

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HLH/76

<u>Applicant</u>	: Smart Long Development Limited
<u>Site</u>	: Lots 173 (Part) and 175 RP (Part) in D.D. 87, Ta Kwu Ling, New Territories
<u>Site Area</u>	: 1,000m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Hung Lung Hang Outline Zoning Plan (HLH) No. S/NE-HLH/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Open Storage of Construction Machinery and Materials for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary open storage of construction machinery and materials 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 building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). Filling of land within the “AGR” zone also requires planning permission from the Board. The Site is hard-paved, fenced-off and currently occupied by the applied use without valid planning permission (**Plan A-4**).
- 1.2 The Site is accessible from its west via a local track leading to Kong Nga Po Road/Man Kam To Road and Ping Che Road (**Plan A-1**). According to the submission, the applied use is for open storage of construction machinery and materials. Two private car parking spaces and two loading/unloading (L/UL) spaces for medium goods vehicle (MGV) are proposed within the Site. A 7.3m-wide vehicular access is proposed at the western boundary of the Site. According to the traffic management measures proposed by the applicant, sufficient manoeuvring space will be provided within the Site. The operation hours are from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. The applicant also applies for regularisation of land filling of the entire site by 0.15m in depth. The layout plan submitted by the applicant is shown in **Drawing A-1**.
- 1.3 The Site is the subject of a previous application (No. A/NE-HLH/55) submitted by the same applicant for the same use, which was approved with conditions by the Rural and

New Town Planning Committee (the Committee) of the Board on 26.8.2022 for a period of three years. The planning permission was subsequently revoked on 26.2.2024 due to non-compliance with approval condition on the submission of a drainage proposal. Compared with the previously approved application, apart from a change in the number of the L/UL and parking spaces, the site area, boundary, layout and major development parameters of the applied use remain the same. Details of the previous application are set out in paragraph 6 below.

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

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|-----|---|---------------|
| (a) | Application Form with attachments received on 16.9.2024 | (Appendix I) |
| (b) | Further Information (FI) received on 25.10.2024* | (Appendix Ia) |
| (c) | FI received on 30.10.2024* | (Appendix Ib) |

** accepted and exempted from publication and recounting requirements*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I and Ib**, as summarised below:

- (a) the applied use is considered not incompatible with the surrounding areas which are intermixed with warehouses and open storage yards;
- (b) the Site has been formed;
- (c) temporary planning permission would not jeopardize the long-term planning intention of the Site;
- (d) no adverse noise nuisance and environmental impacts are anticipated;
- (e) no adverse traffic impact is anticipated as the Site is accessible via two local roads, and the applied use, which is for open storage of light construction materials serving the North District, would only generate minimal traffic flow; and
- (f) the applicant has complied with the approval condition on the submission of fire service installations proposal under the previously approved application but failed to address departmental comments on the drainage proposal within the compliance period. The applicant commits that a revised drainage proposal will be submitted should the application be approved by the Committee.

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

The applicant is one of the “current land owners” and 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. 31B) by obtaining consents of the other two current land owners. 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 areas under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is subject to active planning enforcement action against unauthorized development (UD) involving storage use (No. E/NE-HLH/157). Enforcement Notice (EN) was issued on 21.10.2024 requiring discontinuation of the UD. If the EN is not complied with, prosecution action would be considered by the Planning Authority.

6. Previous Applications

- 6.1 The Site/Part of the Site is the subject of two previous applications (No. A/NE-HLH/6 and 55) for similar uses. The northern part of the Site is the subject of application No. A/NE-HLH/6 submitted by a different applicant for proposed temporary open storage of construction equipment, which was rejected by the Committee on 17.3.2006 mainly for reasons of being not in line with the planning intention of the “AGR” zone; not complying with the then TPB PG-No. 13E in that the use was not compatible with the rural character of the surrounding areas and the adjacent domestic structures; there was no previous planning approval granted to the site; and no information had been submitted to demonstrate that the use would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 6.2 Application No. A/NE-HLH/55 was submitted by the same applicant for the same use. The application was approved with conditions by the Committee on 26.8.2022 after the Site was reclassified from Category 3 to Category 2 under TPB PG-No. 13G. It generally complied with TPB PG-No. 13G in that no major adverse departmental comments were received on the application; and the concerns of the relevant government departments could be addressed through implementation of approval conditions. However, the planning permission was subsequently revoked on 26.2.2024 due to non-compliance with approval condition on the submission of a drainage proposal.
- 6.3 Compared with the previously approved application, apart from an addition of two MG/L/UL spaces and a reduction of four goods vehicle parking spaces, the site area, boundary, layout and major development parameters of the current application remain the same.
- 6.4 Details of the previous applications are summarised at **Appendix III** and their locations are shown in **Plan A-1**.

