RNTPC Paper No. A/NE-LK/132 For Consideration by the Rural and New Town Planning Committee on 6.11.2020

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LK/132

Applicant : Global Express Enterprise Limited

Site : Lot 2048 S.B (Part) in D.D. 39, Yim Tso Ha Village, Sha Tau Kok,

New Territories

Site Area : About 230 m²

<u>Lease</u>: Block Government Lease (demised for agricultural use)

Plan : Approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No.

S/NE-LK/11

Zoning : "Recreation" ("REC")

Application : Proposed Temporary Public Utility Installation (Solar Photovoltaic

System) for a Period of 5 years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary public utility installation (solar photovoltaic system) for a period of five years. The Site falls within an area zoned "REC" on the approved Luk Keng and Wo Hang OZP No. S/NE-LK/11. According to the Notes of the OZP, the solar photovoltaic (SPV) system, which is regarded as 'Public Utility Installation' use, is a Column 2 use within the "REC" zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the proposed temporary development involves a CLP electric meter installation (about 0.7m high X 0.5m wide X 0.25m deep) and 80 solar panels (each about 2m long x 1m wide x 1.5m high) installed on metal stands (**Drawings A-1 and A-2**). The SPV system is to facilitate the participation in the 'Renewable Energy Feed-in Tariff (FiT) Scheme' by CLP. The electricity generated by the solar panels will be transmitted to the nearby CLP's substation for connection to the existing electrical power network of CLP. The applicant has

obtained a letter from CLP which confirms technical feasibility of the proposal. The proposed development is considered as a single system with a total generation capacity of 32kW. The Site is accessible from Sha Tau Kok Road — Shek Chung Au via local access road (Plans A-1 and A-2). The entrance to the Site is at the northeastern boundary of the Site. No parking or loading / unloading space would be provided. The solar panels erected on the Site is without planning permission.

- 1.3 The layout plan and the meter installation location plan submitted by the applicant are at **Drawings A-1** and **A-2** respectively. In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with supplementary information (Appendix I) received on 17.9.2020
 - (b) Supplementary Information received on 18.9.2020 (Appendix Ia)
 - (c) Further Information received on 16.10.2020^ (Appendix Ib)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form in **Appendix I** and the Further Information in **Appendix Ia**. They can be summarized as follows:

- (a) the proposed installation is in line with the Government's policy regarding energy efficiency and environmental protection;
- (b) the applicant has applied to CLP for participation in the FiT Scheme, and Acknowledgement Letter from CLP on the FiT application has been obtained;
- the proposed installation falls within the criteria of Item 3.15 under Class III under the Minor Works Control System (MWCS). A Prescribed Registered Contractor is also consulted in order to prepare a structural justification report which would be submit to relevant authorities;
- (d) the proposed installation does not involve any vegetation clearance;
- (e) the proposed installation has been carefully designed and compatible with the surrounding area;
- (f) the proposed installation does not involve any massive construction and it would not cause significant adverse impact on the environment, drainage, sewerage, traffic, geotechnical, landscape and visual aspects;
- (g) the proposed temporary development would comply with the guidelines as advised by relevant Departments;

[^]exempted from publication requirement

- (h) there will be on-site manual inspections for maintenance services and the use of vehicle is not required; and
- (i) the SPV panels are coated with anti-reflective coating such that reflective lights are reduced.

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.

4. Assessment Criteria for Considering Applications for Solar Photovoltaic System

The set of assessment criteria for considering applications for solar photovoltaic system made under Section 16 of the Town Planning Ordinance was promulgated on 21.7.2020 (**Appendix II**). The relevant assessment criteria are summarized as follows:

- (a) it is a prerequisite for the applicant to obtain the 'Consent Letter' or 'Acknowledgement Letter' from CLP/HKE and submit a copy of the document together with the application to demonstrate the technical feasibility of the scheme in terms of serviceability, electrical safety and output generated by the SPV system;
- (b) unless with strong justifications, the SPV system, including the height of the proposed structures, should be in keeping with the surrounding area/developments and commensurate with the function(s) it performs;
- (c) for optimisation of use of land, favourable consideration may be given if viability of co-existence of the proposed SPV system and uses that are in line with the long-term planning intention of the land use zoning of the Site could be satisfactorily demonstrated;
- (d) it has to be demonstrated to the satisfaction of the relevant government departments that the SPV system will not have significant adverse impacts, including but not limited to those relating to the environment, drainage, sewerage, traffic, geotechnical safety, landscape and visual and, where needed, appropriate measures are to be adopted to mitigate the impacts;
- unless with strong justifications, proposals involving extensive site formation, vegetation clearance/tree felling, excavation or filling of land/pond are generally not supported;

¹ The applicant has to demonstrate that the proposal would not affect the visual and landscape amenities/character of the area adversely by, for instance, causing a significant change of landscape resources/character, dwarfing the surrounding developments or catching the public's visual attention due to the scale and prominence of the proposed installation. Where appropriate, measures should be taken to mitigate the visual/landscape impact, for example, by peripheral screen planting.

