

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/486

- Applicant** : 黃國榮 (Mr.) represented by 得寶實業公司
- Site** : Lots 2663 S.G (Part) and 2663 S.H (Part) in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 208m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/11
- Zoning** : “Green Belt” (“GB”)
- Application** : Temporary Public Utility Installation (Solar Photovoltaic System) for a Period of 3 Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary public utility installation (solar photovoltaic system) for a period of three years and associated filling of land at the application site (the Site) (**Plan A-1a**) zoned “GB” on the OZP. According to the Notes for the “GB” zone, both ‘Public Utility Installation’, which is a Column 2 use, as well as filling of land require planning permission from the Town Planning Board (the Board). The Site is currently concrete-paved, erected with a temporary structure mounted with solar panels, and used for parking of vehicles without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is accessible from Tin Wah Road via a local track. As shown on the layout plan at **Drawing A-1**, the solar photovoltaic system involves an open shed (about 4m in height and with a total floor area of about 208m²), on the roof of which a total of 104 solar panels (each of about 2m long × 1m wide × 0.03m thick) are mounted. Beneath the open shed is a meter room¹ of about 4m in height and with a floor area of about 5m²). The total generation capacity of the solar photovoltaic system is 39kW. The solar photovoltaic system is connected to the existing electrical power network of CLP Power Hong Kong Limited (CLP Power) under the ‘Renewable Energy Feed-in Tariff Scheme’ (FiT Scheme). All electricity generated will be sold

¹ The meter room comprises direct current (DC) junction box, alternating current(AC)/DC inverter, isolation transformer, AC power distribution box and electricity meter, all of which are to facilitate the transmission of electricity generated by the solar panels to the electrical power network of CLP Power (**Drawing A-3**). The meter room is entirely covered by the open shed, and hence not counted as an independent structure.

to CLP Power on commercial basis. The applicant has obtained a letter from CLP Power which confirmed the technical feasibility of the proposal.

1.3 Moreover, the applicant would like to regularise the land filling works on the Site. As shown on the land filling plan at **Drawing A-2**, the applied land filling works covers the entire Site (about 208m²) which has been filled with concrete of about 0.2m in depth.

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

- | | | |
|-----|---|----------------------|
| (a) | Application Form with attachments received on 21.8.2023 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 22.8.2023 | (Appendix Ia) |
| (c) | Further Information (FI) received on 18.9.2023* | (Appendix Ib) |
| (d) | FI received on 22.9.2023* | (Appendix Ic) |

** accepted and exempted from publication requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments to the Application Form at **Appendix I**. They can be summarised as follows:

- (a) solar photovoltaic system would not generate greenhouse gases, noise and other forms of pollution. It is cost-effective in that it incurs zero fuel cost as well as low operation and maintenance costs, whilst having long expected service life;
- (b) the Site falls within the 'Village Environs' of Sha Kong Wai. Filling of land by concrete has been undertaken to facilitate Small House development on the Site;
- (c) the applied development is temporary in nature and can easily be reinstated. It would not jeopardise the long-term planning intention;
- (d) the applied development does not involve tree felling, filling of pond, excavation of land and blockage of stream. No parking or loading/unloading spaces would be provided at the Site. No lighting would be installed, and no waste would be generated. The applied development would not generate adverse environmental and ecological impacts; and
- (e) the applied development is compatible with the surrounding area. It can also improve the local environment by preventing dumping or fly-tipping at the Site.

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

The applicant is not a "current land owner" but 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 Ordinance (TPB PG-No. 31A) by posting site notice and sending notification letter to the Ping Shan Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines for ‘Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are detailed at **Appendix II**.

5. Assessment Criteria for Considering Applications for Solar Photovoltaic System

The ‘Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance’ first promulgated on 21.7.2020 is relevant to the application. The latest set of Assessment Criteria which was promulgated on 7.10.2022 is at **Appendix III**.

6. Background

The FiT Scheme

- 6.1 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. It aims to encourage the private sector to consider investing in renewable energy 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 renewable energy systems and generation.
- 6.2 Any non-governmental bodies or individuals, who as customers of the relevant power company plan to install distributed renewable energy 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 FiT Scheme, an applicant may make submission to the relevant power company direct with the required documents including the preliminary layout diagram and other information of the proposed renewable energy 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 renewable energy system to the power grid. The successful applicant would be offered the FiT rate throughout the project life of the renewable energy system until end-2033. The applicant shall ensure that the design, installation, operation and maintenance of the renewable energy system comply with the applicable laws, guidelines and safety and technical guidelines.

Suspected unauthorized development

- 6.3 The public utility installation (solar photovoltaic system), parking of vehicles and filling of land on the Site would be subject to planning enforcement action.

7. Previous Applications

- 7.1 The Site is involved in four previous applications for proposed house (NTEH – Small House) and temporary public vehicle park (private cars). All of them were rejected

by the Rural and New Town Planning Committee (the Committee) of the Board between 2008 and 2022. Details of the previous applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1b**.