7. Similar Applications

- 7.1 There were 16 similar applications for temporary open storage use within the same “AGR” zone in the vicinity of the Site in the past five years (**Plan A-1**). Six of them (No. A/NE-HLH/38, 39, 43, 44, 46, 48) were rejected by the Committee in 2020 mainly for reasons of not complying with the previous versions of TPB PG-No. 13E/13F in that the

sites fell within Category 3 areas and no previous planning approvals were granted to the sites concerned; adverse departmental comments; and insufficient information to demonstrate that the developments would not generate adverse environmental, traffic and landscape impacts on the surrounding areas.

- 7.2 The remaining 10 similar applications (No. A/NE-HLH/51, 54, 59, 60, 61, 64, 66, 68, 70 and 71) were approved with conditions between 2021 and 2024 after the relevant sites were reclassified from Category 3 to Category 2 under TPB PG-No. 13F/13G. The applications generally complied with TPB PG-No. 13F/13G 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.
- 7.3 Details of the similar applications are summarised at **Appendix IV** and their 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) hard-paved, fenced-off and currently occupied by the applied use without valid planning permission; and
 - (b) accessible via a local track leading to Kong Nga Po Road/Man Kam To Road and Ping Che Road.
- 8.2 The surrounding areas are intermixed with warehouses, open storages yards (including a site to the immediate north with planning permission under application No. A/NE-HLH/68), cultivated/fallow agricultural land, vacant land and tree clusters. There is a watercourse to the southeast of the Site. Domestic structures can be found in the vicinity with the nearest located at about 40m to the northwest of the Site.

9. Planning Intention

- 9.1 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.
- 9.2 According to the Explanatory Statement of the OZP for “AGR” zone, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraph 10.2 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 V** and **VI** respectively.

10.2 The following government departments do not support the application:

Land Administration

10.2.1 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 Government land (GL) is granted to the Site;
- (b) the Site is being used for the uses under application. The approach of unauthorised use before application (先違規後申請) should not be encouraged. The subject planning application only covers 20% (about) of the business operation. Such partitioning approach should not be encouraged. The unauthorised structures and illegal occupation of GL as mentioned in paragraphs (c) and (d) below had been stated in the previous application No. A/NE-HLH/55 from the same applicant for the same use in June 2022, however, no rectification had been carried out as demanded;
- (c) the following irregularity covered by the subject planning application has been detected by her office:

- (i) Unauthorised structures within the said private lots covered by the planning application

LandsD has reservation on the planning application since there is unauthorised structure on the private lots which are already subject to lease enforcement actions according to case priority. The lot owner should rectify the lease breaches as demanded by LandsD;

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

- (i) Unauthorised structures within the said private lots not covered by the planning application

there are unauthorised structures within and extended from the said private lots not covered by the subject planning application. The lot owners 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 lots has been fenced off and illegally occupied by unauthorised structures without permission. The GL being illegally occupied is not included in the application. 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 owners shall either (i) remove the unauthorised structures and cease the illegal occupation of the GL not covered by the subject planning application immediately; or (ii) include the unauthorised structures and the adjoining GL being illegally occupied 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 Short Term Waiver (STW) and Short Term Tenancy (STT) to permit the structures erected/to be erected and the occupation of the GL. The applications for STW/STT will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW/STT, if approved, will be on whole lot basis and subject to such terms and conditions including the payment of back-dated waiver fee/rent from the first date of the structures were erected and occupation of GL and administrative fee as considered appropriate to be imposed by LandsD. In addition, LandsD reserves the right to take enforcement action against the lot owners 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 structure(s) will be considered;
- (f) unless and until all the unauthorised structures and the unlawful occupation of GL are duly rectified by the lot owners or entirely included in the subject planning 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; and
- (g) the applicant should comply with all land filling requirements imposed by relevant Government departments. GL should not be disturbed unless with prior approval.

Agriculture and Nature Conservation

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

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation; and
- (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.

Environment

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

- (a) does not support the application as there are sensitive users in the vicinity of the Site (the nearest domestic structure being about 40m away) (**Plan A-2**), and environmental nuisance is expected as the applied use involves use of heavy vehicles;

- (b) no comment on the filling of land from environmental planning perspective;
- (c) no substantiated environmental complaint pertaining to the Site received in the past three years; and
- (d) should the application be approved, the applicant is advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (COP) and the Environmental Protection Department's Practice Note for Professional Person (ProPECC) PN 2/23 "Construction Site Drainage".

11. Public Comments Received During Statutory Publication Periods

On 24.9.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix VII**). An individual objects to the application on the grounds that the applied use is not in line with the planning intention of the "AGR" zone; and the previously approved application is subject to local objection and subsequently revoked due to non-compliance with drainage related approval condition. A Member of North District Council indicates no comment on the application.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary open storage of construction machinery and materials for a period of three years and associated filling of land at the Site zoned "AGR" on the OZP. The applied 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 applied use on a temporary basis of three years could be tolerated.
- 12.2 The applied use involves regularisation of land filling of the entire site by 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, the Chief Engineer/Mainland North of Drainage Services Department has no objection to the application from public drainage perspective, while DEP has no particular comment on the land filling. Should the application be approved, approval conditions requiring the applicant to submit and implement a drainage proposal, and reinstate the Site to an amenity area are recommended in paragraph 13.2 below.
- 12.3 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.

- 12.4 The Site is hard-paved, fenced-off and currently occupied by the applied use without valid planning permission. The applied use is considered not entirely incompatible with the surrounding land uses intermixed with warehouses, open storages yards, domestic structure, cultivated/fallow agricultural land, vacant land and tree clusters. In this regard, the Chief Town Planner/Urban Design and Landscape of Planning Department has no objection to the application from landscape planning perspective as significant adverse impact on the landscape character and existing landscape resources arising from the applied use is not anticipated.
- 12.5 The Site is accessible via a local track leading to Kong Nga Po Road/Man Kam To Road and Ping Che Road. The Commissioner for Transport has no comment on the application from traffic engineering perspective. DEP does not support the application as the applied use involves the use of heavy vehicles and environmental nuisance on the sensitive receivers (i.e. domestic structures) in the vicinity of the Site is expected (**Plan A-2**). In this regard, the applicant will be advised to follow the COP to minimise the possible environmental impacts on the surrounding areas. Other relevant departments consulted, including the Director of Fire Services, have no objection to or no adverse comment on the application. Regarding DLO/N, LandsD's comments on the presence of unauthorised structures and unlawful occupation of GL within and adjoining the Site, the applicant undertakes that applications for STW/STT will be submitted should the application be approved by the Committee. The applicant will also be advised to liaise with LandsD on these land administration matters.
- 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 The Site is the subject of a previously approved application (No. A/NE-HLH/55) submitted by the same applicant for the same use as detailed in paragraph 6.2 above. Compared with the previously approved application, apart from an addition of two MGVL/UL spaces and a reduction of four goods vehicle parking spaces, the site area, boundary, layout and major development parameters of the current application remain the same. The planning permission was subsequently revoked on 26.2.2024 due to non-compliance with approval condition on the submission of a drainage proposal. The applicant explained that they failed to address departmental comments on the drainage proposal within the compliance period. Should the Committee decide to approve the application, the applicant will be advised that should they fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application.
- 12.8 There were 10 similar applications for temporary open storage use approved by the Committee between 2021 and 2024 as mentioned in paragraph 7.2 above. Those applications generally complied with TPB PG-No. 13F/13G 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. The planning circumstances of the current application are similar to those of the approved applications. As such, approval of the current application is in line with the Committee's previous decisions.

- 12.9 Regarding the adverse public comment mentioned in paragraph 11 above, the government departments' comments and the 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 the public comments mentioned in paragraph 11 above, the Planning Department considers that the applied use could be tolerated for a period of three 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 8.11.2027. 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 8.5.2025;
- (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 8.8.2025;
- (c) in relation to (b) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (d) 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 20.12.2024;
- (e) 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 8.5.2025;
- (f) in relation to (e) 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 8.8.2025;
- (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 VI**.

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

the applied use with associated filling of land 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.

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 applicant.

15. Attachments

Appendix I	Application Form with attachment received on 16.9.2024
Appendix Ia	FI received on 25.10.2024
Appendix Ib	FI received on 30.10.2024
Appendix II	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous s.16 Applications
Appendix IV	Similar s.16 Applications for Temporary Open Storage within the "AGR" zone in the vicinity of the Site in the Hung Lung Hang Area
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos