

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/69

Applicant : Mr. CHAN Wan Choi

Site : Lots 1117 and 1118 in D.D. 78, Ta Kwu Ling North, New Territories

Site Area : About 642m²

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2

Zoning : “Recreation” (“REC”)

Application : Public Utility Installation (Solar Photovoltaic System)

1. The Proposal

- 1.1 The applicant seeks planning permission for a public utility installation (solar photovoltaic (SPV) system) at the application site (the Site) which falls within an area zoned “REC” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2 (**Plan A-1**). According to the Notes of the OZP, ‘Public Utility Installation’ (‘PUI’) is a Column 2 use in “REC” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.
- 1.2 According to the applicant’s submission, the SPV system comprises a total of 176 solar panels (1.7m long x 1m wide) mounted on supporting frames, covering a total area of about 300m² (about 46.7% of the site) with a height of not more than 1.5m. The SPV system is connected to the existing electrical power network of CLP Power Hong Kong Limited (CLP) under the ‘Renewable Energy (RE) Feed-in Tariff Scheme’ (FiT Scheme) with a generation capacity of 40kW, which will remain in effect until the end of 2033. On the western side of the Site, a container structure with a gross floor area (GFA) of about 30m² and a height of not more than 2.8m is erected for ancillary storage use and a canopy. A private car parking space is provided underneath the canopy. The Site is accessible via a local track from its south to Lin Chuk Road (**Plan A-2**). The layout plan submitted by the applicant is shown in **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 31.8.2023 (**Appendix I**)
 - (b) Supplementary Information received on 6.9.2023 (**Appendix Ia**)
 - (c) Further Information (FI) received on 30.10.2023[^] (**Appendix Ib**)
 - (d) FI received on 22.11.2023[^] (**Appendix Ic**)
- [^] *accepted and exempted from the publication and recounting requirements*

- 1.4 On 27.10.2023, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendix I**, as summarized below:

- (a) the applied solar photovoltaic system is in support of the FiT scheme promoted by the Government, and approval from CLP has been obtained;
- (b) all solar panels are installed within the private lots owned by the applicant without encroaching onto others' private land or Government Land (GL); and
- (c) no adverse environmental impact is anticipated from the development.

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

The applicant is one of the "current land owners" of the Site and has complied 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) by posting site notice and sending notice to the Ta Kwu Ling District Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection.

4. Assessment Criteria

The set of Assessment Criteria for Considering Applications for SPV System made under Section 16 of the Town Planning Ordinance (Assessment Criteria) was first promulgated on 21.7.2020. The latest set of Assessment Criteria which was promulgated on 7.10.2022 is at **Appendix II**.

5. Background

- 5.1 The Site is the subject of an enforcement case No. E/NE-TKLN/58 against unauthorized use for place for solar panels installation. Enforcement Notice (EN) was issued on 13.7.2023 requiring discontinuation of the unauthorized development (UD). The EN has expired on 13.10.2023 and recent site inspection revealed that the UD has not been discontinued. The Site is under monitoring according to the established procedures.
- 5.2 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 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.

- 5.3 Any non-governmental bodies or individuals, 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 with 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 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.

6. Previous Application

The Site is not subject to any previous application.

7. Similar Application

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

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

8.1 The Site is:

- (a) paved, fenced off and installed with SPV system without valid planning permission; and
- (b) accessible via a local track connecting to Lin Chuk Road.

8.2 The surrounding areas are of rural inland plains landscape character comprising active/fallow agricultural land, extended chicken farm structures, vegetated areas, tree group clusters, domestic structures, and woodlands within the "Green Belt" zone to the east (Plan A-2).

9. Planning Intention

The planning intention of the "REC" zone is primarily for low-density recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism.

