

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-CWBN/74

- Applicant** : CLP Power Hong Kong Limited represented by Kum Shing (K.F) Construction Company Limited
- Sites** : Government Land (G.L.) in D.D. 238 near Hang Hau Wing Lung Road, Sai Kung
- Site Area** : About 10m²
- Land Status** : G.L.
- Plan** : Approved Clear Water Bay Peninsula North Outline Zoning Plan (OZP) No. S/SK-CWBN/6
- Zoning** : Conservation Area” (“CA”)
- Application** : Proposed Public Utility Installation (Poles, Stays and Underground Cable) and Associated Excavation of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed public utility installation (poles, stays and underground cable) and associated excavation of land at the application sites (the Sites), which fall within an area zoned “CA” on the approved Clear Water Bay Peninsula North OZP No. S/SK-CWBN/6 (the OZP) (**Plan A-1**). According to the Notes of the OZP, ‘Public Utility Installation’ and excavation of land within the “CA” zone require permission from the Town Planning Board (the Board).
- 1.2 The Sites are located at the edge of an existing road and on an inaccessible vegetated natural slope covered with shrubs/trees. According to the applicant, the proposed installation, which is for provision of electricity to a proposed farm to the south of the Sites within the same “CA” zone, includes a Low Voltage (LV) underground cable (about 1m(L) x 1m(W)), three poles (about 1m(L) x 1m(W) x 7.2m(H) each), and six pole erection stays (about 1m(L) x 1m(W)) (**Plan A-2**). The area for proposed excavation works under the subject application is about 10m² with depths ranging from about 1.2m to 1.8m. Upon completion of the proposed

works, the Sites will be backfilled to the original level.

1.3 The location plans and section plans of the proposed installation submitted by the applicant are at **Drawings A-1 to A-4**.

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application form and supplementary information (**Appendix I**)
received on 20.6.2023 and 23.6.2023
- (b) Further information (FI) received on 23.8.2023 (**Appendix Ia**)
[accepted and exempted from publication and recounting requirements]

1.5 On 11.8.2023, 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 in **Appendices I and Ia** and summarised as follows:

- (a) the proposed installation is for provision of electricity supply to a proposed farm at Lots No. 50 and 53 in D.D. 238 near Hang Hau Wing Lung Road to the south of the Sites (**Plan A-2**);
- (b) there is no possible alternative sites for the proposed installation as the surrounding areas are within the "CA" zone;
- (c) a tree protection zone (TPZ) would be delineated in accordance with the required perimeter to protect the trees near the Sites during construction stage. Sturdy and visible fencing would be installed to minimise disturbance to the area within the TPZ;
- (d) the proposed installation will bring minor impact on the existing landscape. No visual impact would be incurred. The proposal is considered to be the best method with the least environmental impact; and
- (e) for excavation works, excavator will be the first choice if circumstances permit. Otherwise, excavation works will be conducted by hand tools to minimise potential impact on the existing trees.

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

As the Sites involve G.L. only, the "owner's consent/notification" requirements as set out in the "Town Planning Board Guidelines on Satisfying the 'Owner's Consent/Notification' Requirements under Sections 12A and 16 of the Town Planning Ordinance" (TPB PG-No. 31A) are not applicable to the application.

4. Previous Application

There is no previous application at the Sites.

5. Similar Applications

- 5.1 There are five similar applications (No. A/SK-CWBN/37, 58, 65, 67 and 70) for proposed public utility installation and associated excavation and/or filling of land within the same or other “CA” zones in the adjacent areas on the OZP.
- 5.2 Four of the similar applications (No. A/SK-CWBN/37, 65, 67 and 70) for proposed public utility installation (pole with transformer, pillar box and underground cables/underground cable/pole with transformer and underground cables) and associated excavation of land within areas zoned “CA”, “Green Belt”, “Village Type Development” and “Coastal Protection Area” were approved with/without condition(s) by the Committee between 2016 to 2023. The applications were approved mainly on the grounds that the proposed works were essential installations for supplying electricity/reinforcing electricity supply for the nearby village house and/or permitted developments; no tree felling was involved in the proposal; and no adverse impacts on surrounding areas were anticipated.
- 5.3 One application (No. A/SK-CWBN/58) for proposed public utility installation (LV poles, underground cable and overhead cable) and associated excavation and filling of land within the “CA” zone, which was intended to supply electricity to nearby farms within private lots, was rejected by the Committee on 15.5.2020 mainly on the grounds that the proposal was not in line with the planning intention of the “CA” zone in that the applicant failed to demonstrate that the proposed installation was an essential infrastructure project and approval of the application would set an undesirable precedent for other similar applications within the “CA” zone.
- 5.4 Apart from the above processed similar applications, a similar application (No. A/SK-CWBN/75) for proposed public utility installation (poles and underground cable) with associated excavation of land in another “CA” zone on the OZP, which is intended to supply electricity to an adjacent proposed farm, is scheduled for consideration by the Committee in the same meeting.
- 5.5 Details of these applications are summarised in **Appendix II** and their locations are shown on **Plan A-1**.

6. The Sites and Their Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plans A-4a and A-4b)

- 6.1 The Sites:
 - (a) are located in the fringe of the “CA” zone;
 - (b) the underground cable and an adjacent pole and stays are located at the edge of Hang Hau Wing Lung Road and near a vegetated slope; and

- (c) the remaining two poles and stays are located on an inaccessible well-vegetated natural slope covered with shrubs/trees.

6.2 The surrounding areas have the following characteristics:

- (a) to the immediate west is Hang Hau Wing Lung Road;
- (b) to the south are Lots No. 50 and 53 in D.D. 238, which are occupied by the proposed farm for which the proposed utility installation is intended to serve. The proposed farm is currently not in active agricultural use and is mainly covered with natural vegetation with a temporary structure (**Plans A-3 and A-4a**);
- (c) to the north and further northeast are vegetated slopes which are partly occupied by farmland and temporary structures within private lots zoned “CA”; and
- (d) to the further south-west are existing low-density residential developments along Hang Hau Wing Lung Road and the existing village clusters of Ng Fai Tin.

7. Planning Intention

- 7.1 The planning intention of the “CA” zone is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in the “CA” zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.
- 7.2 As stated in the Explanatory Statement of the OZP, 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” zone, permission from the Board is required for such activity.

8. Comments from Relevant Government Departments

- 8.1 The following government departments have been consulted and their views are summarised as follows:

Land Administration

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

- (a) no objection to the application subject to the applicant’s compliance of the Excavation Permit (EP) requirements and conditions before

commencement of the work;

- (b) there was an EP application for the purpose of LV cable laying, poles and stays erection submitted by the applicant. The EP has been issued by his office on 9.6.2022 under which the applicant is required to consult the Planning Department for the area within “CA” zone before commencement of works. The EP was extended on 7.7.2023 and is valid till 7.2.2024;
- (c) the Sites fall within the boundary of slope feature No. 12NW-C/F99(1) and Government Land Licence No. S12038 for the purpose of unimproved grazing and grass cutting and the growing of pine trees on a non-commercial basis. The applicant is required to consult the slope maintenance party and the concerned licensee prior to the commencement of the works; and
- (d) comments are included in the advisory clauses at **Appendix IV**.

Nature Conservation

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

- (a) the proposed installation at the Sites would be located in well-vegetated area with trees. Despite the applicant’s claim that no tree felling is required, it is noted that the works would likely affect some trees in the vicinity including individuals of a protected species, *Aquilaria sinensis* (土沉香), close to two of the proposed poles (**Plan A-2**). The applicant should clarify and elaborate on how the vegetation impact could be avoided and/or minimised; and
- (b) it is noted that a TPZ is proposed to avoid impact on the existing trees and no works should be allowed within the TPZ. Nevertheless, it seems that the proposed works area of two of the proposed poles (**Drawing A-1**) would be fenced off by the proposed TPZ. The applicant fails to demonstrate the extent of TPZ on a plan for sake of clarity or explore alternative measures.

Landscape

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

- (a) no tree survey and landscape proposal are provided by the applicant to demonstrate that the proposed public utility installation would not generate adverse impact on the surrounding trees and natural environment; and
- (b) other comments are included in the advisory clauses at **Appendix IV**.

Environment

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

no objection to the application in view of the small scale and nature of the proposed installation with excavation of land, which will unlikely cause major pollution.

Geotechnical

8.1.5 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) no comment on the application; and
- (b) other comments are included in the advisory clauses at **Appendix IV**.

Electricity Supply

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

- (a) no comment on the application from electricity supply safety perspective; and
- (b) other comments are included in the advisory clauses at **Appendix IV**.

Fire Safety

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

- (a) no comment on the application; and
- (b) other comments are included in the advisory clauses at **Appendix IV**.

8.2 The following government departments have no objection to or no comment on the application:

- (a) Commissioner for Transport;
- (b) Chief Highway Engineer/New Territories East, Highways Department;
- (c) Chief Engineer/Mainland South, Drainage Services Department (CE/MS,DSD);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) District Officer/Sai Kung, Home Affairs Department (HAD);
- (f) Chief Engineer (Works), HAD; and
- (g) Director of Leisure and Cultural Services.

9. Public Comment Received During Statutory Publication Period

During the statutory publication period, one public comment was received from an individual objecting to the application mainly on the grounds that the applicant should clarify the end use for which the proposed installation is to serve, as the end use will be detrimental to the preservation of local environment and the planning intention of the “CA” zone (**Appendix III**).

10. Planning Considerations and Assessments

10.1 The application is for proposed public utility installation (poles, stays and underground cable) and associated excavation of land within an area zoned “CA” on the OZP. The planning intention of the “CA” zone is to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes. There is a general presumption against development in the “CA” zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted. Besides, excavation of land may cause adverse drainage and environmental impacts on the surrounding areas. According to the applicant, the proposed installation is for provision of electricity to a proposed farm to the south of the Sites within the same “CA” zone. The proposed farm is currently not in active agricultural use and is mainly covered with natural vegetation with a temporary structure (**Plan A-3**). The applicant has neither provided information on the nature and operation of the proposed farm nor any information demonstrating that the proposed utility installation is required and necessary for the proposed farm thereat. As such, the applicant fails to demonstrate that the proposed installation with excavation of land is an essential infrastructure project with overriding public interest which warrants a departure from the planning intention of the “CA” zone.

10.2 The Sites are located at the edge of an existing road and on an inaccessible well-vegetated natural slope covered with shrubs and trees in the “CA” zone (**Plans A-3 and A-4a**). According to the applicant, no tree felling is required for the proposed installation. However, DAFC advises that the proposed works would likely affect some trees in the vicinity including individuals of a protected species, *Aquilaria sinensis* (土沉香) (**Plan A-2**) near two of the proposed poles. CTP/UD&L, PlanD advises that no tree survey and landscape proposal are provided by the applicant to demonstrate that proposed installation would not generate adverse impact on the surrounding trees and natural environment. The applicant fails to elaborate on how the landscape impact could be avoided and/or minimised and demonstrate that the proposal would not generate adverse impact on the surrounding trees and natural environment.

10.3 Other concerned government departments including DEP, CE/MS, DSD, DEMS, and H(GEO), CEDD have no object to or no adverse comment on the application from environment, drainage, electricity supply safety and geotechnical aspects respectively.

10.4 Four similar applications (No. A/SK-CWBN/37, 65, 67 and 70) were approved

with/without condition(s) between January 2016 and March 2023 and one similar application (No. A/SK-CWBN/58) was rejected by the Committee in 2020 for the reasons stated in paragraphs 5.1 to 5.3 above. The planning circumstances of the current application are similar in nature with the rejected application as the applicant fails to demonstrate the necessity of the proposed installation. In view of the above, rejection of the current application is generally in line with the Committee's previous decision.

- 10.5 Regarding the public comment objecting to the application, the departmental comments in paragraph 8 above and the planning assessments in paragraphs 10.1 to 10.4 above are relevant.

11. Planning Department's Views

- 11.1 Based on the assessments made in paragraph 10 and having taken into account the public comment in paragraph 9 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed installation with excavation of land is not in line with the planning intention of the "Conservation Area" ("CA") zone which is primarily to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes. There is a general presumption against development within the "CA" zone. The applicant fails to demonstrate that the proposed installation is an essential infrastructure project with overriding public interest that warrants a departure from the planning intention of the "CA" zone; and
- (b) the applicant fails to demonstrate that the proposed installation with excavation of land would not generate adverse landscape impact on the application sites and the surrounding natural environment.

- 11.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 13.10.2027, 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 recommended advisory clauses are attached at **Appendix IV**.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 12.3 Alternatively, 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.

13. Attachments

Appendix I	Application form and supplementary information received on 20.6.2023 and 23.6.2023
Appendix Ia	FI received on 23.8.2023
Appendix II	Similar Applications
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawings A-1 and A-2	Location Plans submitted by the applicant
Drawings A-3 and A-4	Section Plans submitted by the applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2023**