- (f) all other statutory or non-statutory requirements of the relevant government departments must be met. Depending on the specific land use zoning of the Site, the relevant TPB guidelines should be observed, as appropriate; and
- (g) approval conditions to address the technical issues, if any, within a specified time and clauses to revoke the permission for non-compliance with approval conditions may be imposed as appropriate.

5. Background

The FiT Scheme

- 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.
- 5.2 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 install 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 end 2033. The applicant shall ensure that the design, installation, operation and maintenance of the RE system comply with the applicable laws, guidelines and safety and technical guidelines.

Suspected Unauthorised Development on Site

5.3 According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is a suspected unauthorised development. His office will closely monitor the Site according to the established procedures for further enforcement action.

6. Previous Applications

6.1 The Site is the subject of two previous applications No. A/NE-LK/76 and 102 for proposed Small House development (**Plan A-1**). They were rejected by the Committee on 9.11.2012 and 6.11.2015 respectively mainly on the consideration that the proposed development was not in line with the planning intention of the

"REC" zone; land was still available within the "Village Type Development" ("V") zone of Yim Tso Ha Village where land was primarily intended for Small House development; the applicant failed to demonstrate in the submission that the proposed development would not have adverse ecological impact on the surrounding area; and setting of undesirable precedent for similar applications in the area.

6.2 Details of the previous applications are summarized at **Appendix III** and its location is shown on **Plan A-1**.

7. Similar Application

There is no similar application within the "REC" zone on the OZP.

- 8. The Site and Its Surrounding Areas (Plans A-1 to A-2, aerial photo on Plan A-3 and site photos on Plan A-4)
 - 8.1 The Site is:
 - (a) currently occupied by solar panels without planning permission (Plan A-4);
 - (b) located to the immediate north-west of the existing village cluster of Yim Tso Ha Village (**Plan A-2**); and
 - (c) accessible by local access road.
 - 8.2 The surrounding area has the following characteristics:
 - (a) to the further east are village houses within the "V" zone of Yim Tso Ha Village (Plan A-2);
 - (b) surrounded by fallow agricultural land; and
 - (c) to the further north is Sha Tau Kok Road Shek Chung Au (Plans A-2 and A-3).

9. Planning Intention

The planning intention of the "REC" zone is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

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/North, Lands Department (DLO/N, LandsD):
 - (a) the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease demised for agricultural use without any guaranteed right of access. The applicant should make its own arrangement for acquiring access, and there is no guarantee that any adjoining Government Land will be allowed for the vehicular access of the proposed development;
 - (b) the Site is surrounded by private lots. If the applicant wishes to gain access through private lots, it should seek consent from individual lot owner concerned. The Government will accept no responsibility in such arrangement; and
 - (c) should the application be approved, the owners of the lots concerned shall apply to her office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW is approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by her office.

Traffic

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

he has no objection to the application. The vehicular access between the Site and Sha Tau Kok Road is not managed by his office. The applicant should seek comment from the responsible party.

Environment

- 10.1.3 Comments of the Secretary for the Environment (SEN):
 - (a) he strongly supports the proposed development of renewable energy (RE) systems under the subject application, especially larger-scale systems such as the one under the captioned application which is with generation capacity of 32kW, as they would be better able to meaningfully contribute to increasing the use of RE in Hong Kong;

- (b) development of RE is an important part of our efforts in combating climate change. Increasing the use of RE, a zero-carbon energy, can help decarbonise our electricity generation sector, which contributes to about two-thirds of the carbon emissions in Hong Kong. In particular, if we are to achieve a carbon reduction that is compliant with Paris Agreement's well below 2°C target in 2050, it is estimated that about 80% of our electricity would need to come from zero-carbon energy sources hence promoting the development of RE has been an integral part of our decarbonisation strategy; and
- our 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, we and the power companies have introduced the Feed-in Tariff (FiT) Schemes, providing financial incentives which can encourage the private sector to invest in distributed RE. Environment Bureau (ENB) has also introduced a series of measures to facilitate and support members of the public in developing RE. Examples include relaxing the restrictions in relation to installation of PV systems at the rooftop of village houses and introducing a new scheme called "Solar Harvest" to install small-scale RE systems for eligible schools and welfare non-Governmental organisations. The Electrical and Mechanical Services Department (EMSD) has also revamped its "HK RE Net" to provide useful information in respect of developing RE to the public. Despite our efforts 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 (with generation capacity ≤ 10 kW).

