

TOWN PLANNING BOARD

TPB Paper No. 10781

**For Consideration by
the Town Planning Board on 5.11.2021**

**REVIEW OF APPLICATION NO. A/YL-SK/302
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Public Utility Installation (Solar Energy System)
in “Agriculture” Zone,
Lot 363 S.A in D.D. 112, Shek Kong, Yuen Long**

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1. Background

- 1.1 On 23.2.2021, the applicant, Swiss Caviar House (Asia) Limited, submitted the subject application under the Section 16 of the Town Planning Ordinance (the Ordinance) to seek permission for proposed public utility installation (solar energy system) at the application site (the Site), with an area of about 781m², which falls within an area zoned “Agriculture” (“AGR”) on the approved Shek Kong Outline Zoning Plan (the OZP) No. S/YL-SK/9 (**Plan R-1**).
- 1.2 On 9.7.2021, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
 - (a) the proposed development was not in line with the planning intention of the “Agriculture” (“AGR”) zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission to justify a departure from the planning intention;
 - (b) the site was in close proximity to the Shek Kong Barracks. Approval of the application might result in security concerns; and
 - (c) the proposed development was not entirely in line with the assessment criteria for considering applications for Solar Photovoltaic (SPV) system in that stand-alone SPV system in the “AGR” zone was generally not supported except those on land with no active farming activities and low agricultural rehabilitation potential.
- 1.3 According to the applicant, the proposed solar energy system comprises 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 at an oblique angle with the support of concrete bricks at the foot of the stands (Illustration in Appendix Ia of **Annex A**). The combined height of each panel and stand will not exceed 1.5m. The 176 solar panels would occupy an area of about 321m² (1.755m long x 1.038m wide x 176 panels), which is equivalent to

about 41% of the Site. There will also 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 of **Annex A**). The remaining area of about 430m² will mainly be used for circulation purpose. The applicant has obtained an acknowledgment letter from CLP Power Hong Kong Limited (CLP) for participation in the Feed-in Tariff (FiT) Scheme before submission of the Section 16 application. 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 R-2**). No parking or loading/unloading spaces will be provided on-site. There is no change in the development proposal as compared with the one at the Section 16 application stage. The layout plan and photomontage submitted by the applicant are at Drawings A-1 and A-2 of **Annex A**.

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

- (a) RNTPC Paper No. A/YL-SK/302A (Annex A)
- (b) Extract of minutes of the RNTPC Meeting held on 9.7.2021 (Annex B)
- (c) Secretary of the Board's letter dated 23.7.2021 (Annex C)

2. Application for Review

On 11.8.2021, 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 not submitted any further information in support of the review.

3. The Section 16 Application

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

- 3.1 The situation of the Site and its surrounding areas at the time of consideration of the Section 16 application by RNTPC are described in para. 8 of **Annex A**. There has not been any major change in the planning circumstances of the area since then.
- 3.2 The Site is:
 - (a) currently vacant and fenced; and
 - (b) is accessible via a local access branching off from Shek Kong Airfield Road.
- 3.3 The surrounding areas are predominantly rural in character with active/fallow farmland, domestic dwellings/structures, open storage yards and vacant land:
 - (c) 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

- (d) 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.

Planning Intention

- 3.4 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.

Assessment Criteria for Considering Applications for SPV System

- 3.5 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 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;

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.

- (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.

Previous Application

3.6 There is no previous application in respect of the Site.

Similar Application

3.7 There is no similar application within the same “AGR” zone on the OZP.

4. Comments from Relevant Government Departments

4.1 The following Government bureaux/departments have no further comments on the review application and maintain their previous views on the Section 16 application as below:

Environment

4.1.1 The Secretary for the Environment (SEN)’s comments on the application as stated in para. 10.1.4 of **Annex A** are recapitulated below:

- (a) he strongly supports the development of Renewable Energy (RE) systems, especially larger-scale systems such as the one proposed

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.

under the 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.

Agriculture and Nature Conservation

4.1.2 The Director of Agriculture, Fisheries and Conservation (DAFC)’s comments on the application as stated in para. 10.1.6 of **Annex A** are recapitulated below:

- (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 of **Annex A**.

Urban Design and Landscape

4.1.3 The Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)'s comments on the application as stated in para. 10.1.7 of **Annex A** are recapitulated below:

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 rural in character. Nevertheless, as shown in the visual illustration (Appendix Ia of **Annex A**), 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 of **Annex A**.

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.

Security

- 4.1.4 The Secretary for Security (S for S)'s comments on the application as stated in para. 10.1.11 of **Annex A** are recapitulated below:

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

Civil Aviation

- 4.1.5 The Director-General of Civil Aviation (DGCA)'s comments on the application as stated in para. 10.1.12 of **Annex A** are recapitulated below:

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.

- 4.2 The following Government departments have no further comments on the review application and maintain their previous views of having no objection to or no adverse comment on the Section 16 application as stated in para. 10 and Appendix IV 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) Director of Environmental Protection (DEP);
- (e) Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD);
- (f) Chief Building Surveyor/New Territories West, Buildings Department;
- (g) Director of Fire Services (D of FS);
- (h) Chief Engineer/Construction, Water Supplies Department;
- (i) Commissioner of Police;
- (j) Director of Electrical and Mechanical Service (DEMS);
- (k) Project Manager/West, Civil Engineering and Development Department;
and
- (l) District Officer/Yuen Long, Home Affairs Department.

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

- 5.1 On 20.8.2021, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 10.9.2021, 2 objecting comments were received from Kadoorie Farm

& Botanic Garden Cooperation and an individual (**Annex E**). They raise objections to the review application mainly on the grounds that the development is not in line with the planning intention of “AGR” zone, approval of the application will set an undesirable precedent for other similar applications, and the reflective panels should not be too close to the Airfield of Shek Kong Barracks.

- 5.2 At the stage of Section 16 application, 4 objecting comments were received. The summary of the comments are in para. 11 of **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The application is for a review of RNTPC’s decision on 9.7.2021 to reject the application for proposed public utility installation (solar energy system) at the Site which is zoned “AGR” zone. The application was rejected for the reasons stated at para. 1.2. The applicant has not submitted any further information in support of the review. There has been no material change in planning circumstances for the Site since the rejection of the application by the RNTPC. The previous planning considerations and assessments in para. 12 of **Annex A** remain valid, which are recapped in the ensuing paragraphs.
- 6.2 The application is for proposed public utility installation (solar energy system), involving 176 solar panels 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 maintains his stance of not supporting the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification given in the application for a departure from the planning intention of the “AGR” zone.
- 6.3 The surrounding areas are predominantly rural in character, comprising active/fallow farmland, domestic dwellings/structures, open storage yards and vacant land (**Plan R-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 RE systems and departments including DEP, DEMS, C for T, CE/MN of DSD and D of FS have no objection to/no adverse comment on the application from environmental planning, electricity regulatory services, traffic, drainage and fire safety aspects. However, the Site is in close proximity to the Shek Kong Barracks. S for S maintains his stance that approval of the application may result in security concerns. DGCA also maintains his views 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.

- 6.4 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. DAFC maintains his views that 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.
- 6.5 The opposing public comments received for the review application as stated in para. 5 above are similar to those received at Section 16 stage. The planning assessments and departmental comments above are relevant.

7. Planning Department’s Views

- 7.1 Based on the assessments made in para. 6, having taken into account the public comments mentioned in para. 5, and given that there is no change in the planning circumstances, PlanD maintains its previous view of not supporting the review 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.
- 7.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 5.11.2025, 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 condition 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 attached at **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 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.
- 8.3 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.

9. Attachments

Annex A	RNTPC Paper No. A/YL-SK/302A
Annex B	Extract of minutes of the RNTPC meeting held on 9.7.2021
Annex C	Secretary of the Board's letter dated 23.7.2021
Annex D	Applicant's email dated 11.8.2021 applying for review
Annex E	Public Comments on the Review Application
Annex F	Advisory Clauses
Annex G	Assessment Criteria for Considering Applications for Solar Photovoltaic System made under Section 16 of the Town Planning Ordinance
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plan R-4	Site Photos