

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/302

<u>Applicant</u>	Swiss Caviar House (Asia) Limited
<u>Site</u>	Lot 363 S.A in D.D. 112, Shek Kong, Yuen Long
<u>Site Area</u>	About 781.5 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed Public Utility Installation (Solar Energy System)

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed public utility installation (solar energy system). The Site falls within an area zoned “AGR” on the approved Shek Kong OZP (**Plan A-1**). According to the Notes of the OZP, ‘Public Utility Installation’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and fenced.
- 1.2 According to the applicant, the proposed development will comprise a total of 176 solar panels (1.755m long x 1.038m wide x 0.035m high each), which will be mounted on aluminium/galvanized steel stands and placed on ground with the support of concrete bricks at the foot of the stands. The combined height of each panel and stand would not exceed 1.5m. Besides, there will be a single-storey (about 6m high) solar energy control room with a total non-domestic floor area of about 30m² at the northeastern corner of the Site (**Drawing A-1**). The remaining area (of about 430m²) will mainly be used for circulation purpose. No filling of land will be involved within the Site. The Site is accessible via a local access branching off from Shek Kong Airfield Road (**Plan A-2**). No parking or loading/unloading spaces will be provided on-site. The layout plan and photomontage submitted by the applicant are at **Drawings A-1** and **A-2**.

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

- (a) Application Form with Attachment received on 23.2.2021 **(Appendix I)**
- (b) Further information (FI) dated 24.5.2021 (*exempted from publication*) **(Appendix Ia)**

1.4 On 16.4.2021, 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 in order to allow time for the applicant to prepare FI to address comments from various departments. On 24.5.2021, the applicant submitted FI to respond to the departmental comments.

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 are briefly summarised as follows:

- (a) the proposed development would make good use of the vacant site;
- (b) the proposed solar energy system supports the environmental protection initiative and helps promote environmental awareness. Specifically, it is in line with the Government's policy to promote green energy; and
- (c) the proposed development would form part of the CLP Power Hong Kong Limited (CLP)'s Renewable Energy (RE) Feed-in Tariff (FiT) Scheme. The applicant has obtained the acknowledgment letter from CLP.

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

The applicant is the sole "current land owner" of the Site. Detailed information would be deposited at the meeting for Members' inspection.

4. Assessment Criteria for Considering Applications for Solar Photovoltaic (SPV) System

The set of assessment criteria for considering applications for SPV system made under Section 16 of the Town Planning Ordinance was approved by the Board on 3.7.2020 and promulgated on 21.7.2020 (**Appendix II**). The relevant assessment criteria are summarised as follows:

- (a) it is a prerequisite for the applicant to obtain the 'Consent Letter' or 'Acknowledgement Letter' from CLP / The Hongkong Electric Company Limited (HKE) and submit a copy of the document together with the application to demonstrate the technical feasibility of the scheme in terms of serviceability, electrical safety and output generated by the SPV system;

- (b) unless with strong justifications, the SPV system, including the height of the proposed structures, should be in keeping with the surrounding area/developments and commensurate with the function(s) it performs;
- (c) for optimisation of use of land, favourable consideration may be given if viability of co-existence of the proposed SPV system and uses that are in line with the long-term planning intention of the land use zoning of the Site could be satisfactorily demonstrated;
- (d) it has to be demonstrated to the satisfaction of the relevant government departments that the SPV system will not have significant adverse impacts, including but not limited to those relating to the environment, drainage, sewerage, traffic, geotechnical safety, landscape and visual¹ and, where needed, appropriate measures are to be adopted to mitigate the impacts;
- (e) unless with strong justifications, proposals involving extensive site formation, vegetation clearance/tree felling, excavation or filling of land/pond are generally not supported;
- (f) where the installation is proposed to be in area close to airports and/or heliports, or major roads, it has to be demonstrated to the satisfaction of the relevant government departments that the SPV system should not cause glare to pilots/drivers and/or unacceptable adverse impact on aviation and/or traffic safety;
- (g) the planning intention of “AGR” zone is to retain and safeguard good quality agricultural farm land/fish ponds for agricultural purposes. SPV system ancillary to agricultural use would not require planning permission². Planning application for stand-alone SPV system as ‘Public Utility Installation’ use in the “AGR” zone is generally not supported except those on land with no active farming activities and low agricultural rehabilitation potential;
- (h) all other statutory or non-statutory requirements of the relevant Government departments must be met. Depending on the specific land use zoning of the Site, the relevant Town Planning Board guidelines should be observed, as appropriate; and
- (i) approval conditions to address the technical issues, if any, within a specified time and clauses to revoke the permission for non-compliance with approval conditions may be imposed as appropriate.

¹ The applicant has to demonstrate that the proposal would not affect the visual and landscape amenities/character of the area adversely by, for instance, causing a significant change of landscape resources/character, dwarfing the surrounding developments or catching the public’s visual attention due to the scale and prominence of the proposed installation. Where appropriate, measures should be taken to mitigate the visual/landscape impact, for example, by peripheral screen planting.

² Installation of SPV system for generating electricity for a permitted use, such as that for a farm, green house/farm structures in the “AGR” zone mainly for generating electricity for agricultural purposes, or that installed in connection with New Territories Exempted Houses (NTEH) in “Village Type Development” (“V”) zone, are also regarded as an ancillary use.

5. Background

- 5.1 The Site is currently not subject to any active planning enforcement action.
- 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, who 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 to install 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

There is no previous application in respect of the Site.

7. Similar Application

There is no similar application for 'public utility installation (solar energy system)' use within all "AGR" zones on the OZP.

8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plan A-4)

- 8.1 The Site is:
- (a) currently vacant and fenced; and
 - (b) is accessible via a local access branching off from Shek Kong Airfield Road.
- 8.2 The surrounding areas are predominantly rural in character with active/fallow farmland, domestic dwellings/structures, open storage yards and vacant land:

- (a) to its immediate north are a local access branching off from Shek Kong Airfield Road and Kam Tin River, and to its further north is the Airfield of Shek Kong Barracks; and
- (b) to its east, south and west are mainly pieces of active/fallow farmland intermixed with scattered domestic dwellings/structures, open storage yards, Pat Heung Central Primary School and vacant land.

9. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

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

- (a) the Site comprises an Old Schedule Agricultural Lot 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; and
- (b) should planning approval be given to the planning application, the lot owner(s) will need to apply to her office to permit the structure(s) to be erected or regularise any irregularities on-site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.

Traffic

- 10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) having regard to the FI (**Appendix Ia**), he has no comment on the application from the traffic engineering perspective; and

- (b) the Site is connected to the public road network via section of a local access road which is not managed by TD. The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

he has no comment on the application from highways maintenance point of view, noting that no vehicular access is proposed or to be granted under the application.

Environment

10.1.4 Comments of the Secretary for the Environment (SEN):

- (a) he strongly supports the development of RE systems, especially larger-scale systems such as the one proposed under the current application, as they would be better able to meaningfully contribute to increasing the use of RE in Hong Kong;
- (b) the Chief Executive announced in her 2020 Policy Address that the Hong Kong Special Administrative Region would strive to achieve carbon neutrality before 2050. To achieve the target, Hong Kong needs to substantially increase the proportion of zero-carbon energy in the overall fuel mix for electricity generation and promoting the development of RE is an integral part of the decarbonisation strategy;
- (c) the policy of his bureau is for the Government to take the lead in developing RE where technically and financially feasible and to create conditions that are conducive to community participation. For the private sector, his bureau and the power companies have introduced the FiT Scheme, providing financial incentives which can encourage the private sector to invest in distributed RE. His bureau has also introduced a series of measures to facilitate and support members of the public in developing RE. Examples include relaxing the restrictions in relation to installation of PV systems at the rooftop of village houses and introducing a new scheme called “Solar Harvest” to install small-scale RE systems for eligible schools and welfare non-Governmental organisations. Electrical and Mechanical Services Department (EMSD) has also revamped its “HK RE Net” to provide useful information in respect of developing RE to the public; and
- (d) despite the efforts mentioned above, due to objective factors including, inter alia, topographical constraints, the RE potential in Hong Kong is modest and most RE installations developed/to be developed under the FiT Scheme are of relatively small scale.

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

- (a) in view of the nature and scale of the proposed development, he has no objection to the application;
- (b) based on the information provided, the applicant proposes to construct a solar energy system with 176 nos. of solar panels in the Site of 781.5m² with generation capacity of 20kW of renewable energy. The applicant also submitted the application under “Renewable Energy Feed-in Tariff” Scheme of CLP; and
- (c) 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 minimise any potential environmental impacts during construction of the project. Reference could be made to relevant publications / guidelines including Recommended Pollution Control Clauses for Construction Contracts and Professional Persons Environmental Consultative Committee Practice Notes (ProPECC PN) 1/94, “Construction Site Drainage”.

Agriculture and Nature Conservation

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

- (a) the Site falls within the “AGR” zone and is currently cemented and vacant. Although agricultural activities are not active in the vicinity, agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view;
- (b) noting that the Site is disturbed in nature, he has no comment on the application from nature conservation perspective; and
- (c) his advisory comments to the applicant are at **Appendix IV**.

Visual and Landscape

10.1.7 Comments of the Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD):

Urban Design and Visual

- (a) the proposed solar energy system will, to a certain extent, bring forth change to the visual context of the area where is predominantly by rural character. Nevertheless, as shown in the visual illustration in the submitted FI (**Appendix Ia**), a fence wall (2.5m high) will be installed along the site boundary to alleviate the visual impact of the

solar panels (1.5m high). As such, significant visual impact is not envisaged;

- (b) to further soften the edge and provide visual interest, the applicant is advised to improve the design of the boundary fencing and explore more mitigation measures such as buffer planting, vertical greening; and
- (c) his detailed comments are at **Appendix IV**.

Landscape

- (d) he has some reservations on the application from landscape planning perspective;
- (e) referring to the aerial photo in 2020, the Site is situated in an area of rural inland plains landscape character comprising scattered tree groups, open storage yards, temporary structures, village clusters, and active/fallow farmland. The proposed development is considered not entirely incompatible with the existing landscape character in proximity; and
- (f) with reference to her site photos dated 11.3.2021, the Site is a vacant barren land with a few containers and fenced. Further significant adverse impact to the landscape resources within the Site is not anticipated. According to record, no similar application within the “AGR” zone in proximity to the Site was approved. There is concern that approval of the application may encourage similar application within the area. The cumulative impact of such approval may alter the landscape character of the “AGR” zone.

Drainage

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

- (a) he has no objection in-principle to the proposed development from public drainage point of view;
- (b) should the application be approved, the conditions requiring the submission of a drainage proposal and the implementation of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval; and
- (c) the applicant is reminded to maintain all the drainage facilities on-site in good condition and ensure that the proposed development would neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.

Building Matters

10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works (UBW) under the Building Ordinance (BO). An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (b) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO; and
- (c) his detailed comments are at **Appendix IV**.

Fire Safety

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

- (a) he has no objection in-principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Security

10.1.11 Comments of the Secretary for Security (S for S):

the Site is in close proximity to the Shek Kong Barracks. Due to the security concerns, the application is not supported.

Civil Aviation

10.1.12 Comments of the Director-General of Civil Aviation (DGCA):

regarding the installation of solar panels, the applicant is reminded about the glare that may be caused by the panels. While there is no specific requirement on the reflection of solar panels from aviation safety perspective, Article 47 of Air Navigation (Hong Kong) Order (Cap. 448C) stated that, “a person shall not recklessly or negligently act in a manner likely to endanger an aircraft or any person therein.” The reflection rate of solar panels with anti-reflective coating of around 5% is most advisable.

District Officer's Comments

10.1.13 Comments of the District Officer/Yuen Long, Home Affairs Department (DO/YL, HAD):

he has not received any comment from locals upon close of consultation and he has no particular comment on the application.

10.2 The following Government departments have no objection to/adverse comment on the application.

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Commissioner of Police (C of P);
- (c) Director of Electrical and Mechanical Service (DEMS); and
- (d) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD).

11. Public Comments Received During Statutory Publication Period

On 2.3.2021, the application was published for public inspection. During the three-week statutory publication period, a total of four objecting public comments were received from Kadoorie Farm & Botanic Garden Cooperation, Designing Hong Kong Limited and two individuals (**Appendix III**). All of them object to the application mainly on the grounds that the development is not in line with the planning intention of “AGR” zone; the approval of the application will set an undesirable precedent for other similar applications; the application is for private gain instead of public interest; and there will be glare problem as the Site is close to the Airfield of Shek Kong Barracks (**Plans A-2 and A-3**).

12. Planning Considerations and Assessment

12.1 The application is for proposed public utility installation (solar energy system), involving 176 solar panels (1.755m long x 1.038m wide x 0.035m high each) and a single-storey solar energy control room at the Site zoned “AGR”. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not in line with the planning intention of the “AGR” zone and would

result in the permanent loss of agricultural land of about 780m². DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation. It is considered that there is no strong planning justification for a departure from the planning intention of the “AGR” zone.

- 12.2 The surrounding areas are predominantly rural in character, comprising active/fallow farmland, domestic dwellings/structures, open storage yards and vacant land (**Plan A-2**). The proposed system with 176 solar panels mounting on steel stands and placed on ground with a combined height of not exceeding 1.5m is not considered incompatible with the surrounding environment. SEN strongly supports the development of large-scale RE systems such as the one proposed under the current application, as they would be better able to meaningfully contribute to increasing the use of RE in Hong Kong, while DEP and DEMS have no adverse comment on the application from environmental planning and electricity regulatory services perspectives respectively. Other departments including C for T, CE/MN of DSD and D of FS have no objection to/no comment on the application from traffic, drainage and fire safety aspects. However, the Site is in close proximity to the Shek Kong Barracks. S for S advises that approval of the application may result in security concerns. DGCA advises that glare may be caused by the solar panels, and the applicant is reminded to note that the reflection rate of solar panels with anti-reflective coating of around 5% is most advisable.
- 12.3 The proposed use is not entirely in line with the assessment criteria for considering applications for SPV system promulgated by the Board on 21.7.2020 in that stand-alone SPV system in the “AGR” zone is generally not supported except those on land with no active farming activities and low agricultural rehabilitation potential. According to DAFC, agricultural infrastructures such as road access and water source are available at the Site, which can be used for agricultural activities such as greenhouses, plant nurseries, etc. Besides, the proposed development does not meet the criterion of co-existence with the long-term planning intention of the “AGR” zone. The applicant fails to pursue a proposal to allow co-existence of the solar panels with agricultural activities to meet the assessment criteria.
- 12.4 Regarding the four objecting public comments received during the statutory publication period, the departmental comments and planning considerations and assessment above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission to justify a departure from the planning intention;

- (b) the application site is in close proximity to the Shek Kong Barracks. Approval of the application may result in security concerns; and
- (c) the proposed development is not entirely in line with the assessment criteria for considering applications for SPV system in that stand-alone SPV system in the “AGR” zone is generally not supported except those on land with no active farming activities and low agricultural rehabilitation potential.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 9.7.2025, 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 submission and implementation of a proposal for fire service installations and water supplies for fire-fighting 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant 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 clause(s), 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 with Attachment received on 23.2.2021
Appendix Ia	Further information (FI) dated 24.5.2021
Appendix II	Assessment Criteria For Considering Applications For Solar Photovoltaic System Made Under Section 16 Of The Town Planning Ordinance
Appendix III	Public Comments

Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Photomontage
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2021**