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

- (a) based on the information provided, the applicant proposes to construct a SPV system with 80 no. of solar panels in the Site of about 230 m² to generate renewable energy; and
- (b) in view of the nature and scale of the proposed development, he has no objection to the application. The applicant is reminded to strictly comply with relevant pollution control ordinances, including Waste Disposal Ordinance and Water Pollution Control Ordinance and to implement appropriate pollution control measures to minimize any potential environmental impacts during construction of the project. Reference could be made to relevant publications /guidelines including Recommended Pollution Control Clauses for Construction Contracts and Professional Persons Environmental Consultative Committee Practice Notes (ProPECC PN) 1/94, "Construction Site Drainage".

Nature Conservation

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

he has no comment on the application from nature conservation point of view.

Landscape and Visual Aspects

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

Urban Design and Visual

- (a) the current application with a site area of 230m² involves a solar energy system with the installation of 80 solar panels (each measuring 2m long x 1m width x 1.5m high); and
- (b) the vicinity of the application site is largely vegetated, with some farmland, village houses and storage uses. According to the "Assessment Criteria for Considering Applications for SPV made under Section 16 of the Town Planning Ordinance" promulgated by the Town Planning Board in July 2020, the solar energy system, including height of the structures, should be in keeping with the surrounding area. Considering the scale of the proposed development, significant visual impact is not anticipated.

Landscape Planning

- (c) from landscape planning perspective, there are no anticipated adverse impact on landscape resources;
- (d) based on aerial photo of 2019, the Site and its surroundings are abandoned agricultural land covered by grassy vegetation, situated in an area of rural landscape character. The proposed development is considered not entirely incompatible with the landscape character of the surrounding; and
- (e) no adverse impact on existing landscape resources within the site is anticipated. There is a concern that the proposed development, if approved, would set an undesirable precedent encouraging more similar proposed development within area. The cumulative impact of such approval would alter the landscape character of the surroundings.

Fire Safety

- 10.1.7 Comments of the Director of Fire Services (D of FS):
 - (a) he has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to the satisfaction of D of FS;
 - (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 to his Department for approval. The applicant should also be advised on the following points:
 - (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 FSIs to be installed should be clearly marked on the layout plans; and
 - (c) the applicant should be reminded that if the 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.

Building Matters

- 10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
 - (a) should there be any supporting structure for the solar panel system which may fall within Item 1.19 under Class I and Item 3.15 under Class III under the control of MWCS, the applicant is advised to consult Prescribed Building Professional and/or Prescribed Registered Contractor and carry out the minor works through the simplified requirements under the MWCS. If the supporting structure for the solar panel system exceeds the restriction of the above items under MWCS, the applicant shall consult building professionals for advice and make formal application for prior approval and consent from the Building Authority (BA);
 - (b) if the existing structures are erected on leased land without approval of the Buildings Department (BD) not being a New Territories Exempted House, they are unauthorised under the Building Ordinance (BO) and should not be designated for any approved use under the captioned application;
 - (c) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are unauthorised building works (UBW)

- under the Building Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (d) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing works or UBW on the Site under the BO;
- (e) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulation (B(P)R) respectively;
- (f) the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage; and
- (g) detailed comments under the BO will be provided at building plan submission stage.

Drainage

- 10.1.9 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) he has no in-principle objection to the application from the public drainage viewpoint;
 - (b) should the application be approved, a condition should be included to request the applicants to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse impact to the adjacent area; and
 - (c) the Site is in an area where no public sewerage connection is available.

District Officer's Comments

10.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The Chairman of Sha Tau Kok District Rural Committee object to the application on the ground that there are objections from the local villagers. The North District Council member of subject constituency, the Indigenous

Inhabitant Representative and Resident Representative of Yim Tso Ha and Pok Tau Ha had no comment on the application.

- 10.2 The following Government departments have no comment on the application:
 - (a) Director of Health (DH);
 - (b) Director of Electrical and Mechanical Services (DEMS);
 - (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
 - (d) Director of Leisure and Cultural Services (DLCS); and
 - (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comments Received During Statutory Publication Period (Appendix IV)

On 25.9.2020, the application was published for public inspection. During the statutory public inspection period, eight public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. A member of North District Council object to the application in that the proposed development does not in line with the principle of "single site, multiple use". World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited, Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society, one local villager and an individual also object to the application on the grounds that the proposed development is not in line with the planning intention of the "REC" zone; 'development first, application later' should not be tolerated as it would further legitimize the current misuse of the "REC" zone; the installation would cause glare to the local villagers;; the proposed development would cause adverse ecological impacts on the surrounding wetlands; the development is not compatible with the surrounding land use; and the proposed development would set an undesirable precedent for similar uses in the surrounding.