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 which contains the restriction that no structures are allowed to be erected without the prior approval of the government. No right of access via GL is granted to the Site;
- (b) there are unauthorized structures erected within the Site with a meter box extended to the GL outside the Site (**Plan A-4b**). The occupation of GL without government's prior approval is an offence. The lot owners should immediately rectify the lease breaches and cease the occupation of GL. This office reserves the right to take necessary lease enforcement action against the lease breaches and take necessary land control action against the illegal occupation of GL without separate notice;
- (c) the total cover area and building height of the proposed development is about 338m² and not more than 2.8m respectively. The applicant shall be reminded that the proposed ancillary facilities such as CLP Revenue Meter Box and FIT Meter Box, etc. are also accountable for built-over area for the Short Term Waiver;
- (d) should planning approval be given to the applicant, the lot owners will need to apply to this office for a Short Term Wavier and a Short Term Tenancy to permit the structures erected/ to be erected onsite. Besides, only application for erection of temporary structure(s) will be considered. The application will be considered by the LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

Environment

10.1.2 Comments of the Secretary for the Environment and Ecology (SEE):

- (a) strongly supports the development of RE systems, including this application involving the installation of 176 solar panels for meeting the annual electricity demand of about 12 households. The application, if approved, could put largely idle land to good use while achieving our carbon neutrality target;
- (b) our policy is for the Government to take the lead in developing RE at various buildings and facilities 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 FiT Scheme, providing financial incentives which can encourage the private sector to invest in distributed RE. We have also introduced a series of measures to facilitate and support members of the public in developing RE; and

- (c) the applicant is further reminded to observe the relevant requirements as set forth in statutory provisions and various design and maintenance guidelines, and conduct regular inspections and check-ups in order to ensure the electrical and structural safety as well as resilience of solar panels amid the impact of extreme weather conditions (such as super typhoons) throughout their lifespan.

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

- (a) no objection to the application;
- (b) 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 the following:
 - Recommended Pollution Control Clauses for Construction Contracts; and
 - Professional Persons Environmental Consultative Committee Practice Notes No. 1/94 - Construction Site Drainage; and
- (c) there was no environmental complaint received in the past three years.

Nature Conservation

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

- (a) he has no comment on the subject application from nature conservation perspective; and
- (b) the Site is paved and existing solar panels could be found. It is also noted that marshes are located to the north of the Site, the applicant is advised to avoid adverse impact on the marshes during construction and operation of the proposed use.

Landscape

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

- (a) the Site is located in an area of rural inland plains landscape character comprising small houses, farmlands, vegetated areas, tree group clusters, and woodlands within the “Green Belt” zone to the east; and
- (b) vegetation clearance within the Site is observed, adverse landscape impact on existing landscape resources has taken place in 2019. Approval of the application may permanently alter the landscape character of the “REC” zone.

Fire Safety

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

- no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of his department.

Drainage

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

- (a) no objection to the application from public drainage viewpoint;
- (b) should the application be approved, approval conditions should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area. The implemented drainage facilities should be maintained at all times during the planning approval period and rectify if they are found inadequate/ineffective during operation; and
- (c) the Site is in an area where public sewer connection is not available.

Project Interface

10.1.8 Comments of the Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD):

- (a) it is noted that the proposed development is located within the proposed New Territories North (NTN) New Town under the Planning and Engineering (P&E) Study for NTN New Town and Man Kam To. The P&E Study already commenced on 29 Oct 2021. The P&E Study will guide the detailed planning and implementation of the future developments of the proposed NTN New Town. The public will be consulted on the proposals under the P&E Study in due course; and
- (b) based on the Northern Metropolis Action Agenda 2023, the Northeastern New Territories Line would be proposed to promote the development of the eastern part of the NM with the possible railway alignment / station in Heung Yuen Wai (HYW) area. The development potential of the HYW area including the Site, supporting transport and other infrastructures and community facilities, should be holistically reviewed given its location along a possible railway corridor. While the implementation programme of NTN New Town will be formulated under the P&E Study, the site formation works will likely commence soon after the completion of detailed design in next stage. Hence, subject to the land use planning in the P&E Study, the subject development, if approved, may need to be vacated for the site formation works.

