

**REVIEW OF APPLICATION NO. A/YL-NTM/405**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Public Utility Installation (Solar Energy System)  
in “Green Belt” Zone,  
Lots 2161 and 2163 (Part) in D.D. 102, Ngau Tam Mei, Yuen Long**

**1. Background**

- 1.1 On 11.6.2020, the applicant, Miracle (HK) Group Limited, sought planning permission for proposed public utility installation (solar energy system) on the application site (the Site) **(Plan R-1)**. The Site of about 1,490 m<sup>2</sup> falls within an area zoned “Green Belt” (“GB”) on the approved Ngau Tam Mei Outline Zoning Plan (the OZP) No. S/YL-NTM/12. The proposed system involves a temporary structure for meter installation (GFA of about 38 m<sup>2</sup> and 3m in height) and 338 solar panels installed on 112 sets of movable metal stands of 2.2m to 2.4m in height in scaffolding style which also act as shelters for agricultural use (for growing vegetable/fruits) underneath. The stands with solar panels will cover about 50% of the Site. 30-35 numbers of tree saplings are proposed to be planted at the Site to mitigate the landscape and visual impact **(Drawings R-1 and R-2)**. While ‘Public Utility Installation’ is a Column 2 use which requires planning permission, ‘Agricultural Use’ is an always permitted use within the “GB” zone.
- 1.2 On 15.9.2020, 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 No. 10 on ‘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 CLP Power Hong Kong Limited’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 For Members’ reference, the following documents are attached:

- (a) RNTPC Paper No. A/YL-NTM/405 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 15.9.2020 (Annex B)
- (c) Secretary of the Board’s letter dated 9.10.2020 (Annex C)

## 2. **Application for Review**

- 2.1 On 30.10.2020, the applicant applied, under Section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application (Annex D). The applicant has submitted a written representation in support of the review.
- 2.2 On 30.12.2020, the applicant submitted further information (FI) (Annex E) to reduce the number of solar panels from 338 to 243, and provided a letter from CLP Power Hong Kong Limited (CLP) offering the terms and conditions to the applicant for CLP to carry out network reinforcement to facilitate the applicant to participate in the Renewable Energy Feed-in Tariff (FiT) Scheme.
- 2.3 On 25.2.2021, the applicant submitted an updated drawing showing the height of the solar panels installed on the movable stands is 2.2-2.4m (Annex F).

## 3. **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 and FI (Annexes D to F) which are summarised as follows:

- (a) Unlike the surrounding storage uses involving more people in the operation, the proposed system is passive in nature which will only require maintenance twice per year. The Site will be rehabilitated for agricultural use which is in line with the planning intention of “GB” zone for providing passive recreational outlets.
- (b) Anti-reflective coating in deep colour will be applied on the solar panels and the height of solar energy system are only 2.2m to 2.4m. It would not induce any noise/water pollution, land contamination or cause any adverse impacts on the surrounding natural resources.
- (c) The Site, currently without any agricultural activities, does not have positive contribution to the landscape of green belt.

- (d) There are a number of permitted uses within “GB” zone and the proposed solar panel shelter is similar to ‘On-Farm Domestic Structure’ in visual terms.
- (e) To address the landscape and visual impacts on the surrounding, the applicant proposes to reduce the number of solar panels from 338 panels on 112 sets of metal stands to 243 panels on 81 sets of metal stands, thus reducing the covered area from about 730m<sup>2</sup> (50% of the Site) to 520m<sup>2</sup> (35% of the Site), and more trees will be planted in the remaining area (**Drawing R-1**).
- (f) The applicant received CLP’s Network Reinforcement Condition Letter (**Annex E**) on 16.12.2020 and will make the deposit payment to CLP for carrying out the network reinforcement works to facilitate the applicant’s participation in the FiT Scheme once the application is approved by the Board.

#### 4. **The Section 16 Application**

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

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by RNTPC are described in paragraph 9 of **Annex A**. There has not been any major change in the planning circumstances of the area since then.
- 4.2 The Site is:
  - (a) largely vegetated, partly paved and occupied by an open shed and a temporary structure; and
  - (b) accessible from the northeast via a local access road branching off Kwu Tung Road.
- 4.3 The surrounding areas are rural in character intermixed with vacant and unused land, open storage, storage yards and residential dwellings. Such open storage and storage yards are suspected unauthorised development (UDs) subject to enforcement action by the Planning Authority:
  - (a) to its north and further north are vacant and unused land;
  - (b) to its east and northeast are vacant land, storage yard, open storages of construction materials and recycle materials, some scattered residential dwellings, and a semi-natural watercourse across the local track;
  - (c) to its southeast are vacant land, residential dwelling, storages and a work site for radio base station framework;
  - (d) to its south and southwest are unused land and scattered residential dwellings; and

- (e) to its west and northwest are unused land, residential dwellings, storage yards and open storage of vehicles and vehicle parts.

#### Planning Intention

- 4.4 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

- 4.5 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

- 4.6 The set of assessment criteria for considering applications for Solar Photovoltaic (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 “GB” zone are summarised as follows:

- (a) It is a prerequisite for the applicant to obtain the ‘Consent Letter’ or ‘Acknowledgement Letter’ from CLP/Hong Kong 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 visual<sup>1</sup> and, where needed, appropriate measures are to be adopted to mitigate the impacts.
- (e) Unless with strong justifications<sup>2</sup>, 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.

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<sup>1</sup> 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.

<sup>2</sup> Ground-mounted SPV system is usually on steel frame or concrete plinth. It should normally not involve extensive site formation or filling of land.

### Previous Applications

4.7 There is no previous application at the Site.

### Similar Applications

4.8 There is no similar application within the same “GB” zone on the OZP.

## **5. Comments from Relevant Government Departments**

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

### **Visual and Landscape Aspects**

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

#### Urban Design and Visual

- (a) The Site of about 1,490m<sup>2</sup> falls within “GB” zone on the OZP and is situated in an area surrounded by dense vegetation and temporary structures of 1 to 2 storeys, which is predominantly rural in character.
- (b) The applicant proposed to reduce the number of solar panels with shelters for agricultural use from 338 to 243 for the proposed solar energy system which will be installed on movable metal stands up to 2.4m high. According to the Assessment Criteria for Considering Applications for SPV made under Section 16 of the 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.
- (c) Considering the reduced scale of the proposed solar energy system involving about 243 solar panels and a structure with an area of about 520m<sup>2</sup> and 38m<sup>2</sup> respectively, it would still bring forth visual changes to the surrounding rural environment.

#### Landscape

- (d) He remains having reservation on the application from the landscape planning perspective.
- (e) It is noted an additional option to reduce 338 number of solar panels to 243 number and planting of more trees is proposed.

- (f) Although significant adverse impact on landscape resources within and adjacent to the Site arising from the proposed development is not anticipated, in comparing the aerial photos taken in 2016 and 2017, it is apparent that trees and vegetation within the Site have been cleared and the Site have been paved since 2016 causing adverse impact on the landscape character of the area. There is concern that approval of this application would encourage more similar development within the “GB” zone. The cumulative impact of such approval would further degrade the landscape quality of surrounding environment.
- (g) Since the Site is not abutting prominent public frontage, should the Board approve this application, it is considered unnecessary to impose any condition for submission and implementation of landscaping proposal.

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

- (a) It is noted that the applicant proposed to reduce the total number of solar panels at the Site to around 243, and the design of the solar panels would not cause bird strike.
- (b) According to his previous site inspection, the Site is partly paved with some weeds and trees of common species. There were two semi-mature trees at the western boundary of the Site. While he has no adverse comment on the vegetation clearance, the two trees should be preserved as far as possible.
- (c) A semi-natural watercourse is located outside the Site. The applicant shall perform good site practice so as not to pollute the semi-natural watercourse.

5.2 The following government bureau/departments maintain their previous comments on the Section 16 application as stated in paragraph 11.1 of **Annex A**:

- (a) District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD);
- (b) Commissioner for Transport (C for T);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (d) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD);
- (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 (CBS/NTW, BD);

- (i) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (j) Director of Electrical and Mechanical Services (DEMS); and
- (k) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD).

5.3 The following government departments maintain their previous views of having no objection to or no comment on the review application as stated in paragraph 11.2 of **Annex A**:

- (a) Commissioner of Police (C of P);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (d) Project Manager (West) (PM(W)), CEDD;
- (e) Director of Leisure and Cultural Services (DLCS); and
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

## **6. Public Comments Received During Statutory Publication Periods**

6.1 On 6.11.2020 and 15.1.2021, the review application was published for public inspection. During the statutory public inspection periods, 10 public comments were received from a Yuen Long District Councillor, Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society, World Wide Fund for Nature Hong Kong, Designing Hong Kong and an individual (**Annex H**). They raised objections to the review application on the ground that the private profitable development should not be stated as public utility; the massive scale of the proposed development is not compatible with the surrounding; it is detrimental to the natural environment; there was clearance of vegetation at the Site between 2016 and 2020; green belt is for trees and vegetation, it is unacceptable to turn the land into commercial solar farms; and it is not in line with the planning intention of the “GB” zone and would set an undesirable precedent for similar applications.

6.2 At the Section 16 application stage, 6 public comments were received objecting to the application. The summary of the comments is in paragraph 12 of **Annex A**.

## **7. Planning Considerations and Assessments**

7.1 The application is for a review of the RNTPC’s decision on 15.9.2020 to reject the subject application for proposed public utility installation (solar energy system). The proposed development involves a temporary structure for meter installation and 338 solar panels installed on movable stands of 2.2m to 2.4m in height, covering about 730m<sup>2</sup> (50% of the site area of about 1,490 m<sup>2</sup>) (**Drawings R-1 and R-2**). The application was rejected for the reasons that the proposed development was not in line with the planning intention of the “GB” zone; not in



line with the TPB PG-No.10 as being incompatible with surrounding area and having adverse landscape and visual impacts; and not in line with the assessment criteria for considering applications for SPV system in that CLP's acknowledgement letter on the technical feasibility of the scheme had yet to be obtained, there were adverse departmental comments and it would jeopardise the integrity of the "GB" zone as a buffer.