- 7.2 Applications No. A/YL-LFS/175, 176 and 191 for proposed house (NTEH – Small House) were rejected by the Committee between 2008 and 2009. The consideration of these previous applications are not relevant to the current application.
- 7.3 Application No. A/YL-LFS/417 for temporary public vehicle park for private cars for a period of three years and associated filling and excavation of land was rejected by the Committee in 2022 mainly on grounds of being not in line with the planning intention of the “GB” zone and TPB PG-No. 10; and failure to demonstrate no adverse landscape impact.
- 7.4 Compared with the last previous application, the current application is submitted by the same applicant for a different use.

8. Similar Application

There is no similar application for solar photovoltaic system within the subject “GB” zone.

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

9.1 The Site is:

- (a) concrete-paved, erected with an open shed mounted with solar panels, and used for parking of vehicles without valid planning permission;
- (b) accessible from Tin Wah Road located to its south via a local track.

9.2 The surrounding areas have the following characteristics. Some of the uses are suspected unauthorized developments (UD) subject to planning enforcement action:

- (a) to the north is shrubland. To the further north and further west are shrubland intermixed with graves falling within the Permitted Burial Ground No YL/59;
- (b) to the immediate east are a car park and parking of vehicles. To the further east and south are village houses within the “Village Type Development” (“V”) zone and the recognized village of Sha Kong Wai, intermixed with storage yard, parking of vehicles, cultivated agricultural land and unused land; and
- (c) to the immediate west are parking of vehicles, an open storage yard and woodland.

10. Planning Intention

- 10.1 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as

well as to provide passive recreational outlets. There is a general presumption against development within this zone.

- 10.2 As filling of land/pond or excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

11. Comments from Relevant Government Bureau/Departments

- 11.1 Apart from the government bureau/departments as set out in paragraph 11.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices V and VI** respectively.
- 11.2 The following government bureau/departments have adverse comments on the application:

Environment

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

According to the ‘Assessment Criteria for Considering Applications for Solar Photovoltaic System’ as promulgated by the Board on 7.10.2022, there is a general presumption against development in the “GB” zone. He has reservation on the proposed development as the applicant failed to demonstrate that the solar photovoltaic system would not adversely affect the landscape character/resources of the “GB” zone and jeopardise the integrity of the zone as a buffer.

Landscaping

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

- (a) The Site is situated in area of miscellaneous rural fringe predominated by village houses, public vehicle park, pond, graveyard and scattered tree groups. The Site was already hard-paved with concrete and occupied by the temporary public utility installation (solar photovoltaic system). No existing vegetation is observed.
- (b) As there are dense tree groups located in close proximity to the Site, she has grave concern that the applied development with associated filling of land, which are already completed, would further degrade the landscape resources and quality of the “GB” zone. Moreover, no information is provided in the submission to demonstrate that the applied development and associated filling of land would not have adverse landscape impact on the Site and surrounding areas. As such, the applied development and associated filling of land are considered incompatible with the landscape character and resources of the subject “GB” zone.

Land Administration

11.2.3 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) He has grave concerns given that there are unauthorized building works and/or uses on the subject lots which are already subject to lease enforcement actions. The lot owner(s) should remedy the lease breaches as demanded by LandsD.
- (b) The applicant should note his advisory comments at **Appendix VI**.

12. Public Comments Received During Statutory Publication Period

On 29.8.2023, the application was published for public inspection. During the statutory public inspection period, two public comments from the Kadoorie Farm & Botanic Garden Corporation and an individual (**Appendices VII-1 and VII-2**) were received objecting to the application mainly on grounds that the proposed development is not in line with the planning intention; the FiT scheme does not intent to convert “GB” zone for solar farming or legitimise unauthorized filling of land; and approval of sporadic application as such would set an undesirable precedent.

13. Planning Considerations and Assessments

- 13.1 The application is for temporary public utility installation (solar photovoltaic system) for a period of three years and associated filling of land at the Site within the “GB” zone of the OZP (**Plan A-1a**). There is a general presumption against development within the “GB” zone. Moreover, filling of land within the “GB” zone requires planning permission from the Board as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. While the Chief Engineer/Mainland North of Drainage Services Department and the Director of Agriculture, Fisheries and Conservation has no comment on the application from drainage and nature conservation perspectives, the applied development and associated filling of land, which involve vegetation clearance and hard-paving of the entire Site (to be discussed at paragraph 13.3 below), are not in line with the planning intention of the “GB” zone. There is no strong planning justification given in the submission to warrant a departure from the planning intention, even on a temporary basis.
- 13.2 The Site is located at the southern fringe of the subject “GB” zone, and just outside the village proper of Sha Kong Wai. To its north and west are predominantly shrubland and woodland. Although the Site and its immediate surroundings have been concrete-paved and are used for, inter alias, parking of vehicles, they are suspected UDs subject to planning enforcement action. Moreover, whilst the applicant claims that no parking or loading/unloading space would be provided at the Site, no justification has been provided as to why the solar panels have to be mounted on an open shed of 4m in height, and no information is given regarding the

use of the space underneath the open shed². The proposed development which involved vegetation clearance and concrete paving is not considered as compatible with the surrounding areas.

