

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

APPLICATION NO. A/NE-MTL/6A

<u>Applicant</u>	:	CLP Power Hong Kong Limited represented by Kum Shing (K.F.) Construction Company Limited
<u>Site</u>	:	Government Land in D.D. 96, Ma Tso Lung, New Territories
<u>Site Area</u>	:	About 6.6m ²
<u>Land Status</u>	:	Government Land (GL)
<u>Plan</u>	:	Approved Ma Tso Lung Outline Zoning Plan (OZP) No. S/NE-MTL/3
<u>Zoning</u>	:	“Conservation Area (1)” (“CA(1)”)
<u>Application</u>	:	Proposed Public Utility Installation (Underground Cable) and Associated Excavation of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed public utility installation (underground cable) and associated excavation of land at the application site (the Site) which falls within an area zoned “CA(1)” on the OZP (**Plan A-1**). According to the Notes of the OZP, ‘Public Utility Installation’ is a Column 2 use in the “CA(1)” zone and the associated excavation of land requires planning permission from the Town Planning Board (the Board). The Site is partly paved/vegetated and partly used as a footpath.
- 1.2 The proposal includes laying of two perpendicular underground power cables with a voltage level of 380V and the associated excavation of land within an area of about 6.6m² (22m x 0.3m) and a depth of about 0.45m (**Drawing A-1** and **Plan A-2**). According to the applicant, the proposed installation is to provide electricity to a single-storey domestic structure (i.e. House No. AB-3E) by connecting it to the existing underground cable network (**Drawing A-2** and **Plans A-2** and **A-4b**).
- 1.3 In support of the application, the applicant has submitted the following documents:

(a)	Application Form received on 21.3.2022	(Appendix I)
(b)	Supplementary Information (SI) received on 6.4.2022	(Appendix Ia)
(c)	SI received on 7.4.2022	(Appendix Ib)
(d)	Further Information (FI) received on 18.7.2022	(Appendix Ic)
(e)	FI received on 3.8.2022	(Appendix Id)
(d)	FI received on 24.8.2022	(Appendix Ie)

- 1.4 On 20.5.2022, the Rural and New Town Planning Committee of the Board (the Committee) agreed to the applicant's request to defer making a decision on the application for two months to allow more time for the applicant to address departmental comments. Three FIs were received on 18.7.2022, 3.8.2022 and 24.8.2022, and 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 SI at **Appendix Ia** and FIs at **Appendices Ic** and **Ie**, as summarized as follows:

- (a) the proposed installation serves to provide electricity to a single-storey domestic structure built before 2009 (i.e. House No. AB-3E) (**Plan A-2**) at Ma Tso Lung Village. The proposed installation will connect to the meter box attached to the domestic structure of his client;
- (b) there are existing cable network laid under the concrete footpath (**Drawing A-2**); and
- (c) the proposed installation is anticipated to be completed by December 2022.

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

As the Site only involves GL, the requirements as set out in the Town Planning Board Guidelines on “Satisfying the Owner’s Consent / Notification Requirements under Section 12A and 16 of the Town Planning Ordinance” (TPB PG-No. 31A) are not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for “Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance” (TPB PG-No. 12C) is relevant to this application. According to TPB PG-No. 12C, the Site is zoned “CA(1)” falling within the Wetland Conservation Area (WCA). Relevant extracts of the Guidelines are at **Appendix II**.

5. Background

- 5.1 The subject single-storey structure (i.e. House No. AB-3E) was recorded as a ruined structure before the publication of the first statutory plan for Ma Tso Lung and Hoo Hok Wai area (i.e., the draft development permission area plan (No. DPA/NE-MTL/1)) on 30.7.2010.
- 5.2 An enforcement notice (EN), covering part of the Site and its surrounding areas, fish pond and structures (**Plan A-2**) was issued on 6.1.2022 against an unauthorized development (UD) involving tent camping ground/fishing ground/barbecue site/eating place/shop and services/storage uses. Since the UD has been discontinued, a compliance notice was issued on 13.5.2022.
- 5.3 Based on the recent site inspection, the concerned structure is currently used as a kitchen and toilets without valid planning permission. The site situation is under close monitoring

and should there be sufficient evidence that the current uses constitute an UD under the Town Planning Ordinance, appropriate enforcement action would be considered.

6. Previous Application

There is no previous application covering the Site.

7. Similar Application

There is no similar application within the same “CA(1)” zone in the Ma Tso Lung and Hoo Hok Wai area on the OZP over the past five years.

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

8.1 The Site is:

- (a) partly paved/vegetated and partly used as a footpath; and
- (b) located at the southern fringe of WCA.

8.2 The surrounding areas have the following characteristics:

- (a) the surrounding areas are predominantly occupied by temporary domestic structures, fish ponds/ponds, vacant land and woodland;
- (b) to its immediate north is a watercourse. To the further north are vacant land and a fish pond;
- (c) to its northeast are vacant/unused land, some domestic structures and a pond;
- (d) to its immediate south and southeast are two structures currently used as kitchen/convenience store/toilet and vacant land (**Plan A-2**). To the further southeast is a woodland; and
- (e) to its west is a fish pond.

9. Planning Intentions

9.1 The planning intention of the “CA(1)” zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem at Hoo Hok Wai and the rest of the Deep Bay area. The “no-net-loss in wetland” principle is adopted for any change of use within this zone. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest.

9.2 Excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. In view of the conservation value of the area within the “CA(1)” zone, planning permission from the Board for land excavation is required.

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/Yuen Long, Lands Department (DLO/YL, LandsD):

- should the application be approved, the applicant has to apply for excavation permit(s) before commencement of works. However, there is no guarantee at this stage that the excavation permit(s) would be approved. Such application(s) will be dealt with by this office acting in the capacity of the landlord at our sole discretion; and if they are approved, the approval would be subject to such terms and conditions including amongst others, the payment of fees and charges as may be imposed by LandsD.

Drainage

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

- (a) no objection to the application from public drainage viewpoint; and
- (b) part of the Site falls within the existing maintenance access of this department. Should the application be approved, the applicant should coordinate with this department before commencement of works.

Landscape

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

- (a) no objection to the application from landscape planning perspective;
- (b) the Site is located in an area of rural inland plains landscape character comprising fish ponds to the north and west within the “CA(1)” zone and woodland at southeast within the “Green Belt” zone; and
- (c) given the nature and scale of works, significant adverse impact on the surrounding landscape resources and character arising from the proposed use is not anticipated.

Environment

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

- (a) no comment on the application; and
- (b) the applicant should ensure the relevant environmental pollution control clauses would be fully implemented during construction to minimize the

environmental impacts, particularly that the Site is within WCA. A full set of the “recommended pollution control clauses for construction contracts” is available at the EPD’s website:

https://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc.html.

Electricity Safety

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

- (a) no comment on the application from electricity safety aspect; and
- (b) in the interest of public safety and ensuring the continuity of electricity supply, the applicant should be reminded to 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

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

- he has consulted the locals regarding the application. The Chairman of Sheung Shui District Rural Committee and the incumbent North District Councilor of N11 Constituency have no comment on the application. Other consultees including the Resident Representative (RR) of Ma Tso Lung (North), the RR of Ma Tso Lung (South) and the Chairman of Fung Shui Area Committee do not reply.

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

- (a) Director of Fire Services (D of FS);
- (b) Commissioner for Transport (C for T);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (f) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (g) Commissioner for Police (C for P).

11. Public Comments Received During Statutory Publication Period

On 8.4.2022, the application was published for public inspection. During the statutory public inspection period, a total of two public comments were received (**Appendix III**) from a North District Council member and an individual. While the North District Council member supports the application, an individual objects to the application mainly on the ground that the proposed installation is related to a non-conforming use (i.e. holiday camp) under Application No. A/NE-MTL/5, which was rejected by the Committee.

12. Planning Considerations and Assessments

- 12.1 The applicant seeks planning permission for a proposed public utility installation (underground cable) and the associated excavation of land at the Site zoned “CA(1)” on the OZP. The planning intention of the “CA(1)” zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem at Hoo Hok Wai and the rest of the Deep Bay area, and to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest. There is a general presumption against development within the “CA(1)” zone. According to the applicant, the proposed installation is to provide electricity to a domestic structure built before 2009 (i.e. House No. AB-3E). However, it is noted that the concerned structure was a ruined structure based on the land survey record of 30.7.2010 (i.e. before the first publication of a gazette notice of the draft DPA Plan No. DPA/NE-MTL/1), and is currently used as a kitchen and toilets without valid planning approval as revealed in a recent site inspection. It should be noted that the toilet and kitchen uses are not the existing use tolerated under the OZP nor a permitted use under the “CA(1)” zone. The applicant fails to justify in the submission that the proposed installation is to support the conservation of the ecological integrity of the wetland ecosystem or is an essential infrastructure with overriding public interest. As such, the proposed installation is considered not in line with the planning intention of the “CA(1)” zone, and there is no strong justification in the submission for a departure from the planning intention.
- 12.2 According to TPB PG-No. 12C, the Site falls entirely within the WCA. The proposed installation is not in line with the intention of the WCA. Furthermore, part of the Site and its surrounding areas, fish pond and structures were the subject of the enforcement action involving unauthorized tent camping ground/fishing ground/eating place, etc. While compliance notice was issued in May 2022, the Site and its surrounding areas are subject to close monitoring by the Planning Authority. Approval of the application would set an undesirable precedent for similar applications to provide utility installation for uses not permitted within the “CA(1)” zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape of the WCA and the Ma Tso Lung and Hoo Hok Wai area.
- 12.3 The Site is located in an area of rural inland plains landscape character comprising temporary structures, fish ponds/ponds, vacant land and woodland. In view of the small scale of the proposed installation, relevant departments consulted, including DAFC, DEP, CTP/UD&L of PlanD, CE/MN of DSD, etc. have no objection to or no comment on the application.
- 12.4 There is one public comment objecting to the application mainly on ground that the proposed installation appears to provide electricity to a non-conforming use. The planning assessments in paragraphs 12.1 to 12.2 above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into the public comments as detailed in paragraph 11, the Planning Department does not support the application for the following reasons:
- the proposed development is not in line with the planning intention of the “CA(1)” zone which is to conserve the ecological value of wetland and fish ponds which

form an integral part of the wetland ecosystem at Hoo Hok Wai and the rest of the Deep Bay area, and to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest. Besides, the proposed development does not comply with TPB PG-No. 12C. There are no strong justifications in the submission for a departure from the planning intention and the TPB-PG-No. 12C.

- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 9.9.2026, 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 Members' reference.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application Form received on 21.3.2022
Appendix Ia	SI received on 6.4.2022
Appendix Ib	SI received on 7.4.2022
Appendix Ic	FI received on 18.7.2022
Appendix Id	FI received on 3.8.2022
Appendix Ie	FI received on 24.8.2022
Appendix II	Relevant Extracts of TPB PG-No. 12C
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Existing Cable Network Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4A to A-Ab	Site Photos