- 7.2 In support of the review application, the applicant proposes to reduce the number of solar panels to 243 with a covered area of about 520m<sup>2</sup> (35% of the Site) and planting more trees in the remaining area (**Drawing R-1**). The applicant also provides a letter from CLP setting out the conditions for CLP to carry out network reinforcement to facilitate his participation in the FiT Scheme. The applicant will make deposit payment to CLP for the network reinforcement works after the Board's approval of the application.

#### Planning Intention of "GB" zone

- 7.3 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 solar energy system can also be used as sheds for agricultural use which is an always permitted use within "GB" zone, the proposed solar energy system per se is not in line with the planning intention. No strong planning justification has been given in the submission for a departure from the planning intention.

#### Land Use Compatibility and Visual and Landscape Impacts

- 7.4 According to TPB PG-No. 10, development in "GB" zone should not affect the existing natural vegetation and landscape or cause any adverse visual impact on the surrounding environment. Although the applicant argues that the proposed solar energy system with agricultural use underneath are passive uses similar to on-farm domestic structures in visual terms and proposes to reduce the number of solar panels to 243 with a reduced covered area of 520m<sup>2</sup> and planting of more trees, it should be noted that the surrounding areas are predominantly rural in character, comprising mainly densely vegetated land, vacant and unused land, scattered residential dwellings (**Plans R-2 and R-3**). The proposed solar energy system is still considered not compatible with the surrounding areas. CTP/UD&L of PlanD considers that the proposed solar energy system would bring forth visual changes to the surrounding rural environment. He also has reservation from landscape planning perspective as approval of the application would encourage other similar developments within the "GB" zone which would further degrade the landscape quality of surrounding environment. In respect of the applicant's argument that the applied use is better than the surrounding open storage uses, it should be noted that no planning permission has been given for open storage uses in the "GB" zone and the application should be assessed with reference to the justifications and merits of the applied use.

Assessment criteria for considering applications for SPV system

- 7.5 To demonstrate the technical feasibility of the proposed solar energy system, the applicant has submitted a letter from CLP informing that subject to the applicant's acceptance of the relevant terms and conditions (**Annex E**), CLP will carry out the network reinforcement works for the applicant to participate in the Fit Scheme. In other words, the network capacity issue is confirmed without problem by CLP for fulfilment of the technical feasibility criteria.
- 7.6 While SEN supports the development of Renewable Energy systems, and departments including DEP, DEMS, C for T, CE/MN of DSD, DAFC and D of FS have no adverse comment on/objection to the application from environmental, electricity regulatory service, traffic, drainage, nature conservation and fire safety perspectives, there are adverse departmental comments on visual and landscape aspects, and the applicant has failed to demonstrate that the proposed use would not adversely affect the landscape character of the "GB" zone and jeopardise the integrity of the "GB" zone as a buffer.

No Similar Application Approval

- 7.7 There is no similar application for the solar energy system 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.

Public Comments

- 7.8 The public comments received for the review application as stated in paragraph 6 above are similar to those received at section 16 stage, the planning assessments and departmental comments above are relevant.

**8. Planning Department's Views**

- 8.1 Based on the assessments made in paragraph 7 and having taken into account the public comments mentioned in paragraph 6, 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 design and layout

of the proposed development is incompatible with the surrounding area, and causes 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 there are adverse comments from relevant departments on visual aspect, and the applicant has failed to demonstrate that the proposed use would not adversely affect the landscape character of the “GB” zone and jeopardise the integrity of the zone as a buffer.

8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 19.3.2025, 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 I**.

**9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the RNTPC’s decision and decide whether to accede to the application.
- 9.2 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.
- 9.3 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.

**10. Attachments**

<b>Annex A</b>	RNTPC Paper No. A/YL-NTM/405
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 15.9.2020
<b>Annex C</b>	Secretary of the Town Planning Board's letter dated 9.10.2020
<b>Annex D</b>	Letter received on 30.10.2020 from the applicant applying for a review
<b>Annex E</b>	FI-1 received from the applicant on 30.12.2020
<b>Annex F</b>	FI-2 received from the applicant on 25.2.2021
<b>Annex G</b>	Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance
<b>Annex H</b>	Public Comments on the Review Application
<b>Annex I</b>	Recommended Advisory Clauses
<b>Drawing R-1</b>	Comparison of Layout Plans of the s16 Scheme and Current Scheme
<b>Drawing R-2</b>	Indicative Solar Panel Installation
<b>Plan R-1</b>	Location Plan
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Aerial Photo
<b>Plan R-4</b>	Site Photos

**PLANNING DEPARTMENT  
MARCH 2021**