

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/225

- Applicant** : ESA Warehouse & Transport (HK) Company Limited represented by Allgain Land Administrators (Hong Kong) Limited
- Site** : Lots 558 RP (Part), 559 RP (Part), 561 RP (Part), 562 S.F (Part), 563 (Part), 564 S.B (Part), 565 (Part), 567 (Part) and 568 (Part) in D.D. 89, Man Kam To Road, Sha Ling, Sheung Shui, New Territories
- Site Area** : About 7,710m²
- Land Status** : Block Government Lease (demised for agricultural use)
- Lot 562 S.F is a mixed lot (i.e. house and agricultural use)
- Part of Lot 565 is covered by a Building Licence No. BL824/55 for house purpose
- Plans** : - Approved Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/16 (at the time of submission)
- Draft Fu Tei Au and Sha Ling OZP No. S/NE-FTA/17 (currently in force)¹
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Logistics Centre 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 logistics centre for a period of three years and associated filling of land at the application site (the Site) which falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years, as well as filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is largely vacant, except that some construction materials are found in the middle part of the Site.
- 1.2 According to the applicant, the current application is submitted to facilitate the relocation of a warehouse and logistics centre on various lots in D.D. 128 and 129 in Yuen Long affected by the Hung Shui Kiu/Ha Tsuen New Development Area (HSK/HT NDA). The affected land was resumed by the Government in 2021.

¹ There is no change to the “AGR” zone under the current OZP No. S/NE-FTA/17.

- 1.3 The proposed use includes one single-storey temporary structure not exceeding 13m in height and gross floor area of about 5,180m² for logistics centre. Together with a rain shelter of about 334m², the total floor area is about 5,514m². Two loading/unloading (L/UL) bays for heavy goods vehicles and six L/UL bays for container vehicles are proposed within the Site (**Drawing A-1**). The Site is accessible via a local track leading to Man Kam To Road to the northeast (**Plan A-2**). The operation hours of the proposed use are from 8:00 a.m. to 6:00 p.m. from Mondays to Saturdays and no operation will be held on Sundays and public holidays.
- 1.4 The applicant also proposes to fill the land (i.e. about 5,180m² of the Site) by about 0.2m in depth with concrete for construction of the proposed logistics centre (**Drawing A-1**). No filling activities will be conducted in the remaining area.
- 1.5 The Site is the subject of six previous planning applications (No. A/NE-FTA/159, 174, 184, 193, 198 and 212) for different uses (details in paragraph 6 below).
- 1.6 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 26.4.2023 (**Appendix I**)
 - (b) Supplementary Information (SI) received on 4.5.2023 (**Appendix Ia**)
 - (c) Further Information (FI) received on 23.8.2023 and 28.8.2023* (**Appendix Ib**)
 - (d) FI received on 27.9.2023* (**Appendix Ic**)
 - (e) FI received on 27.11.2023* (**Appendix Id**)
- * *accepted and exempted from the publication and recounting requirements*
- 1.7 On 23.6.2022 and 13.10.2023, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months each 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 at **Appendices I** and **Ic**, as summarized below:

- (a) the applicant is a subsidiary of ESA Logistics (HK) Company Limited, which is one of the leading third-party logistics providers in Asia with over 20 years of experience in providing international freight forwarding, warehousing, cross border trucking services, etc. The original operation site in Yuen Long was affected by the HSK/HT NDA and had been resumed and reverted to the Government in 2021;
- (b) the applicant has carried out site search in the territory for reprovisioning of his business, taking into account factors including affordability, suitability and availability of possible sites. The proposed logistics centre is similar to his original business in Yuen Long (i.e. warehouse and logistics centre). Due to land availability issue, the current Site is about 61% smaller than the original one in Yuen Long;
- (c) the proposal is temporary in nature and will not jeopardize the long-term planning intention of the "AGR" zone;
- (d) the Site falls within Category 3 area under 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). Having considered that the brownfield

operators affected by the government projects may face difficulties in finding a replacement site, sympathetic consideration could be given to those applications with policy support with no adverse departmental comments and no local objections, or the relevant concerns can be addressed through the implementation of approval conditions;

