

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/242

- Applicant** : Smart Tone Development Limited
- Site** : Lot 339 (Part) in D.D. 87, Kong Nga Po, New Territories
- Site Area** : 1,300m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plans** : - Draft Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/17
(at the time of submission)
- Approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/18
(currently in force)
- Zoning** : “Agriculture” (“AGR”)
- [No change to the “AGR” zone under the current OZP]
- Application** : Proposed Temporary Vehicle Repair Workshop (Private Car) and Open Storage
of Vehicles for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary vehicle repair workshop (private car) and open storage of vehicles for a period of three years and associated filling of land at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the OZP. According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Notes of the OZP also state that filling of land within the “AGR” zone requires planning permission from the Board. The Site is hard-paved, fenced off and its western portion is occupied by a vacant structure without any valid planning permission (**Plan A-4a**).
- 1.2 The Site is accessible via a local road leading to Kong Nga Po Road (**Plan A-1**). The proposed use consists of one single-storey structure of about 4m in height and a total floor area of about 670m² for a vehicle repair workshop. According to the applicant, about 100m² of the uncovered area will be reserved as a waiting space for repair/maintenance of broken/unfixed private cars (open storage portion). Two private car parking spaces for staff are proposed within the Site. In terms of traffic management measures, staff will be

deployed to manage the parking arrangement within the Site and no vehicle will queue back on the local road; and traffic signs will be installed to ensure pedestrian safety. The operation hours of the proposed use are from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays, and no operation on Sundays and public holidays. Vehicle repairing activities will be carried out inside the enclosed structure only. An existing tree at the western boundary of the Site will be preserved. According to the applicant, one portable toilet is proposed and desludging services will be arranged twice a month. The applicant also applies for regularization of filling of the entire site with concrete with a depth of about 0.15m. The layout plan submitted by the applicant is shown in **Drawing A-1**.

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

- | | | |
|-----|---|------------------------|
| (a) | Application Form with attachments received on 20.2.2024 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 23.2.2024 | (Appendix Ia) |
| (c) | Further Information (FI) received on 15.3.2024* | (Appendix Ib) |
| (d) | FI received on 20.3.2024* | (Appendix Ic) |
| (e) | FI received on 28.3.2024* | (Appendix Id) |
| (f) | FI received on 13.5.2024* | (Appendix Ie) |
| (g) | FI received on 24.7.2024* | (Appendix If) |
| (h) | FI received on 14.8.2024* | (Appendix Ig) |

** accepted and exempted from publication and recounting requirements*

1.4 On 19.4.2024 and 5.7.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's request to defer making a decision on the application for two months each to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendices I and Ia to Ig**, as summarized below:

- (a) the surrounding areas are predominately intermixed with warehouses and open storage yards. The proposed use is not incompatible with the surrounding uses;
- (b) the proposal is for a vehicle repair workshop only. Only private cars will be allowed to enter the Site. No other activities will be conducted within the Site;
- (c) the proposed use would not induce adverse environmental impacts and noise nuisance;
- (d) temporary approval would not jeopardize the long-term planning intention of the Site; and
- (e) the applicant has excluded the Government Land (GL) portion of the Site from the application boundary. Should the planning application be approved, application for Short Term Waiver (STW) will be made to regularize the irregularities at the Site.

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. Background

The Site is subject to active planning enforcement action against unauthorized developments (UDs) involving storage use (No. E/NE-FTA/180). Reinstatement Notice (RN) was issued on 11.6.2024 requiring reinstatement of the concerned land. If the RN is not complied with, prosecution action would be considered by the Planning Authority.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Application

There is no similar application for the same proposed use within the same “AGR” zone in the vicinity of the Site in the Fu Tei Au and Sha Ling area over the past five years.

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

7.1 The Site is:

- (a) hard-paved and fenced off. The western part of the Site is currently occupied by a temporary vacant structure;
- (b) traversed by 400kV extra high voltage overhead lines; and
- (c) accessible via a local road leading to Kong Nga Po Road.

7.2 The surrounding areas are intermixed with open storages, warehouses, temporary domestic structures, a plant nursery, vacant land and tree clusters. A pond is located to the immediate south of the Site. To the immediate north is an open storage of construction materials and to the further north and west of the Site is an area zoned “Green Belt” (“GB”) generally comprising wooded slope (**Plan A-1**). A site to the further northwest of the Site zoned “Government, Institution or Community (1)” is planned for co-locating various police facilities in the North District and a proposed policy training facility and the construction works is in progress (**Plans A-1 and A-3**).

8. Planning Intention

- 8.1 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land within the “AGR” zone may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices II** and **III** respectively.
- 9.2 The following government departments do not support/ have adverse comments on the application:

Land Administration

9.2.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises 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. No right of access via GL is granted to the Site;
- (b) the applicant should not be encouraged to graphically exclude the erected unauthorised structure(s) and illegal occupation of Government land on paper;
- (c) the following irregularities covered by the subject planning application have been detected by her office:

- (i) Unauthorised structure within the private lot covered by the planning application

there is unauthorised structure on the private lot. The proposed structure in the planning application had been erected without approval. The lot owner should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (d) the following irregularities not covered by the subject planning application have been detected by her office:

- (i) Unauthorised structure extended from the private lot not covered by the planning application

there is unauthorised structure extended from the said private lot to Lot 340 RP in D.D. 87 which is not covered by the subject planning application. The lot owner should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (ii) Unlawful occupation of GL not covered by the planning application

the GL adjoining the said private lot has been illegally occupied by a platform and an unauthorised structure without permission. Any occupation of GL without Government's prior approval is an

offence under Cap. 28. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (e) the lot owner shall (i) remove the unauthorised structure not covered by the subject planning application and cease the illegal occupation of the GL immediately; and (ii) include the area erected with unauthorised structures in the subject planning application for the further consideration by the relevant departments and, subject to the approval of the Board to the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to her office for an STW to permit the structures erected/to be erected. The application for STW will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW, if approved, will be subject to such terms and conditions including the payment of date-back waiver fee and administrative fee as considered appropriate to be imposed by LandsD. In addition, LandsD reserves the right to take enforcement action against the lot owner for any breach of the lease conditions, including the breaches already in existence or to be detected at any point of time in future and land control action for any unlawful occupation of GL. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered; and
- (f) unless and until all the unauthorised structure and the unlawful occupation of GL are duly rectified by the lot owner or entirely included in the subject application, her office has objection to the application and it must be brought to the attention of the Board when the application is being considered.

Agriculture and Nature Conservation

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

Agriculture

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation;
- (b) agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc.; and

Nature Conservation

- (c) it is noted from the aerial photo that the Site is hard paved and there is a pond located in close proximity of the Site. While she has no comment on the application from nature conservation perspective, the applicant is reminded to avoid impact on the pond nearby during construction and operation stages should the application be approved.

Landscape

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

- (a) with reference to the site photos, the Site is mostly fenced off and hard paved with a temporary structure. A tree is observed at the western periphery of the Site. According to the applicant, no tree felling is required. Significant adverse impact on the existing landscape resources within the Site is not anticipated; and
- (b) based on the aerial photo of 2023, the Site is located in an area of miscellaneous rural fringe landscape character comprising farmland, temporary structures, vegetated areas, tree clusters and woodland to the west and north within the “GB” zone. There is concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone.

10. Public Comments Received During Statutory Publication Period

On 27.2.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix IV**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Another comment from an individual objects to the application mainly on the grounds that the Site is not the subject of any previous approval; it is part of an expanding brownfield cluster alongside the “GB” zone; not in line with the planning intention of the “AGR” zone; and the proposed use will make the soil unfit for agricultural purpose.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary vehicle repair workshop (private car) and open storage of vehicles for a period of three years and associated filling of land at the Site which falls within an area zoned “AGR” on the OZP. The proposed use 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.
- 11.2 The application involves regularisation of filling of the entire site by not more than 0.15m in depth. Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, Chief Engineer/Mainland North, Drainage Services Department has no objection to the application from public drainage perspective. Director of Environmental Protection has no particular comment on the land filling provided that the applicant would strictly comply with all environmental protection/pollution control ordinances, in particular the Water Pollution Control and Noise Control Ordinances. An approval condition requiring the reinstatement of the Site to an amenity area is recommended should the Committee decide to approve the application.

- 11.3 The proposed use is considered not entirely incompatible with the surrounding land uses intermixed with open storages, warehouses, temporary domestic structures, a plant nursery, vacant land, tree clusters and planned police facilities. While CTP/UD&L of PlanD considers that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone, she considers that significant adverse impact on the existing landscape resources within the Site is not anticipated. Other relevant departments consulted, including Commissioner for Transport, Director of Fire Services and Director of Electrical and Mechanical Services, etc. have no adverse comment on or no objection to the application.
- 11.4 In response to DLO/N, LandsD’s comments regarding the presence of unauthorised structure(s) within and outside the Site which are subject to land control and lease enforcement actions, the applicant has excluded the GL portion from the Site and included the concerned remaining part of the structure in the revised site area. Besides, the applicant undertakes that application for STW will be submitted should the application be approved by the Board. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 11.5 Regarding the objecting public comment as detailed in paragraph 10 above, government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10, the Planning Department considers that the proposed temporary vehicle repair workshop (private car) and open storage of vehicles for a period of three years and associated filling of land could be tolerated.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of three years until 6.9.2027. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.3.2025;
- (b) in relation to (a) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.6.2025;
- (c) in relation to (b) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (d) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.3.2025;

- (e) in relation to (d) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.6.2025;
- (f) the implementation of the traffic management measures, as proposed by the applicant, within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 6.6.2025;
- (g) if the above planning condition (c) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (h) if any of the above planning condition (a), (b), (d), (e) or (f) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (i) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix III**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed use 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, 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. Attachments

| | |
|--------------------|--|
| Appendix I | Application Form with Attachment received on 20.2.2024 |
| Appendix Ia | SI received on 23.2.2024 |
| Appendix Ib | FI received on 15.3.2024 |
| Appendix Ic | FI received on 20.3.2024 |

| | |
|---------------------------|--|
| Appendix Id | FI received on 28.3.2024 |
| Appendix Ie | FI received on 13.5.2024 |
| Appendix If | FI received on 24.7.2024 |
| Appendix Ig | FI received on 14.8.2024 |
| Appendix II | Government Departments' General Comments |
| Appendix III | Recommended Advisory Clauses |
| Appendix IV | Public Comments |
| Drawing A-1 | Layout Plan |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4a to A-4b | Site Photos |

**PLANNING DEPARTMENT
SEPTEMBER 2024**