

TOWN PLANNING BOARD

TPB Paper No. 10749

**For Consideration by
the Town Planning Board on 16.7.2021**

**REVIEW OF APPLICATION NO. A/YL-NTM/399
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Public Utility Installation (Solar Photovoltaic System)
in “Green Belt” Zone,
Lots 978 (Part), 979 (Part), 1043 and 1047 in D.D. 102,
Ngau Tam Mei, Yuen Long**

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1. Background

- 1.1 On 6.2.2020, the applicant, Cornerstone Renewable Energy Limited, sought planning permission for proposed public utility installation (solar photovoltaic (SPV) system) on the application site (the Site) which falls within an area zoned “Green Belt” (“GB”) on the approved Ngau Tam Mei Outline Zoning Plan (the OZP) No. S/YL-NTM/12 (**Plan R-1**).
- 1.2 On 4.9.2020, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
 - (a) the development was not in line with the planning intention of the “GB” zone, which was to define 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 was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from the planning intention;
 - (b) the development was not in line with the Town Planning Board Guidelines for ‘Application for Development within the “GB” zone under Section 16 of the Ordinance’ in that the proposed development was incompatible with the surrounding area and would affect the existing natural landscape and cause adverse visual impact on the surrounding environment; and
 - (c) the proposed use was not in line with the assessment criteria for considering applications for solar photovoltaic system in that the applicant had yet to obtain China Light and Power Hong Kong Limited (CLP)’s acknowledgement letter, there were adverse comments from relevant government departments on visual and landscape aspects, and the applicant failed to demonstrate that the proposed use would not adversely affect the landscape character/resources of the “GB” zone and jeopardise the integrity of the zone as a buffer.
- 1.3 The Site has an area of about 2,264 m². The proposed SPV system involves 4 sets of CLP outdoor meter box (GFA of about 1.73m² and 1.9m in height) and 774

solar panels installed on expandable metal stands of 1.5m in height in scaffolding style, which are supported on ground using concrete blocks laying on top of existing soil/vegetation (grass). The stands with solar panels will cover about 66.8% of the Site (**Drawings R-1 and R-2**).

1.4 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/YL-NTM/399 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 4.9.2020 (Annex B)
- (c) Secretary of the Board's letter dated 18.9.2020 (Annex C)

2. **Application for Review**

- 2.1 On 8.10.2020, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**).
- 2.2 On 11.12.2020, 19.2.2021 and 23.4.2021, the Board agreed to defer a decision on the review application each for 2 months as requested by the applicant for submission of further information (FI), mainly CLP's acknowledgement letter for the Renewable Energy Feed-in Tariff (FiT) Scheme.

3. **Request for Deferment**

- 3.1 On 24.6.2021, the applicant wrote to the Secretary of the Board and requested the Board to defer making a decision on the review application for further 3 months in order to allow time for the applicant to follow up with the documentation from CLP on the FiT Scheme (**Annex E**).

Planning Department's Views

- 3.2 The Planning Department does not support the request for the deferment. Consideration of the review application has already been deferred for 3 times for a total of 6 months at the request of the applicant for similar reason.
- 3.3 According to the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance (TPB PG-No. 33), 2 months will normally be given to the applicant or relevant parties for preparation of FI but reasonable grounds must be provided to support the request and the proposed deferment period should not be indefinite. Since the submission of the application for review by the applicant on 8.10.2020 and over the last three rounds of deferment, no supplementary information has been submitted by the applicant to support the review application. Sufficient time has been allowed for the applicant to prepare and submit FI. In accordance with TPB PG-No. 33, there is no reasonable ground to allow a fourth deferment.

- 3.4 In agreeing to the third deferment on 23.4.2021, the Board has advised the applicant that no further deferment would be granted unless under very special circumstances (**Annex F**).
- 3.5 Should the Board agree not to defer making a decision on the review application, the application is ready for consideration by the Board at this same meeting.
- 3.6 Alternatively, should the Board decide to defer a decision on the review application, it is suggested that 2 months instead 3 months applied should be allowed for the applicant to prepare and submit FI according to normal practice. The review application will be submitted to the Board within 3 months upon receipt of FI from the applicant. If the FI submitted by the applicant is not substantial and can be processed within a shorter time, the application could be submitted to an earlier meeting for the Board's consideration. Since it is the fourth deferment of the application, the applicant should be advised that the Board has allowed a total of 8 months (extra 2 months instead of 3 months sought) for preparation of submission of FI, and this is the last deferment and no further deferment would be granted.

Decision Sought

- 3.7 The Board is invited to consider whether or not to accede to the applicant's request for deferment. If the request is not acceded to, the consideration of the review application is to be proceeded as below.

4. Justifications from the Applicant

The grounds for review and the justifications put forward by the applicant in support of the review application are detailed in the applicant's letter at **Annex D** which are summarised as follows:

- (a) The proposed SPV system is located inside an area of abandoned farmland and should not affect any passive recreational outlets.
- (b) The proposed height of the SPV system is lower than the existing structures near the Site and the Site will be surrounded by tree line. If required, the applicant can arrange green vegetation around the Site to match the surrounding environment. It is noted that there are buildings and other facilities as well as land filling works in the vicinity.
- (c) The applicant has made an application to CLP for electricity supply and installation of new electric meters at the Site. CLP has responded with a Confirmation Notice of Application of Electricity Supply (Appendix Ia of **Annex A**). Without the Board's approval, the applicant is unable to proceed with installation of CLP's electric meters and hence the FiT application.
- (d) The applicant can consider reducing the size of the project (number of solar panels).

5. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-1 to R-4)

- 5.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by RNTPC are described in para. 9 of **Annex A**. There has not been any major change in the planning circumstances of the area since then.
- 5.2 The Site is:
- (a) largely low-lying agricultural land covered with vegetation, and currently vacant; and
 - (b) accessible via a village path leading to a local access road and Ka Lung Road branching off from Kwu Tung Road.
- 5.3 The surrounding areas are predominantly rural in character with mainly agricultural land, ponds and scattered residential dwellings, and have the following characteristics:
- (a) to its immediate north and further north are scattered residential dwellings and agricultural land;
 - (b) to its east and south are ponds and agricultural land; and
 - (c) to its immediate and further west are ponds and scattered residential dwellings.

Planning Intention

- 5.4 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.

Town Planning Board Guidelines

- 5.5 The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarised as below:
- (a) There is a general presumption against development (other than redevelopment) in “GB” zone.
 - (b) An application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.

- (c) Applications for G/IC uses and public utility installations must demonstrate that the proposed development is essential and that no alternative sites are available. The plot ratio of the development site may exceed 0.4 so as to minimise the land to be allocated for G/IC uses.
- (d) The design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.
- (e) The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area.
- (f) The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

Assessment Criteria for Considering Applications for Solar Photovoltaic System

5.6 The set of assessment criteria for considering applications for SPV system made under Section 16 of the Ordinance was approved by the Board on 3.7.2020 and promulgated on 21.7.2020 (**Annex G**). The relevant assessment criteria for applications within “GB” zone are summarised as follows:

- (a) It is a prerequisite for the applicant to obtain the ‘Consent Letter’ or ‘Acknowledgement Letter’ from Hong Kong Electric Company Limited (HKE) and CLP respectively 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 justifications², proposals involving extensive site formation, vegetation clearance/tree felling, excavation or filling of land/pond are generally not supported.
- (f) As there is a general presumption against development in the “GB” zone, planning application within the “GB” zone is normally not supported unless with strong justifications. It has to be demonstrated to the satisfaction of the relevant government departments that the SPV system would not adversely affect the landscape character/resources of the “GB” zone and jeopardise the integrity of the zone as a buffer.
- (g) 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 TPB guidelines should be observed, as appropriate.
- (h) 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.

Previous Application

5.7 There is no previous application at the Site.

Similar Application

5.8 After the rejection of the s.16 application by RNTPC, a similar planning application for proposed solar energy system (No. A/YL-NTM/405) within the “GB” zone on the OZP (**Plan R-1**) was rejected by the RNTPC and the Board on review on 15.9.2020 and 19.3.2021 respectively. Details of the application are summarised at **Annex H**.

6. Comments from Relevant Government Departments

6.1 For the review application, the following government departments have been further consulted and their updated comments are summarised as follows:

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 Ground-mounted SPV system is usually on steel frame or concrete plinth. It should normally not involve extensive site formation or filling of land.

Visual and Landscape Aspects

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

Urban Design and Visual

- (a) Having examined the review application with no further technical submission to support the application from the visual perspective, his following comments provided at the s.16 application stage remain valid:
 - (i) The Site of about 2,264 m² falls within “GB” zone on the respective OZP and is situated in an area surrounded by active/fallow agricultural land, which is predominantly rural in character.
 - (ii) The current application seeks planning permission for a SPV system involving the installation of about 774 solar panels (measuring about 1.67m long x 1m wide x 0.035m thick each) and four structures (measuring 1.15m long x 1.5m wide x 1.9m high each) for the outdoor meter installation on the Site. According to the Assessment Criteria for Considering Applications for SPV System made under Section 16 of the Town Planning Ordinance promulgated by the Board in July 2020, the height of the proposed structures should be in keeping with the surrounding area/developments and the applicant has to demonstrate that such SPV system will not have significant adverse visual impacts which would catch the public’s visual attention due to the scale and prominence of the proposed installation.
 - (iii) In the submitted FI (**Appendix Ia of Annex A**), the applicant has claimed that the visual impact on the surrounding environment would be minimised, given the tall vegetation at the Site boundary would be retained to filter the proposed SPV system while the height of the SPV panels and structures proposed on a low-lying ground would be below the eye-sight of an adult. Considering the scale of proposed SPV system involving 774 solar panels and four structures covering about 67% of the Site is quite extensive, it would inevitably bring forth visual changes to the surrounding rural environment.

Landscape

- (b) He remains having reservation on the application from the landscape planning perspective.
- (c) The Site is situated in an area of rural landscape character. The surrounding area comprises agricultural land, ponds and scattered

tree groups. The proposed use is considered not entirely compatible with the existing landscape setting in the proximity. The proposed development would affect the existing natural landscape of the area. Although the applicant states that the Site will be surrounded by tree line and green vegetation could be arranged around the Site to match with the surrounding environment, no revised layout or further information on the tree planting/landscape proposal has been submitted by the applicant.

- (d) Although significant adverse impact on the landscape resources within the Site arising from the proposed development is not anticipated, given that there is no similar application within the same “GB” zone that have previously been approved by the Board, there is concern that approval of the application would set an undesirable precedent for other similar use, which is not entirely compatible with the existing landscape setting in proximity, and further alter and degrade the landscape character of the “GB” zone.

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

The Site is currently vegetated and surrounded by active/inactive agricultural fields and fishponds. The Board shall consider whether the proposed use is compatible to the planning intention of the “GB” zone which is primarily to promote the conservation of the natural environment and to safeguard it from encroachment by urban-type developments.

6.2 The following government bureau/departments has no further comments on the review application and maintain their previous comments on the s.16 application as stated in para. 11.1 of **Annex A**:

- (a) District Lands Officer/Yuen Long, Lands Department;
- (b) Commissioner for Transport (C for T);
- (c) Chief Highway Engineer/New Territories West, Highways Department;
- (d) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department;
- (e) Secretary for the Environment (SEN);
- (f) Director of Environmental Protection (DEP);
- (g) Director of Fire Services (D of FS);
- (h) Chief Building Surveyor/New Territories West, Buildings Department;
- (i) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (j) Director of Electrical and Mechanical Services; and
- (k) District Officer (Yuen Long), Home Affairs Department.

6.3 The following government departments maintain their previous views of having no objection to or no comment on the review application:

- (a) Commissioner of Police;
- (b) Director of Food and Environmental Hygiene;

- (c) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (CEDD);
- (d) Project Manager (West), CEDD;
- (e) Director of Leisure and Cultural Services; and
- (f) Chief Engineer/Construction, Water Supplies Department.

7. Public Comments on the Review Application Received During Statutory Publication Period

- 7.1 On 23.10.2020, the review application was published for public inspection. During the statutory public inspection period which ended on 13.11.2020, 4 public comments were received from Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society and two individuals (**Annex I**). They raise objections to the review application mainly on the grounds that the massive scale of the proposed development is not compatible with the surrounding; it is not in line with the planning intention of the “GB” zone and would set an undesirable precedent for similar applications; and that the intention of the FiT Scheme is to encourage solar panels on the roof tops of village houses or buildings instead of development of solar farms at sites zoned “GB”, “Government, Institution or Community”, “Recreation”, etc.
- 7.2 At the s.16 application stage, 1 supporting and 6 objecting comments were received. The summary of the comments is in para. 12 of **Annex A**.

8. Planning Considerations and Assessments

- 8.1 The application is for a review of the RNTPC’s decision on 4.9.2020 to reject the subject application for proposed public utility installation (SPV system). The proposed SPV system involves 4 sets of meter box and 774 solar panels installed on expandable metal stands of 1.5m in height in scaffolding style covering about 67% of the site area (**Drawings R-1 and R-2**). The application was rejected for the reasons stated in para. 1.2.
- 8.2 The proposed system, which falls within an area zoned “GB”, is 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. Although the applicant claims that the proposed SPV system is located inside an area of abandoned farmland and would not affect the passive recreational outlets within “GB” zone, this does not justify a departure from the planning intention. DAFC also points out that the Site is currently vegetated and surrounded by active/inactive agricultural fields and fishponds, and stated that the Board should consider whether the proposed use is compatible with the planning intention of “GB” zone which is primarily to promote the conservation of the natural environment and to safeguard it from encroachment by urban-type developments.

- 8.3 Although the applicant argues that there are buildings and other facilities as well as land filling works in the vicinity of the Site, it should be noted that the surrounding areas are predominantly rural in character, comprising mainly agricultural land, fish ponds and scattered residential dwellings (**Plans R-2 and R-3**). The proposed system with 774 solar panels mounting on metal stands (1.5m high in total) sitting on concrete blocks and covering about 67% of the Site is rather massive in scale and is considered not compatible with the scale of development in the surrounding areas. The land filling works outside the Site mentioned by the applicant are situated on an area zoned “Open Storage” which is currently vacant (**Plans R-2 and R-3**).
- 8.4 According to TPB PG-No. 10, development in “GB” zone should not affect the existing natural landscape or cause any adverse visual impact on the surrounding environment. The application is not in line with the Guidelines as it would affect existing nature landscape and cause adverse visual impact. Although the applicant states that he can consider reducing the number of solar panels at the Site and arrange green vegetation around the Site to match with the surrounding environment, no revised layout or further information on the tree planting/landscape proposal has been submitted by the applicant. CTP/UD&L of PlanD considers that the proposed SPV system is extensive and would bring forth visual changes to the surrounding rural environment. He also has reservation from landscape planning perspective as the proposed development is considered not entirely compatible with the existing landscape setting in the proximity and approval of the application would set an undesirable precedent for similar developments within the “GB” zone which would further alter and degrade the landscape character of the “GB” zone.
- 8.5 Apart from the visual and landscape concerns, the applicant has not submitted any document to demonstrate the technical feasibility of the proposed SPV system. Although the applicant requests for the Board’s approval of the current application to allow him to proceed with his FiT application, it should be noted that it is a prerequisite for the applicant to obtain and submit the acknowledgement letter from CLP on the proposed SPV scheme to the Board for consideration. Indeed, the applicant has only submitted documents in relation to application to CLP for creating an electricity supply account for the Site (**Appendix Ia of Annex A**), which is not equivalent to an acknowledgement letter required for demonstrating technical feasibility of the scheme. The application is therefore not in line with the assessment criteria for considering applications for SPV system promulgated by the Board in July 2020. Nevertheless, SEN supports the development of Renewable Energy systems and departments including DEP, DEMS, C for T, CE/MN of DSD and D of FS have no adverse comment on/objection to the application from environmental, electricity regulatory service, traffic, drainage and fire safety perspectives.
- 8.6 No similar application for SPV system has been approved within the “GB” zone on the OZP. Approval of the application would set an undesirable precedent for similar applications to proliferate in the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.

- 8.7 The opposing public comments received for the review application as stated in para. 7 above are similar to those received at s.16 stage. The planning assessments and departmental comments above are relevant.

9. **Planning Department's Views**

- 9.1 Based on the assessments made in para. 8 and having taken into account the public comments mentioned in para. 7, PlanD maintains its previous view of not supporting the review application for the following reasons:

- (a) the development is not in line with the planning intention of the “GB” zone, which is to define 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;
- (b) the development is 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’ in that the proposed development is incompatible with the surrounding area and would affect the existing natural landscape and cause adverse visual impact on the surrounding environment; and
- (c) the proposed use is not in line with the assessment criteria for considering applications for SPV system in that the applicant has yet to obtain CLP’s acknowledgement letter, there are adverse comments from relevant government departments on visual and landscape aspects, and the applicant fails to demonstrate that the proposed use would not adversely affect the landscape character/resources of the “GB” zone and jeopardise the integrity of the zone as a buffer.

- 9.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 16.7.2025, 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 drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (b) the submission and implementation of fire service installations proposal to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Annex J**.

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 10.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 10.3 Alternatively, should the Board decide to approve the review 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.

11. Attachments

Annex A	RNTPC Paper No. A/YL-NTM/399
Annex B	Extract of minutes of the RNTPC meeting held on 4.9.2020
Annex C	Secretary of the Town Planning Board's letter dated 18.9.2020
Annex D	Letter received on 8.10.2020 applying for a review
Annex E	Letter received on 24.6.2021 requesting for deferment
Annex F	Letter dated 11.5.2021 from the Secretary of the Town Planning Board to the applicant on the last deferral request
Annex G	Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance
Annex H	Similar Application
Annex I	Public Comments on the Review Application
Annex J	Recommended Advisory Clauses
Drawing R-1	Layout Plan
Drawing R-2	Indicative Solar Panel Installation
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a and 4c	Site Photos

**PLANNING DEPARTMENT
JULY 2021**