

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/101

<u>Applicant</u>	: Best Creation Development Limited represented by Chun Lik Engineering (Hong Kong) Limited
<u>Site</u>	: Lots 736 RP, 738 RP (Part) and 739 RP in D.D. 95 and Adjoining Government Land, Kwu Tung North, New Territories
<u>Site Area</u>	: About 2,238m ² (including 797.9m ² of Government land (about 35.7%))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/4
<u>Zoning</u>	: (i) “Open Space” (“O”) (58%) (ii) “Other Specified Uses” annotated “Business and Technology Park” (“OU(BTP)”) (34%) (iii) An area shown as ‘Road’ (8%)
<u>Application</u>	: Temporary Warehouse and Vehicle Repair Workshop with Ancillary Office and Staff Rest Room for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary warehouse and vehicle repair workshop with ancillary office and staff rest room for a period of three years. The Site is zoned “O”, “OU(BTP)” and an area shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/4 and falls within the Remaining Phase of the Kwu Tung North/Fanling North New Development Area (KTN/FLN NDA) (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied uses without a valid planning permission.
- 1.2 The Site is subject of two previous applications No. A/KTN/51 and A/KTN/86 for the same applied uses approved in 2019 and 2022 respectively. The last application No. A/KTN/86 for the same applied uses which was submitted by the same applicant and approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 10.6.2022 for a period of

three years up to 10.6.2025 (**Plan A-1**). The planning permission was subsequently revoked on 10.3.2024 for non-compliance with the approval condition on implementation of the fire service installations (FSI) proposal. The proposed layout, uses and major development parameters in the current application are largely the same with those approved under application No. A/KTN/86.

- 1.3 According to the submission, the proposed development comprises four structures of one to two storeys with a total gross floor area (GFA) of 1,550m² and building height ranging from 6.9m to 16m for warehouse, vehicle repair workshop, staff resting room, utilities and ancillary office uses (**Drawing A-1**). The Site is accessible from Castle Peak Road – Kwu Tung via a local road through three ingress/egress points (**Drawing A-1**). There are two light goods vehicle loading/unloading spaces in the Site. The operation hours are from 9 a.m. to 6 p.m. from Mondays to Fridays and 9 a.m. to 1 p.m. on Saturdays and no operation on Sundays and public holidays.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on 19.1.2024 (**Appendix I**) and supplementary information via email dated 24.1.2024
 - (b) Further Information received on 20.2.2024 in response to (**Appendix Ia**) departmental comments
(exempted from publication and recount 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 Further Information at **Appendices I and Ia** are briefly as summarised below:

- (a) The current application is the same as the previous application (No. A/KTN/86) at the Site which was approved with conditions on 10.6.2022. The applicant has implemented the landscape and drainage proposals for compliance with the approval conditions. While the submission of the FSI proposal has been agreed, the applicant has been liaising with the contractors and Government departments for the implementation works of the FSI proposal. As the implementation works may not be completed before the time-specified date, the current application has been submitted. The applicant is committed to comply with the approval conditions upon the approval of the current application.
- (b) Vehicle manoeuvring takes place within the Site and the vehicles would not queue back onto the local road. The applied uses will therefore not bring adverse traffic impact to Castle Peak Road – Kwu Tung. The applicant also undertakes to repair and maintain the local road along the east of Site which is not maintained by the Transport Department.

- (c) The applicant has attached the drainage impact assessment and drainage proposal from the previous application in support of the current application. The applicant has implemented the drainage proposal and undertake the maintenance of drainage facilities. No adverse drainage impact is anticipated.
- (d) The applied uses and structures are simple and the Site can be reinstated. There is no other use except those under the application. There will be no spraying or polluting works to be conducted at the Site. No toxic waste, pollutant or flammable goods will be stored at the Site. There is no impact to the ecology or environment of the surrounding areas.

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

The applicant is the sole “current land owner” of the private land within the Site. For the portion of government land, the “Owner’s Consent/Notification” requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31B) is not applicable to the application. 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 three previous applications No. A/DPA/NE-KTN/37, A/KTN/51 and A/KTN86. The location and details of the previous applications are at **Plan A-1** and **Appendix II** respectively.
- 5.2 The application No. A/DPA/NE-KTN/37 for low density residential development, mainly on an area zoned “Industrial (Group D)” at that time was rejected by the Committee on 15.7.1994 which is not relevant to the current application.
- 5.3 The applications No. A/KTN/51 and A/KTN/86 for the same applied uses at the Site submitted by the same applicant were approved with conditions for a period of three years by the Committee on 8.3.2019 and 10.6.2022 respectively. Both applications were revoked on 8.6.2021 and 10.3.2024 respectively for non-compliance with approval conditions.
- 5.4 Compared with the previous approved application (No. A/KTN/86), the current application generally proposes no change in the major development parameters including site area, GFA, number of structure and provision of loading/unloading spaces.

6. Similar Application

There is no similar application within the same “O” and “OU(BTP)” zones and area shown as ‘Road’.

7. The Site and Its Surrounding Areas (Plan A-2a and site photos on A-4a to A-4c)

7.1 The Site is:

- (a) hard paved, fenced off and currently used for the applied uses without valid planning permission; and
- (b) accessible from Castle Peak Road – Kwu Tung via a local road.

7.2 The surrounding areas are rural in character and intermixed with domestic structures, vehicle repair workshops, warehouse/logistics centre, and storage/open storage yards, shops and unused land. To the south-west are a restaurant, a village office and a vegetated co-operative society. To the northwest are a waste recycling yard and a soy sauce factory.

8. Planning Intentions

8.1 The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

8.2 The planning intention of the “OU(BTP)” zone is primarily for medium-density development to provide a mix of commercial, office, design, research and development uses for promoting high technology business development.

8.3 The area shown as ‘Road’ is intended for road use.

9. Comments from Relevant Government Departments

9.1 Apart from the Government departments as set out in paragraphs 9.2 to 9.4 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 in the Recommended Advisory Clauses are provided in **Appendices III and IV** respectively.

Long-term Development

9.2 Comments of the Chief Estate Surveyor/New Development Area, Lands Department (CES/NDA, LandsD):

the subject lots were affected by the Remaining Phase of KTN/FLN NDA development. According to the Gazette Notices No. 160 and 205 gazetted on 11.1.2024, the subject lots shall revert to the Government on 12.4.2024 (the

Reversion Date). In this regard, approval for the planning application beyond the Reversion Date is not supported.

9.3 Comments of the Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD):

- (a) the subject lots fall within the land resumption limit of the Remaining Phase of KTN/FLN NDA (**Plan A-2b**); and
- (b) the construction of the Remaining Phase of KTN/FLN NDA is planned to commenced in July 2024 tentatively. Under the latest programme, the handover of the subject private lots from LandsD to CEDD is expected to be in Q3 2024.

Land Administration

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

- (a) objects to the planning application from land administration perspective due to the unauthorised structures within the private lots and the unlawful occupation of Government land (GL);
- (b) the Site comprises Old Schedule Agricultural Lots 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;
- (c) the Site is already being used for the applied uses under the application;
- (d) there are unauthorised structures on the private lots. According to the records at the Land Registry, a statutory order (No. C/TC/003980/19/NT) under section 24(1) of the Buildings Ordinance was registered against the unauthorised structures. The lot owner should immediately rectify the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without further notice; and
- (e) the GL within the Site has been fenced off and illegally occupied with unauthorised structures without any permission. Any occupation of GL without Government's prior approval is an offence under Cap 28. LandsD objects to the planning application since there is illegal occupation of GL which regularisation would not be considered according to the prevailing land policy. The lot owner should immediately cease the illegal occupation of GL and remove the unauthorised structures as demanded by LandsD. His office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice.

10. Public Comments Received During Statutory Publication Period

During the statutory public inspection period, one public comment from an individual expressing concerns was received (**Appendix V**). The main concerns are that the previous applications were revoked due to non-compliance with approval conditions, and approval of the subject application should not be given as the applicant had no intention to comply with the approval conditions.

11. Planning Considerations and Assessments

- 11.1 The application seeks planning permission for temporary warehouse and vehicle repair workshop with ancillary office and staff rest room for a period of three years. The Site falls within an area zoned “O” and “OU(BTP)” and area shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/4 (**Plan A-1**) and falls within the Remaining Phase of the KTN/FLN NDA. The planning intentions of the “O” and “OU(BTP)” zone are primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public, and for medium-density development to provide a mix of commercial, office, design, research and development uses for promoting high technology business development respectively, whilst area shown as ‘Road’ is intended for road use. The applied uses are not in line with the long-term planning intentions of the above zonings for the KTN/FLN NDA.
- 11.2 The Site falls within the Remaining Phase of the KTN/FLN NDA development and the subject private lots are within the land resumption limit of the Remaining Phase development (**Plan A-2b**). According to CES/NDA, LandsD, the subject private lots shall revert to the Government on the Reversion Date (i.e. 12.4.2024). Furthermore, PM(N) of CEDD advised that the related construction works is tentatively scheduled for commencement in July 2024. Under such implementation programme, the handover of the subject private lots from LandsD to CEDD for the construction works is expected in Q3 2024. In this regard, CES/NDA, LandsD does not support the planning application as the approval period would go beyond the Reversion Date. Taking into account the imminent land resumption and implementation programme of the KTN/FLN NDA and the fact that the NDA is one of the major land supply sources of the Development Bureau’s latest 10-year supply forecast of developable land for 2024-25 to 2033-34, the approval of the planning application would jeopardise the implementation of the planned developments of the Site under the KTN NDA.
- 11.3 While the Site was subject to two previous applications approved in 2019 and 2022, the latest progress on the implementation of the KTN/FLN NDA explained in paragraph 11.2 above are much different from that for the consideration of the two previous applications. Such changes in circumstances make it difficult to further approve the current application even on a sympathetic ground, not to mention that the two previous planning permissions were revoked for non-compliance with approval conditions. Given the firm development programme of KTN/FLN NDA development, the planning circumstances of the application is different from that of the previous approved applications.

- 11.4 Regarding the public comment received, the planning considerations and assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department does not support the application for the following reason:

the Site falls with the Remaining Phase of the KTN/FLN NDA development with imminent land resumption and development programme. Approval of the application would jeopardise the planned developments of the Site under the KTN/FLN NDA. There is no strong planning justifications in the submission for a departure from the planning intentions.

- 12.2 Alternatively, should the Committee decide to approve the application, on a sympathetic ground, it is suggested that the permission shall be valid on a temporary basis for a period of one year until 15.3.2025, instead of the period of three years sought in view of the imminent land resumption of the Site. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 1:00 p.m. and 6:00 p.m. on Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) the submission of a condition record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.6.2024;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.6.2024;
- (g) in relation to (f) above, the implementation of the 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 15.9.2024;

- (h) if any of the above planning condition (a), (b), (c) 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; and
- (i) if any of the above planning condition (d), (f) or (g) 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 attached at **Appendix IV**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application Form with attachments received on 19.1.2024 and supplementary information via email dated 24.1.2024
Appendix Ia	Further Information received on 20.2.2024
Appendix II	Previous Applications covering the Site
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comment
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plans A-2a and A-2b	Site Plans
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
MARCH 2024**