- (e) the proposed development is not incompatible with the surrounding areas intermixed with storage/open storage yards and warehouses;
- (f) no workshop activities will be carried out within the Site. To minimize environmental nuisance to the nearby area, hoarding will be erected along the boundary of the Site. The logistics centre will be enclosed with sound insulation materials, and the operation hours will be restricted, etc.;
- (g) the applicant will follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by Environmental Protection Department;
- (h) sufficient manoeuvring space will be reserved within the Site to ensure that no vehicle will reverse onto the public road. As such, no adverse traffic impact arising from the proposed development is anticipated; and
- (i) adverse sewerage, fire safety and drainage impact are not 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 posting site notice and sending notice to the Ta Kwu Ling District Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement actions against unauthorized development (UD) involving parking of vehicles and storage use (No. E/NE-FTA/197, 198 and 200) (**Plan A-2**). Enforcement Notices (ENs) were issued on 30.10.2023. For EN No. E/NE-FTA/197, as the UD had been discontinued, the Site is under close monitoring according to established procedures. For EN No. E/NE-FTA/200, as the UD still continued upon expiry of the notices, prosecution action may be followed. For the remaining EN No. E/NE-FTA/198, if the notice is not complied with by 30.1.2024, prosecution notice may be taken.

5. Town Planning Board Guidelines

The TPG PG-No. 13G promulgated by the Board on 14.4.2023 are relevant to the application. The Site falls within Category 3 areas under the Guidelines. The relevant extracts of the Guidelines are at **Appendix II**.

6. Previous Applications

- 6.1 Part of the Site is the subject of six previous applications submitted by different applicants for different uses including parking of container tractor/trailers/vehicles; vehicle repair workshop; place of recreation, sports or culture (hobby farm); and logistics centre. Details of the previous applications are at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Of them, three applications for parking of container tractor/trailers/vehicles and vehicle repair workshop (No. A/NE-FTA/159, 174 and 184) were rejected by the Committee or the Board on review between 2016 and 2019 and two applications for hobby farm (Applications No. A/NE-FTA/193 and 198) were approved by the Committee between 2019 and 2020. As the current application is for a proposed temporary logistics centre, the above applications are not relevant.
- 6.3 The remaining application (No. A/NE-FTA/212) for the same use submitted by a different applicant was rejected by the Committee in September 2022 for being not in line with the planning intention of the “AGR” zone; and not complying with the then TPB PG-No. 13F in that there was no previous planning approval and there were adverse departmental comments on the application.

7. Similar Application

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

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

- 8.1 The Site is:
 - (a) largely vacant, except that the middle part of the Site is occupied by construction materials without any valid planning permission; and
 - (b) accessible via a local track leading to Man Kam To Road to the northeast.
- 8.2 The surrounding areas are characterized by temporary domestic structures, warehouses, vehicle parks, tree clusters, vegetated land and vacant land.

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, permission from the Board is required for filling of land within the “AGR” zone as the activity may cause adverse drainage impact on the adjacent areas and adverse impact on the natural environment.

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 departments consulted have no objection to or no adverse comments on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are at **Appendices IV and V** respectively.

10.2 The following government bureau supports the application

Policy Aspect

10.2.1 Comments of Secretary for Development (SDEV):

- (a) the application is to facilitate relocation of a brownfield operation for a warehouse and logistics centre in Yuen Long, which was displaced by the First Phase development of the HSK/HT NDA. The affected land had been resumed and reverted to the Government in 2021;
- (b) according to the applicant, a site search had been carried out with a view to identifying suitable site for re-establishment of its business affected by the site clearance under the NDA project, and the Site under application is one of the considered suitable and practicable after the site search. It is noted that the Site is smaller than the original site cleared by the Government; and
- (c) the proposed use is not entirely incompatible with the surrounding environment and would not create insurmountable impacts in technical terms subject to imposition of appropriate approval conditions. To facilitate the provision of operating space for displaced brownfield operations still needed by the community, the application is supported from the policy perspective.

10.3 The following government departments have comments on/objection to the application/conveyed local views/comments on the application:

Land Administration

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

- (a) the Site comprises Old Schedule Lots held under the Block Government Lease. Except Lots 562 S.F and 565 both in D.D. 89, the lots are Old Schedule Agricultural Lots which contain the restriction that no structures are allowed to be erected without prior approval of the Government. Lot 562 S.F in D.D. 89 is a mixed lot (i.e. house and agricultural use). Apart from agricultural use, part of Lot 565 in D.D. 89 is covered by Building Licence No. BL824/55 for house purpose. No right of access via Government land (GL) is granted to the Site (**Plan A-2**); and
- (b) the actual occupation area does not tally with the Site. A portion of adjoining GL is occupied without approval from LandsD. Any occupation of GL without Government's prior approval is an offence. The lot owner(s)/the applicant should immediately cease any occupation of GL

and LandsD reserve the rights to take necessary land control action against the illegal occupation of GL without separate notice.

Environment

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

- (a) does not support the application as it would generate traffic of heavy vehicles and there are residential dwellings in the vicinity of the Site (**Plan A-2**), environmental nuisance to the nearby residential uses could be generated by the proposed use; and
- (b) three substantiated environmental complaints were received between 2021 and 2023 in relation to air quality and waste pollution.

Agriculture

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

- (a) does not support the application from agricultural perspective; 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, plant nurseries etc.

District Officer's Comments

10.3.4 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of San Uk Ling object to the application mainly on grounds that the proposed development would induce adverse traffic impact to the surrounding areas;
- (b) the incumbent North District Councilor of N16 Constituency and the Chairman of Fung Shui Area Committee have no comment on the application; and
- (c) the Chairman of 打鼓嶺村居民福利會 and the Ta Kwu Ling District Rural Committee do not reply.

11. Public Comments Received During Statutory Publication Period

On 9.5.2023, the application was published for public inspection. During the statutory public inspection period, a total of ten public comments were received (**Appendix VI**). A former member of North District Council indicates no comment on the application. Nine public comments from the Kadoorie Farm & Botanic Garden Corporation, 打鼓嶺沙嶺居民福利會 (with 73 signatures from Sha Ling villagers) and seven individuals object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; it would generate adverse environmental and traffic impacts on the surrounding

areas, heavy traffic generated by the proposed development would cause air pollution and threaten the safety of local residents; and the Site was occupied by vehicle park without planning approval and is a 'destroy first, develop later' case.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed temporary logistics centre for a period of three years and filling of land at the Site zoned "AGR" on the OZP. The proposed development is not in line with the planning intention of the "AGR" zone, which is to retain fallow 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. Nevertheless, it is noted that the application is to facilitate relocation of the business operation affected by the HSK/HT NDA and that the applicant has spent effort in identifying alternative sites to relocate his business. However, other potential sites are considered not feasible due to various reasons including affordability, suitability and availability of the sites, etc, and the Site is considered by the applicant as the only suitable one for relocation of his business. With the policy objective of facilitating smooth clearance for the HSK/HT NDA and providing operating space for displaced brownfield operations still needed by the community, SDEV supports the application from policy perspective. Taking into account the planning assessment below, the proposed development on a temporary basis for a period of three years could be tolerated.
- 12.2 Filling of land within the "AGR" zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North, Drainage Services Department (CE/MN of DSD) has no adverse comment on the application from drainage perspective. Should the application be approved, approval conditions requiring the applicant to submit and implement the drainage proposal and reinstate the Site to an amenity area are recommended in paragraph 13.2 below.
- 12.3 DEP does not support the application in considering that environmental nuisance could be generated by the proposed development. Nevertheless, the proposed vehicular run-in and run-out are in the northeast and northwest of the Site respectively with a distance from the residential dwellings mainly located in the south and southeast (**Plan A-2**). The applicant also proposes to erect hoardings along the peripheral boundary of the Site and enclose the proposed structure with sound insulation materials to minimize nuisance to the surrounding areas; and no workshop activities will be conducted at the Site. To address DEP's concern, approval conditions restricting the operation hours and prohibiting workshop activities are recommended in paragraph 13.2 below. To minimize any potential environmental nuisance, the applicant will also be reminded to implement the proposed environmental mitigation measures and to follow the revised 'Code of Practice on Handling the Environmental Aspect of Temporary Uses and pen Storage Sites' issued by EPD.
- 12.4 The Site is situated in an area of rural landscape character characterized by temporary domestic structures, warehouses, tree clusters and vegetated/vacant land. Significant adverse landscape impact on the landscape character and the existing landscape resources arising from the proposed development is not anticipated. Chief Town Planner/Urban Design & Landscape of PlanD has no objection to the application from landscape planning perspective.