- 13.3 According to TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The design and layout of any proposed development within “GB” zone should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. The issue on compatibility has been discussed in paragraph 13.2 above. With regard to the impact on existing natural vegetation and landscape, with reference to aerial photos between 2009 and 2018 (**Plan A-3b to A-3e**), it is noted that vegetation clearance had been undertaken at the Site. The Site has gradually been degraded from mainly grassland to hard-paved land. In this regard, CTP/UD&L of PlanD considered that the applied development and associated filling of land are incompatible with the landscape character and resources of the “GB” zone. She also raised concern that the applied development with associated filling of land would further degrade the landscape resources and quality of the “GB” zone. In view of the above, the applied development and associated filling of land are considered not in line with TPB PG-No. 10.
- 13.4 The proposed development is not in line with the ‘Assessment Criteria for Considering Applications for Solar Photovoltaic System’ promulgated on 7.10.2022 in that there are adverse comments from relevant department on landscape aspect; the applicant has failed to demonstrate that the applied development and associated filling of land would not adversely affect the landscape character/resources of the “GB” zone and jeopardise the integrity of the zone as a buffer; and vegetation clearance and filling of land of the entire Site are involved. In this regard, SEE has reservation on the proposed development. Although the Site is located at the periphery of the “GB” zone adjoining the “V” zone, as discussed in paragraph 13.3 above, vegetation clearance has been undertaken and the Site is hard-paved and used for parking of vehicles without planning permission. In view of the above, the applied development is considered not in line with the assessment criteria.
- 13.5 DLO/YL of LandsD raised concerns from land administration perspective as there are unauthorized building works and/or uses at the Site which is already subject to lease enforcement action.
- 13.6 Other concerned departments including the Director of Electrical and Mechanical Services, the Director of Environmental Protection, the Commissioner for Transport and the Director of Fire Services have no objection to or no comment on the applied development and associated filling and excavation of land from electricity supply safety, environmental, traffic and fire safety perspectives.
- 13.7 There is no approved previous application at the Site, nor is there any similar application for solar photovoltaic system within the same “GB” zone. Approval of the application would set an undesirable precedent and encourage proliferation of similar solar photovoltaic systems within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the natural environment of the area.

² As shown in the site photo taken on 25.8.2023 at **Plan A-4a**, the space underneath the open shed at the Site is used for parking of vehicles.

- 13.8 Regarding the public comments received objecting to the application on grounds as summarised in paragraph 12 above, the planning considerations and assessments in paragraphs 13.1 to 13.6 above are relevant.

14. Planning Department's Views

- 14.1 Based on the assessments made in paragraph 13 above and having taken into account the public comments mentioned in paragraph 12, the Planning Department does not support the application for the following reasons:

- (a) the applied development and associated filling of land are not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the applied development and associated filling of land are not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that the applied development and associated filling of land are considered not compatible with the surrounding areas; and the applicant fails to demonstrate that the applied development and associated filling of land would not have adverse landscape impact on the surrounding areas; and
 - (c) the applied development and associated filling of land are not in line with the ‘Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance’ in that there are adverse comments from relevant department on landscape aspect; the applicant has failed to demonstrate that the applied development and associated filling of land would not adversely affect the landscape character/resources of the “Green Belt” zone and jeopardise the integrity of the zone as a buffer; and extensive vegetation clearance and filling of land are involved.
- 14.2 Alternatively, 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 three years until **13.10.2026**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission of a 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 **13.4.2024**;
- (b) in relation to (a) above, the implementation of the 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 **13.7.2024**;

- (c) in relation to (b) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of a 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 **13.4.2024**;
- (e) in relation to (d) above, the implementation of the 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 **13.7.2024**;
- (f) if the above planning condition (c) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (g) if any of the above planning condition (a), (b), (d) or (e) 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; and
- (h) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

15. Decision Sought

- 15.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant planning permission.
- 15.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 15.3 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 period of which permission should be valid on a temporary basis.

16. Attachments

Appendix I	Application Form with attachments received on 21.8.2023
Appendix Ia	SI received on 22.8.2023
Appendix Ib	FI received on 18.9.2023
Appendix Ic	FI received on 22.9.2023
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)

Appendix III	Assessment Criteria for Considering Applications for Solar Photovoltaic System Made Under Section 16 of the Town Planning Ordinance
Appendix IV	Previous Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendices VII-1 and VII-2	Public Comments Received During Statutory Publication Period
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Plan
Drawing A-3	Components of the Solar Photovoltaic System
Plan A-1a	Location Plan
Plan A-1b	Site Plan with Previous Applications
Plan A-2	Site Plan
Plan A-3a to A-3e	Aerial Photos in 2022, 2018, 2016, 2012 and 2009
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2023**