District Officer's Comments

10.1.9 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Chuk Yuen object to the application;
- (b) the incumbent North District Councilor of N16 Constituency has no comment; and
- (c) the Chairman of Fung Shui Area Committee and Ta Kwu Ling District Rural Committee does not reply.

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

- (a) Commissioner for Transport (C for T);
- (b) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P);
- (e) Director of Electrical and Mechanical Services (DEMS); and
- (f) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD).

11. Public Comment Received During Statutory Publication Period

On 8.9.2023, the application was published for public inspection. During the statutory public inspection period, a total of six public comment were received, including a North District Council member indicating no comment on the application, and five individuals objecting to the application mainly on the grounds that the development is not in line with the planning intention of the "REC" zone, adverse traffic impact, and the failure to obtain all owner's consent (**Appendix III**).

12. Planning Considerations and Assessments

12.1 The application is for a SPV system involving 176 solar panels at the Site zoned "REC". The applicant states that the installation of SPV system is for his participation in the FiT Scheme introduced by the Government. The applied use is not in line with the planning intention of the "REC" zone, which is primarily for low-density recreational developments for the use of the general public. Nevertheless, the recreational or related development has not been materialized since the Site was zoned "REC" since the gazette of the first statutory plan for the area in 2010. The applied use, with the support of EEB, is in line with the Government's policy to promote the use of RE in Hong Kong, which forms part of the decarbonisation strategy in Hong Kong. SEE strongly supports the subject application and considers that approval of the application could put the vacant land to good use to generate RE which would help Hong Kong achieve the carbon neutrality target. While the Site has been used for the applied development before having obtained the planning permission, sympathetic consideration may be given taking into

account the following planning assessment.

- 12.2 According to the applicant, the SPV System has been connected to the existing electrical power network of CLP FiT Scheme with a generation capacity of 40kW, relevant approval letters issued by CLP at **Appendix I** could demonstrate the technical feasibility of the applied SPV system. DEMS and DEP have no objection to the application from electricity supply safety and environmental aspects respectively.
- 12.3 The Site is paved and existing solar panels could be found. The applied use involves erection of solar panels mounted on supporting frames covering a total area of about 300m² with a height of not more than 1.5m. While CTP/UD&L of PlanD advises that vegetation clearance within the Site is observed and approval of the application may permanently alter the landscape character of the “REC” zone, it should be noted that the Site is zoned “REC” primarily for low-density recreational development. The Site is surrounded mainly by landscape character comprising active/ fallow agricultural land, extended chicken farm structures, temporary structures, tree clusters, etc., the applied use is considered not entirely incompatible with the surrounding area. Other relevant government departments consulted, including DAFC, C for T, CE/MN of DSD and D of FS, have no objection to or no adverse comment on the application. Their technical requirements could be addressed by appropriate approval conditions as recommended in paragraph 13.2 below.
- 12.4 The applied use is generally in line with the Assessment Criteria (**Appendix II**) for considering applications for SPV system in that the applicant has obtained CLP’s approval to demonstrate the technical feasibility of the SPV system; height of the applied development is in keeping with the surrounding areas and commensurate with the function it performs; and relevant departments consulted generally have no adverse comments on the application from various technical perspectives. Taking into account the policy support from EEB, sympathetic consideration may be given to the current application.
- 12.5 Regarding the local comments conveyed by DO(N) of HAD and the public comments on the application as detailed in paragraphs 10.1.9 and 11 above, government departments’ comments and planning assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, 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 until **22.12.2027**, 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 following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and

- (b) the design and provision of water supplies for fire-fighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix IV**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the applied use is not in line with the planning intention of the "REC" zone, which is for low-density recreational developments for the use of the general public. It 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.

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 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 date when the validity of the permission should expire.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form with attachments received on 31.8.2023
Appendix Ia	Supplementary Information received on 6.9.2023
Appendix Ib	FI received on 30.10.2023
Appendix Ic	FI received on 22.11.2023
Appendix II	<i>Assessment Criteria For Considering Applications For Solar Photovoltaic System Made Under Section 16 of The Town Planning Ordinance</i>
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos