

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/988

<u>Applicant</u>	: Smartek Engineering Investment Limited
<u>Site</u>	: Lots 745 S.B ss.1, 745 S.B ss.2 (Part) and 745 S.B RP (Part) in D.D. 111, Fan Kam Road, Pat Heung, Yuen Long, New Territories
<u>Site Area</u>	: About 368m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Proposed Temporary Shop and Services for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services for a period of three years and associated filling of land at the application site (the Site), which falls within an area zoned “V” on the OZP (**Plan A-1a**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ other than those on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). Filling of land within the “V” zone also requires planning permission from the Board. The Site is currently paved, partly vacant and partly occupied by temporary structures (**Plan A-4**).
- 1.2 The Site is accessible from Fan Kam Road via a local track (**Plan A-2**). According to the applicant, the proposed use involves two single-storey structures with a building height of not exceeding 5m and a gross floor area of about 72m² for a retail shop and an ancillary office for selling small goods such as beverages, hardware tools and daily necessities etc. (**Drawing A-1**). The applicant also applies for regularisation of associated filling of land for the entire Site with concrete for site formation (**Plan A-4**). The proposed operation hours are between 8:00 a.m. and 10:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public

holidays. Two parking spaces for private car will be provided within the Site. The layout plan submitted by the applicant is at **Drawing A-1**.

1.3 The Site, in part or in whole, is the subject of five previous planning applications (details in paragraph 5 below). The last application (No. A/YL-PH/837) submitted by the same applicant for the same use at the same site was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 9.4.2020. All the approval conditions had been complied with and the planning permission lapsed on 9.4.2023.

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

- (a) Application Form received on 5.2.2024 (Appendix I)
- (b) Further Information (FI) received on 5.6.2024* (Appendix Ia)
- (c) FI received on 23.9.2024* (Appendix Ib)

** accepted and exempted from publication and recounting requirements*

1.5 On 5.4.2024 and 2.8.2024, the Committee agreed to defer making a decision on the application for two months each as requested by the applicant.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FIs at **Appendices I to Ib**, and can be summarised as follows:

- (a) There is a previous planning approval for the same use. The nature and layout of the proposed use remain unchanged as compared with the latest previous approval under application No. A/YL-PH/837.
- (b) The proposed use would not cause any adverse drainage, traffic and environmental and visual impacts, and would not create significant nuisance to the surrounding areas.
- (c) To support the current application, the applicant has submitted photo record of the implemented drainage facilities prepared under the previous planning approval and a fire services installations (FSIs) proposal. The applicant will undertake the maintenance of the implemented drainage facilities.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to any active enforcement action.

5. **Previous Applications**

- 5.1 The Site is the subject of five previous planning applications (No. A/YL-PH/473, 486, 493, 747 and 837). Details of the previous applications are summarised in **Appendix II** and the locations are shown on **Plan A-1b**.
- 5.2 Two applications (No. A/YL-PH/486 and 493) for temporary open storage of vehicles and/or sale of second-hand cars respectively were rejected by the Committee in 2005. Two other applications (No. A/YL-PH/473 and 747) for temporary vehicle park were approved with conditions by the Committee in October 2004 and July 2017 respectively. The considerations of these four planning applications are not relevant to the current application which involves a different use.
- 5.3 The last previous application No. A/YL-PH/837 submitted by the same applicant for same use at the same site with the same major development parameters, and operation mode as the current application, except that the current application involves regularisation of filling of land at the Site, was approved with conditions by the Committee on 9.4.2020, on the considerations that the temporary approval would not frustrate the long-term planning intention of the “V” zone; the proposed use was not incompatible with the surrounding uses; and the concerned government departments consulted in general had no adverse comment or their technical concerns could be addressed by relevant approval conditions. All of the approval conditions had been complied with and the planning permission lapsed on 9.4.2023.

6. **Similar Applications**

There are 14 similar applications, involving 11 sites, for various temporary shop and services uses within the same “V” zone in the vicinity of the Site in the past five years. All of the applications were approved with conditions by the Committee between July 2019 and October 2024, mainly on the considerations as stated in paragraph 5.3 above. The planning permissions under applications No. A/YL-PH/816, 818, 867, 880, 889 and 925 were subsequently revoked between January 2022 and June 2024 due to non-compliance with the approval conditions. Details of the similar applications are summarised in **Appendix III** and the locations are shown on **Plan A-1a**.

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

- 7.1 The Site is:
- (a) currently paved, partly vacant and partly occupied by temporary structures; and
 - (b) accessible from Fan Kam Road via a local track.
- 7.2 The surrounding areas are rural in character comprising mainly residential structures intermixed with vehicle parks (one with valid permission under

application No. A/YL-PH/931), an open storage yard, Sheung Ha Che Sports Association (with valid permission under application No. A/YL-PH/904), grassland and vacant land.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses (SHs) by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

9.1. Apart from the government departments as set out in paragraphs 9.2 and 9.3 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 in **Appendices IV and VI** respectively.

9.2. The following government department has adverse comments on the application:

Land Administration

9.2.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) has adverse comment on the application;
- (b) the Site comprises Old Schedule Agricultural Lots No. 745 S.B ss.1, 745 S.B. ss.2 and 745 S.B RP all in D.D. 111 held under the Block Government Lease which contains restriction that no structures are allowed to be erected without the prior approval of the Government;
- (c) Lots No. 745 S.B ss.1 in D.D. 111 is covered by Short Term Waiver (STW) No. 5355 for the purpose of Temporary Shop and Services;
- (d) there are unauthorised structures and uses on Lots No. 745 S.B. ss.2 in D.D. 111. The lot owner(s) should immediately rectify/apply for regularisation on the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (e) if the planning application is approved, the STW holders(s) will need to apply to his office for modification of the STW conditions where appropriate and the lot owner(s) shall apply to his office for a STW to permit the structure(s) erected within Lots No. 745 S.B. ss.2 and 745 S.B RP both in D.D. 111. The application(s) 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 waiver fee and administrative fee as considered appropriate by LandsD. Besides, given the proposed use is temporary in nature, only erection of temporary structure(s) will be considered; and
- (f) no SH application approved or under processing within the Site.

9.3. The following government department expressed local views on the planning application:

District Officer

9.3.1 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

- (a) no comment on the application; and
- (b) the locals object to the application mainly on the grounds that the Site is intended for SH development which is not suitable for other uses; and it would cause nuisance to the nearby residential structures due to the close proximity.

10. Public Comment Received During Statutory Publication Period

On 16.2.2024, the application was published for public inspection. During the statutory public inspection period, one public comment objecting to the application submitted by the village representative of Sheung Che Tsuen is received (**Appendix VI**). The public comment received is the same as the local objection received by DO(YL), HAD and the objection grounds are mentioned in paragraph 9.3.1(b) above.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services for a period of three years and associated filling of land at the Site zoned “V” (**Plan A-1a**). The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects, and land within this zone is primarily intended for development of SHs by indigenous villagers. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Whilst the proposed use is not entirely in line with the planning intention of the “V” zone, it can help meet the demand for such use from locals. Besides,

DLO/YL, LandsD advises that there is no SH application approved or under processing at the Site. The proposed use of temporary nature would not adversely affect the land availability for NTEH/SH within the “V” zone in the long term. Hence, approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “V” zone.

- 11.2 Filling of land within the “V” zone requires planning permission from the Board. In this regard, the Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD) and Director of Environmental Protection have no objection to the application from drainage and environmental perspectives respectively.
- 11.3 The proposed use is considered not incompatible with the surrounding land uses which are rural in character comprising mainly residential structures intermixed with vehicle parks, an open storage yard, Sheung Ha Che Sports Association, grassland and vacant land. The Chief Town Planner/Urban Design and Landscape of Planning Department (PlanD) considers that significant landscape impact arising from the proposed use is not anticipated.
- 11.4 Other relevant government departments consulted, including the Director of Fire Services and CE/MN, DSD who also consider the submitted FSIs proposal and photo record of the implemented drainage facilities acceptable, have no objection to or adverse comment on the application. To address the technical requirements of concerned departments, relevant approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Department to minimise the possible environmental nuisance caused by the proposed use on the surrounding areas.
- 11.5 Regarding DLO/YL, LandsD’s concerns on the unauthorised structures and uses within the Site, the applicant will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.
- 11.6 There is one previous application and 14 similar applications approved for similar shop and services uses as mentioned in paragraphs 5 and 6 above. Approving the current application is in line with the Committee’s previous decisions.
- 11.7 Regarding the local view and public comment objecting to the application as mentioned in paragraphs 9.3.1 and 10 respectively, the 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 local view and public comment mentioned in paragraphs 9.3.1 and 10 above, PlanD has no objection to the application.

- 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 22.11.2027. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (b) the submission of a run-in/out proposal at Fan Kam Road within **6** months from the date of planning approval to the satisfaction of the Director of Highways and Commissioner for Transport or of the Town Planning Board by 22.5.2025;
- (c) in relation to (b) above, the implementation of the run-in/out proposal at Fan Kam Road within **9** months from the date of planning approval to the satisfaction of the Director of Highways and Commissioner for Transport or of the Town Planning Board by 22.8.2025;
- (d) the implementation of the accepted 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 22.8.2025;
- (e) if the above planning condition (a) 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; and
- (f) if any of the above planning condition (b), (c) or (d) 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.

Advisory Clauses

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

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

the proposed use with associated filling of land is not in line with the planning intention of the "V" zone which is to provide land primarily for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the 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 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 received on 5.2.2024
Appendix Ia	FI received on 5.6.2024
Appendix Ib	FI received on 23.9.2024
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comment
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2024**