

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/SK-PK/287

<u>Applicant</u>	:	CLP Power Hong Kong Limited (CLP) represented by Kum Shing (K.F) Construction Company Limited
<u>Sites</u>	:	Government Land (G.L.) in D.D. 220 near Keng Pang Ha Road, Sai Kung
<u>Site Area</u>	:	About 26m ²
<u>Land Status</u>	:	G.L.
<u>Plan</u>	:	Approved Pak Kong and Sha Kok Mei Outline Zoning Plan (OZP) No. S/SK-PK/11
<u>Zoning</u>	:	“Conservation Area” (“CA”)
<u>Application</u>	:	Proposed Public Utility Installation (Poles and Underground Cables) and Associated Excavation of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed public utility installation (poles and underground cables) and associated excavation of land at the application sites (the Sites), which fall within an area zoned “CA” on the approved Pak Kong and Sha Kok Mei OZP (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 along the edge of Keng Pang Ha Road and on a soil path covered with shrubs and grass (**Plans A-2 and A-4a**). According to the applicant, the proposed installation, which is for supplying electricity to an organic farm to the north of the Sites within the same “CA” zone, includes two poles (1m(L) x 1m(W) x 7.2m(H) x 1.8m(D) each) with four stays (1m(L) x 1m(W) x 1.8m(D) each), two underground cables (1m(W) x 1.2m(D) each, with a total length of 20m) and overhead wire. The area for the associated excavation works is about 26m² (1.2m to 1.8m in depth) (**Plan A-2**). Upon completion of the proposed works, the Sites will be backfilled to the original level. The layout plan, sections and alignment of overhead wire submitted by the applicant are at **Drawings A-1 to A-5**.

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

- | | |
|--|---------------|
| (a) Application form received on 23.6.2023 | (Appendix I) |
| (b) Further information (FI) received on 5.7.2023* | (Appendix Ia) |
| (c) FI received on 24.7.2023 and 27.7.2023* | (Appendix Ib) |
| (d) FI received on 15.8.2023* | (Appendix Ic) |
| (e) FI received on 6.10.2023* | (Appendix Id) |

**accepted and exempted from publication and recounting requirements*

1.4 On 11.8.2023, the Rural and New Town Planning Committee (the Committee) agreed to defer making a decision on the application for two months as requested by the applicant.

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 and FIs at **Appendices I to Id**. They can be summarised as follows:

- (a) the proposed installation is for supplying electricity to Lots 152 S.A and 152 RP in D.D. 220 for agricultural purpose, where an organic farm is in operation. The total area of the farm is 728m² and the proposed installation will provide electricity for the following uses:-
 - (i) lighting – as the concerned farm is situated at the hillside, for safety reason, lighting is required for working at dusk/ night;
 - (ii) irrigation – as the concerned farm is at a higher terrain than the nearby watercourse. Electricity is required for pumping water from the watercourse for irrigation purpose;
 - (iii) ventilation – electricity is needed for the running of ventilation system at the two tents and the storeroom, which are for labour resting and storage purpose;
 - (iv) farming tools and machines – electricity is required for the running of farming tools and machines such as weeder and boiler;
- (b) the operation of the concerned farm involves accepting appointments by the general public to visit and experience farming through activities such as sowing, weeding, manuring, irrigating and harvesting crops, with a view to raising awareness of environmental protection and cherishing food amongst the participants. The concerned farm grows medicinal herbs in collaboration with herbal medicine centre to help people in need. Greenhouse is also planned to be erected in the concerned farm in the future to demonstrate methods of protecting soil, using pesticides and organic farming to the public;
- (c) the owner of the concerned farm has tried using solar energy but it cannot provide a steady supply of electricity. There is no other possible alternative but to propose a new installation within the “CA” zone for electricity supply to the farm; and

- (d) the proposed installation will only bring minor impact on the existing landscape in the area. A distance of at least 1.5m from existing trees will be set up as Tree Protection Zone, and fencing with clear signs will be installed at its periphery to avoid entrance and disturbance. The excavation works will be carried out by hand tools to minimise any potential impacts on the existing trees nearby. There will be no visual impact incurred from the erection of poles.

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. Background

- 4.1 The Sites are not subject to any active planning enforcement action. Nevertheless, the northern Site (i.e. where one of the proposed poles will be located) together with Lots 152 S.A and 152 RP in D.D. 220 (i.e. the concerned farm) and the adjoining G.L. were the subject of a planning enforcement case against unauthorized developments involving filling and excavation of land (**Plan A-2**). Subsequent to the Enforcement Notice and Reinstatement Notice issued in February and May 2022 respectively, the unauthorized developments had been discontinued and the concerned site had been reinstated, with Compliance Notices issued in November 2022. The Planning Department will continue to monitor the situation and take appropriate action.
- 4.2 Besides, according to the District Lands Officer/Sai Kung, LandsD, lease enforcement actions were carried out against the unauthorized structures at Lot 152 RP in D.D. 220 and a warning letter dated 19.9.2022 was issued requesting the owner of lot to purge the breach of lease. Their office has yet received any response from the lot owner.

5. Previous Applications

Parts of the Sites were the subject of two previous applications. Application No. A/SK-PK/263 was for proposed excavation and filling of land for permitted agricultural use at the concerned farm and adjoining G.L.. The proposed works involved excavation of an area of 720m² with 1m in depth, and filling of an area of 428.23m² with 1.2m in height. Application No. A/SK-PK/279 was for proposed utility installation for private project (meter room and underground cable for permitted agricultural use) and associated excavation of land, which was for supplying electricity to the concerned farm for irrigation purpose. The proposal included an electricity meter room and underground cables passing through an area covered with dense vegetation, and the proposed excavation area was about 46m² with a depth of about 1m. These two applications were rejected by the Committee in 2021 and 2023 respectively mainly for the reasons that the excavation of land/ the proposed installations with excavation of land were not in line with the planning intention of the “CA” zone and the applicant failed to demonstrate no

adverse environmental and/or landscape impacts on the application sites and their surrounding areas. For the latter application, the applicant also failed to demonstrate that the proposed installation was an essential infrastructure project with overriding public interest. Details of the previous applications are summarised in **Appendix II** and their locations are shown on **Plans A-1** and **A-2**.

6. Similar Applications

- 6.1 There are ~~four~~ **three** similar applications (No. A/SK-PK/91, ~~275~~, 286 and 288) for proposed public utility installation (electricity supply related) and associated excavation of land within the same “CA” zone on the OZP.
- 6.2 ~~Two~~ **One** similar applications (No. A/SK-PK/91 ~~and 275~~) for proposed 15 electricity poles, overhead transmission lines and underground cable trench, ~~and for proposed public utility installation (pole with transformer and underground cable) and associated excavation of land were~~ **was** approved with ~~without~~ condition by the Committee in 1999 ~~and 2022 respectively~~ mainly on the grounds that the proposed installations ~~were~~ **was** for improving the reliability of electricity supply to the Sai Kung area ~~and for supplying electricity to the nearby village houses~~, which could be considered as **an** essential infrastructure projects.
- 6.3 Two similar applications (No. A/SK-PK/286 and 288) for proposed public utility installation (underground cable(s)) and associated excavation of land were rejected by the Committee in 2023 mainly for reasons that the proposed installation with excavation of land were not in line with the planning intention of the “CA” and the applicants failed to demonstrate that the proposed installations were essential infrastructure projects with overriding public interest that warrants a departure from the planning intension of “CA” zone.
- 6.4 Details of these applications are summarised in **Appendix III** and their locations are shown on **Plan A-1**.

7. 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 to A-4c)

7.1 The Sites are:

at the edge of Keng Pang Ha Road covered with shrubs and grass, and on a soil path which was subject to a previous planning enforcement case against unauthorized development as mentioned in paragraph 4.1 above.

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate north is the concerned farm (i.e. Lots 152 S.A and 152 RP in D.D. 220 named ‘Nam Shan Sai Kung Organic Farm’) for which the proposed installation is intended to serve. Plots of cultivated land and temporary structures including tents, huts and a pavilion are found within the concerned farm (**Plans A-4a** and **A-4c**);

- (b) to the north, west and east are predominately hillside mature woodland. A natural stream course is located to the further north of the Sites; and
- (c) to the south and southeast are some village houses.

8. Planning Intention

- 8.1 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 this 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.
- 8.2 As stated in the Explanatory Statement of the OZP, filling and 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 this zone, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (a) no objection to the application;
- (b) the proposed public utility installation on G.L. is permitted under the Block Licence issued to the applicant;
- (c) an excavation permit application for the proposed cable laying, pole and stays erection at the Sites submitted by the applicant is received and under processing; and
- (d) other comments are included in the advisory clauses at **Appendix V**.

Nature Conservation

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

- (a) no comment on the application; and

- (b) the Sites for proposed utility installation are covered with common plant species.

Landscape

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

- (a) no comment on the application from landscape planning perspective;
- (b) the Sites are situated in an area of miscellaneous rural fringe landscape character predominated by woodland and houses as observed from the aerial photo in 2022. The proposed use is considered not incompatible with the surrounding environment;
- (c) with reference to site photos dated 30.6.2023, it is noted that the proposed area for cabling works is located at the edge of a shrubland area along Keng Pang Ha Road, which is densely covered by wild planting of groundcover as well as shrubs, and existing trees are observed. According to the applicant, the work site and the proposed installation will be kept at least 1.5m from any existing tree and the potential impacts will be minimised; and
- (d) other comments are included in the advisory clauses at **Appendix V**.

Environment

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

- (a) no objection to the application;
- (b) in view of the nature and scale of proposed works, no adverse environmental impact is anticipated with implementation of appropriate pollution control measures;
- (c) it is noted that part of the Sites are located in close proximity (approx. 40m) to a natural stream. The applicant should implement appropriate pollution control measures during construction to minimise any potential environmental impact especially to avoid potential water quality impact on the stream. The recommended pollution control measures are detailed in the advisory clauses at **Appendix V**; and
- (d) their office had not received any environmental complaint regarding air quality and noise impacts against Lots 152 S.A and 152 RP in D.D. 220 (i.e. the concerned farm) in the past three years.

Water Supply

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

- (a) no objection to the application; and
- (b) other comments are included in the advisory clauses at **Appendix V**.

Electricity Supply Safety

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

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

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

- (a) Commissioner for Transport;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Chief Engineer/Mainland South, Drainage Services Department;
- (e) Director of Fire Services;
- (f) Chief Engineer (Works), Home Affairs Department (HAD); and
- (g) District Officer (Sai Kung), HAD.

10. Public Comments Received During Statutory Publication Period

Five public comments from individuals opposing to the application were received during the statutory publication period. The opposing comments were mainly on the grounds that the proposed utility installation claimed to serve the agricultural use at the adjacent lots is questionable, unauthorized uses and improper activities such as karaoke and cooking during weekends are found at the adjacent lots, and the proposed utility installation will encourage continuation of such activities and exacerbate the noise, air, water quality and traffic impacts caused by the adjacent lots on the surrounding areas and residents (**Appendix IV**).

11. Planning Considerations and Assessments

11.1 The application is for proposed public utility installation (poles and underground cables) and associated excavation of land at the Sites which fall 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 this 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 impacts on the adjacent areas and adverse impacts on the natural environment. According to the applicant, the proposed installation is for supplying electricity to the concerned farm to the north of the Sites within the same “CA” zone for agricultural purpose (**Plan A-2**). Nevertheless, it is noted that the operation of the concerned farm involves accepting appointments by the general public to visit and experience farming through activities such as sowing, weeding, manuring, irrigation and harvesting crops, which is akin to a hobby farm. Hobby farm is regarded as ‘Place of Recreation, Sports and Culture’, which is neither a Column 1 nor Column 2 use within the “CA” zone, and that no planning permission for temporary hobby farm use has been granted at the concerned farm. The applicant fails to provide strong justification to demonstrate that the proposed installation with excavation of land is an essential infrastructure project with overriding public interest that warrants a departure from the planning intention of “CA” zone.

- 11.2 Whilst the Sites are situated in an area of miscellaneous rural fringe landscape character predominated by woodland and houses, the proposed installation is located along the edge of Keng Pang Ha Road covered with shrubs and grass, and on a soil path. According to the applicant, the proposal will only bring minor impact on the existing landscape in the area and a Tree Protection Zone will be set up to protect the existing trees. CTP/UD&L, PlanD has no comment on the application from landscape planning perspective. DAFC also has no comment on the application as the location for the proposed installation is covered with common plant species. Other concerned government departments including DEP, CE/MS, DSD, and DEMS have no objection to or no adverse comment on the application from environmental, drainage and electricity supply safety aspects respectively.
- 11.3 Parts of the Sites were the subject of two previous applications (No. A/SK-PK/263 and 279) for excavation and filling of land, and utility installation for private project with associated excavation of land respectively, which were rejected by the Committee as mentioned in paragraph 5 above (**Plan A-2**). There were two similar applications approved and two similar applications rejected by the Committee as mentioned in paragraph 6 above (**Plan A-1**). The circumstances of the current application are similar to those of the rejected previous application (No. A/SK-PK/279) and the two rejected similar applications (No. A/SK-PK/286 and 288) in that the applicants failed to demonstrate that the proposed installations with associated excavation of land were essential infrastructure projects with overriding public interest that warranted a departure from the planning intention of “CA” zone. In view of the above, rejecting of the current application is generally in line with the Committee’s previous decisions.
- 11.4 Regarding the public comments objecting to the application, the departmental comments in paragraph 9 and the planning consideration and assessments in paragraph 11.1 to 11.3 above are relevant. Regarding concerns on environmental and traffic impacts arising from the activities at the adjacent lots, it should be noted that such activities are subject to the control of relevant regulations.

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 reason:

the proposed installation with excavation of land is not in line with the planning intention of the "Conservation Area" ("CA") zone which 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 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.

- 12.2 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 V**.

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, 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. **Attachments**

Appendix I	Application Form received on 23.6.2023
Appendix Ia	FI received on 5.7.2023
Appendix Ib	FI received on 24.7.2023 and 27.7.2023
Appendix Ic	FI received on 15.8.2023
Appendix Id	FI received on 6.10.2023
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Section Plan (Pole)
Drawing A-3	Section Plan (LV Cable Trench)

Drawings A-4 and A-5

Plan A-1

Plan A-2

Plan A-3

Plans A-4a to 4c

Existing Cable and Proposed Alignment of Overhead
Cable

Location Plan

Site Plan

Aerial Photo

Site Photos

**PLANNING DEPARTMENT
OCTOBER 2023**