

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HLH/60

<u>Applicant</u>	: Smart Long Development Limited
<u>Site</u>	: Lot 441 (Part) in D.D. 87, Hung Lung Hang, New Territories
<u>Site Area</u>	: About 1,800m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Open Storage of Construction Machinery and Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary open storage of construction machinery and materials for a period of three years. The Site falls within an area zoned “AGR” on the approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11 (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is flat and vegetated.
- 1.2 The Site is accessible from Kong Nga Po Road via a local track with an ingress/egress point in the south (**Plans A-1 and A-2**). According to the applicant, the Site will be used for open storage with two private car parking spaces and two medium goods vehicle parking spaces in the southwestern part of the Site (**Drawing A-1**). According to the applicant, the operation hours are 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays, and there will be no operation on Sundays and public holidays.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on 8.2.2023 (**Appendix Ia**)
 - (b) Further Information (FI) received on 18.4.2023 (**Appendix Ib**)
 - (c) FI received on 31.5.2023 (**Appendix Ic**)
- 1.4 On 31.3.2023, the Committee agreed to the applicant’s request to defer making a decision on the application for 2 months to allow more time for the applicant to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix Ia** as summarized below:

- (a) the proposed use is not incompatible with the surrounding land uses which are predominantly occupied by open storage yards and warehouses;
- (b) the Site can be accessed by vehicles;
- (c) the proposed use is temporary in nature, which would not jeopardize the long-term planning intention of “AGR” zone; and
- (d) no significant adverse traffic and environmental impacts are anticipated.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent / Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by taking reasonable steps to give notification to the owner including posting notice at the Sites and the notice board of Ta Kwu Ling District Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No.13G) promulgated on 14.4.2023 is relevant to this application. The Site falls within Category 2 area under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is currently not subject to any planning enforcement action.

6. Previous Application

There is no previous application for the Site.

7. Similar Applications

- 7.1 There are 14 similar applications (No. A/NE-HLH/20, 21, 32, 33, 38, 39, 43, 44, 46, 48, 51, 54, 55 and 59) involving nine sites for temporary open storage uses within the same “AGR” zone in the vicinity of the Site in the Hung Lung Hang area (**Plan A-1**). Ten of them were rejected by the Committee between September 2013 and December 2020 mainly for reasons of not complying with the previous versions TPB PG-No. 13E/13F in that no previous planning approvals were granted to the sites concerned; adverse departmental comments on the applications; insufficient information to demonstrate that

the developments would not generate adverse environmental, traffic and landscape impacts on the surrounding areas; and setting of undesirable precedent for other similar applications within the “AGR” zone.

- 7.2 The remaining four applications (No. A/NE-HLH/51, 54, 55 and 59) were approved with conditions between August 2021 and February 2023 after the relevant sites were reclassified from Category 3 to Category 2 under the previous version TPB PG-No.13F in 2020. The applications generally complied with TPB PG-No. 13F in that no major adverse departmental comments were received on the applications; and the concerns of the relevant government departments could be addressed through implementation of approval conditions. However, the planning permission of application No. A/NE-HLH/51 was revoked on 27.5.2023 due to non-compliance with approval conditions.
- 7.3 Details of the similar applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) flat and vegetated; and
 - (b) accessible from Kong Nga Po Road via a local track.
- 8.2 The surrounding areas are of rural landscape character comprising open storage, warehouses, workshops, active/fallow agricultural land and vacant land. Domestic structures can be found in the vicinity, with the nearest located to the immediate southeast of the Site.

9. Planning Intention

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

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraphs 10.2 and 10.3 below, other government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided at **Appendices IV** and **V** respectively.
- 10.2 The following government departments do not support the application:

Agriculture and Nature Conservation

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

- the Site falls within the “AGR” zone and is fallow. The 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, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the applied use is not supported from agricultural perspective.

Environment

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

- (a) he does not support the application as there are sensitive users in the vicinity of the Site (the nearest domestic structure being about 5m away) (**Plan A-2**), and environmental nuisance is expected as the development involves use of medium/heavy goods vehicles;
- (b) there is no substantial environmental complaint pertaining to the Site received in the past three years; and
- (c) the applicant is advised to comply with all environmental protection/pollution ordinances, in particular Noise Control Ordinance, and to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites and Temporary Uses”.

10.3 The following government department has relayed the following local views on the application:

District Officer’s Comments

Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- he has consulted the locals regarding the application. The incumbent North District Councilor of N16 Constituency and the Indigenous Inhabitant Representative (IIR) of Tai Po Tin object to the application as there are already many warehouses in the area without transport infrastructures to support the uses, causing adverse traffic impact on the surroundings especially the existing residents. The Chairman of Fung Shui Area Committee, the IIR of Chow Tin Tsuen, the Resident Representative (RR) of Tai Po Tin, the IIR and the RR of Lei Uk have no comment.

11. Public Comments Received During Statutory Publication Period (Appendix VI)

On 17.2.2023, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining three comments from individuals and Kadoorie Farm and Botanic Garden Corporation object to the application mainly on the grounds that the proposed use is not in line with the planning intention of “AGR” zone; approval would set a precedent for similar applications; the proposed use would create ecological and environmental impacts to the surroundings; and there is no strong justification in granting approval for the application.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed temporary open storage of construction machinery and materials for a period of three years at the Site zoned “AGR”. The proposed use is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard 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 point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone.
- 12.2 The Site falls within Category 2 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:
- Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of three years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 12.3 The Site is located in an area of rural landscape character comprising open storage, warehouses, workshops, active/fallow agricultural land and vacant land. The proposed use is considered not entirely incompatible with the surrounding environment. In this regard, Chief Town Planner/Urban Design & Landscape, Planning Department, has no objection to the application from landscape planning perspective since significant adverse impacts on the landscape character and existing landscape resources arising from the proposed use is not anticipated.
- 12.4 DEP has expressed concerns on the application as the development involves use of medium/heavy goods vehicles and environmental nuisance on the sensitive users in the vicinity of the Site (the nearest domestic structure being about 5m away) (**Plan A-2**) is expected. To address these concerns, relevant approval conditions including restriction on the operation hours at the Site have been recommended in paragraph 13.2 below. Should the application be approved, the applicant will also be advised to follow the ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ to minimize the possible environmental impacts on the surrounding areas.
- 12.5 Having reviewed the FI, the Commissioner for Transport has no comment on the application from the traffic engineering point of view. Although DLO/N of LandsD has concerns on unauthorized structures erected within the same Lot outside the Site, which are subject to lease enforcement actions, the applicant advises that he will rectify the matter and settle the land issue accordingly (**Appendix Ib**). Other concerned government departments, including Chief Highway Engineer/New Territories East of Highways Department and Director of Fire Services have no objection to or no adverse comment on the application.
- 12.6 The application generally complies with the TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments can be addressed through implementation of approval

conditions.

- 12.7 There are 14 similar applications involving nine sites for temporary open storage uses within the same “AGR” zone in the vicinity of the Site in the Hung Lung Hang area. Ten of the similar applications were rejected by the Committee between September 2013 and December 2020 for reasons of not complying with the previous versions TPB PG-No.13E/13F where the sites fall within Cat. 3 areas. The remaining four applications (No. A/NE-HLH/51, 54, 55 and 59) were approved with conditions between August 2021 and February 2023 after the sites were reclassified from Category 3 to Category 2 under the previous version TPB PG-No.13F in 2020 and the applications generally complied with TPB PG-No. 13F in that no major adverse departmental comments have been received on the applications and the concerns of the relevant government departments can be addressed through implementation of approval conditions. The planning circumstances of the current application are similar to the approved applications.
- 12.8 Regarding the local comments conveyed by DO (N) of HAD and public comments on the application as detailed in paragraphs 10.3 and 11 respectively, government departments’ comments and planning assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account local comments conveyed by DO (N) of HAD and public comments as detailed in paragraphs 10.3 and 11 respectively, the Planning Department considers that the temporary development could be tolerated for a period of 3 years.
- 13.2 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 9.6.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 6:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 9.12.2023;
- (d) in relation to (c) above, the provision of drainage facilities 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 9.3.2024;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the provision of fire extinguisher(s) within **6** weeks from the date of planning

approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.7.2023;

- (g) 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 9.12.2023;
- (h) in relation to (g) 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 9.3.2024;
- (i) if any of the above planning conditions (a), (b) or (e) 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;
- (j) if any of the above planning conditions (c), (d), (f), (g) or (h) 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
- (k) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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

- the development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good 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. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 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.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

15. Attachments

Appendix Ia	Application Form with Attachments received on 8.2.2023
Appendix Ib	FI received on 18.4.2023
Appendix Ic	FI received on 31.5.2023
Appendix II	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Similar s.16 Applications for Temporary Open Storage within the “Agriculture” zone in the vicinity of the Site in the Hung Lung Hang Area
Appendix IV	Government Departments’ General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2023**