- 12.5 Having considered the FI submitted by the applicant, Commissioner for Transport considers that the application is tolerable from traffic engineering perspective. Other departments consulted, including CE/MN of DSD and Director of Fire Services, etc., have no adverse comment on or no objection to the application. While DLO/N of LandsD has comments on the application regarding the occupation of GL, the applicant will be advised to liaise with LandsD to deal with land issue separately under the land regime.
- 12.6 The Site falls within Category 3 areas under TPB PG-No. 13G. The following considerations in the Guidelines are relevant:
- Category 3 areas: applications would normally not be favourably considered unless the applications are on sites with previous planning approvals (irrespective of whether the application is submitted by the applicant of previous approval or a different applicant). Having considered that the open storage and port back-up uses have a role to play in Hong Kong's economy and provide considerable employment opportunities, and the operators/uses affected by resumption and clearance operations of the Government to make way for developments may face difficulties in finding a replacement site, sympathetic consideration could be given to those applications meeting the following criteria: (i) policy support is given by the relevant bureau(x) to the application for relocation of the affected uses/operations to the concerned sites; and (ii) no adverse departmental comments and local objections, or the concern could be addressed by approval conditions.
- 12.7 The application is considered generally in line with TPB PG-No. 13G in that policy support is rendered by SDEV to the application for relocation of the affected uses/operation to the Site, and that relevant departments consulted have no comment on or no objection to the application. Concerns of DEP can be addressed as stated in paragraph 12.3 above. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 13.2 below.
- 12.8 The Site is the subject of one previous application (No. A/NE-FTA/212) for the same use submitted by different applicant. Although the previous application was rejected due to reasons including adverse environmental impact and not complying with the then TPB PG-No. 13F as detailed in paragraph 6.3 above, it is considered that the planning circumstances of the current application are different from the rejected one given that policy support is given to the current application from SDEV; there is no adverse departmental comment or the concern can be addressed by relevant approval conditions; and it is generally in line with TPB PG-No. 13G as mentioned in paragraph 12.7 above.
- 12.9 Regarding the local objection conveyed by DO(N), HAD and the adverse public comments mainly on traffic and environmental aspects as detailed in paragraphs 10.3.4 and 11 above respectively, the government departments' comments and the planning assessment above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local views conveyed by DO(N), HAD and the public comments mentioned in paragraphs 10.3.4 and 11 respectively, the Planning Department considers that the proposed development 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 26.1.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 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) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities, as proposed by the applicant, shall be carried out on the site at any time during the planning approval period;
- (d) 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 26.7.2024;
- (e) in relation to (d) 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 26.10.2024;
- (f) in relation to (e) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (g) the submission of fire service installations (FSIs) 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 26.7.2024;
- (h) in relation to (g) above, the implementation of the FSIs 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 26.10.2024;
- (i) the submission of the design of vehicular run-out to the Site within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 26.7.2024;
- (j) in relation to (i) above, the provision of vehicular run-out to the Site within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 26.10.2024;
- (k) if any of the above planning condition (a), (b), (c) or (f) 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;
- (l) if any of the above planning condition (d), (e), (g), (h), (i) or (j) 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
- (m) 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 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. This zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given 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 applicant.

15. Attachments

Appendix I	Application Form received on 26.4.2023
Appendix Ia	SI received on 4.5.2023
Appendix Ib	FI received on 23.8.2023 and 28.8.2023
Appendix Ic	FI received on 27.9.2023
Appendix Id	FI received on 27.11.2023
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Previous S.16 Applications
Appendix IV	Government Department's Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	UAV Photo
Plans A-4 and A-4b	Site Photos