12. Planning Considerations and Assessments

- 12.1 The application is for a temporary public utility installation (SPV system) at the Site falling entirely within the 'REC' zone. The proposed temporary proposed development is not entirely in line with the planning intention of the 'REC' zone which is primarily for recreational developments for the use of the general public and development of active and/or passive recreation and tourism/eco-tourism. Nevertheless, as the proposed development is only on a temporary basis for a period of five years, the approval of the application would not frustrate the long-term planning intention of the "REC" zone.
- 12.2 The Site is situated in an area of rural landscape character comprising mainly active/ fallow agricultural land, village houses in "V" zone to the northeast, and densely vegetated woodland, warehouses and parking of vehicles to the north across the Sha Tau Kok Road Shek Chung Au (Plans A-2 and A-3). The temporary proposed development with a site area of 230m² involves a solar energy system with the installation of 80 solar panels (each measuring 2m long x 1m width x 1.5m tall) coated with anti-reflective material mounting on metal stands. Considering the scale of the proposed development, CTP/UD&L of

PlanD considers that significant visual impact is not anticipated. From landscape planning perspective, there are no anticipated adverse impact on landscape resources and the proposed development is considered not entirely incompatible with the landscape character of the surrounding. There is a concern that the approval of the application would set an undesirable precedent encouraging more similar developments within the area altering the landscape of the surrounding. In view of the small scale of the proposed development and its close proximity to the existing village cluster of Yim Tso Ha Village and Sha Tau Kok Road — Wo Hang Section to its east and north respectively, it is considered that the development would not have a significant adverse landscape impact to the surrounding environment.

- 12.3 According to the applicant, he has applied to CLP for participation in the FiT Scheme, and Acknowledgement Letter from CLP on the FiT application has been obtained. SEN strongly supports the development of RE systems, and DEP and DEMS have no objection to or no comment on the application. Other relevant departments consulted, including C for T, CE/MN of DSD, CBS/NTW of BD, D of FS and CE/C of WSD have no adverse comment on / no objection to the application.
- 12.4 The proposed temporary development is in line with the assessment criteria for considering applications for SPV system promulgated by the Board on 21.7.2020 in that the applicant has obtained CLP's letter to demonstrate technical feasibility of the proposal; height of the system is in keeping with the surrounding areas and commensurate with the function it performs; and relevant government departments advise no adverse impacts from various technical perspectives.
- 12.5 The Site is the subject of two previous applications (No. A/NE-LK/76 and 102) for proposed Small House development (**Plan A-1**) and their proposed use are different from the current application. There is no similar application for the solar energy system within the same "REC" zone on the OZP.
- 12.6 Regarding the adverse public comments as detailed in paragraph 11 and the local objections conveyed by DO(N), HAD in paragraph 10.1.10 above, the Government department's comments and the planning assessment above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the local views conveyed by DO(N), HAD and public comments in paragraphs 10.1.10 and 11 respectively, 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 on a temporary basis for a period of 5 years until

<u>6.11.2025</u>. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.5.2021;
- (b) in relation to (a) above, the implementation of drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.8.2021;
- (c) the submission of fire service installations proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.5.2021;
- (d) in relation to (c) above, the implementation of fire service installations proposal within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.8.2021; and
- (e) if any of the above planning condition (a), (b), (c) or (d) 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.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix V**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejections are suggested for Members' reference:
 - (a) the proposed temporary development is not in line with the planning intention of the "Recreation" zone which is primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the approval of the application would set an undesirable precedent for similar applications within the "REC" zone. The cumulative effect of approving such applications would result in a general degradation of the landscape character 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 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 reasons for rejection should be given to the applicant.

15. Attachments

Appendix I Appendix Ia Appendix Ib Appendix II	Application Form received on 17.9.2020 Supplementary Information received on 18.9.2020 Further Information received on 16.10.2020 Assessment Criteria For Considering Applications For Solar Photovoltaic System Made Under Section 16 Of The Town Planning Ordinance
Appendix III	Previous Applications
Appendix IV	Public comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Proposed Meter Installation Location
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

PLANNING DEPARTMENT NOVEMBER 2020