTP/UD&L of PlanD has some reservations on the application from the landscape planning and visual perspectives.
- 11.4 The Site is located within the upper indirect WGG. CE/C of WSD has reservation on the application as there is a risk of contamination to WGG arising from installation/maintenance/operation of the proposed development and the applicant has not submitted sufficient information/justification/risk assessment report to prove and demonstrate to the satisfaction of the Water Authority that there is no material increase in pollution effect within WGG resulting from the proposed development.
- 11.5 CE/MN of DSD advises that there is no existing DSD maintained public drain available for connection in the area. If the application is approved by the Board, approval condition for the submission and implementation of drainage proposals is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas. Other Government departments consulted, including C for T, PM/N and H(GEO) of CEDD, CHE/NTE of HyD, DO/TP of HAD, D of FS, CBS/NTW of BD and D of Health have no objection to or no adverse comment on the application.
- 11.6 There is no similar application for installation of solar energy system within the "AGR" zone on the Kau Lung Hang OZP. The approval of the application would set an undesirable precedent for similar applications in the area, the cumulative effect of which would result in general degradation of the landscape character of the area. For other areas, the Committee, on 1.11.2019, has approved an application for solar energy system under "AGR" zone on the Approved Ting Kok OZP on a temporary basis of five years (No. A/NE-TK/649) on considerations that development of RE is an environmental friendly initiative; the proposed development would not deprive the potential of the site for agriculture use; and no adverse impact on the surrounding areas would be incurred. An approval for a temporary period of five years was imposed mainly to allow monitoring of the implementation progress of the solar energy system and the condition of the site. The circumstances of that similar application in Ting Kok is not entirely applicable to the current application.
- 11.7 Regarding the public comments raising objection to the application as detailed in paragraph 10, Government departments' comments and assessments above

are relevant.

## 12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having 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 "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from the planning intention;
- (b) the applicant fails to demonstrate that the proposed development would not cause adverse impact on the water quality in WGG and would not cause adverse landscape and visual impacts in the area; and
- (c) the approval of the application would set an undesirable precedent for similar applications in the area. The cumulative effect of approving such applications would result in general degradation of the landscape character of the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be granted on a temporary basis for a period of five years until 29.11.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) the submission of an assessment report to demonstrate that no pollution will be caused to the water gathering grounds within 6 months from the date of the approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 29.5.2020;
- (b) in relation to (a) above, the implementation of the mitigation measures as proposed in the report within 9 months from the date of the approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 29.8.2020;
- (c) the submission of drainage proposal within 6 months from the date of the approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 29.5.2020;
- (d) in relation to (c) above, the implementation of drainage proposal within 9 months from the date of the approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 29.8.2020;
- (e) the submission of fire service installations and water supplies for

firefighting proposal within 6 months from the date of the approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 29.5.2020;

- (f) the implementation of fire service installations and water supplies for firefighting proposal within 9 months from the date of the approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 29.8.2020;
- (g) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (h) 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 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 reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application on a temporary basis, 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. Attachments**

Appendix I	Application form and attachments dated 2.10.2019
Appendix II	Detailed comments from Government departments
Appendix III	Public comments
Appendix IV	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Layout plan submitted by the applicant
Drawing A-3	Drawing of supporting-frames submitted by the applicant

Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photos
Plan A-4	Site photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**