

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/31

- Applicant** : 英盛（合和）工程有限公司
- Site** : Lots 113, 116, 117, 118 and 119 (Part) in D.D. 86 and Lots 566 S.A RP, 567, 570, 571, 573, 574 and 576 S.A RP in D.D. 90 and Adjoining Government Land (GL), Lin Ma Hang Road, Man Kam To, New Territories
- Site Area** : 5,750m² (about) (Includes GL of about 1,230m² (or about 21% of the Site))
- Land Status** : Block Government Lease (demised for agricultural use) (about 78.8% of the Site)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zonings** : (i) “Agriculture” (“AGR”) (about 97% of the Site)
(ii) “Green Belt” (“GB”) (about 3% of the Site)¹
- Application** : Proposed Temporary Logistics Warehouse (Excluding Dangerous Goods) and Ancillary Office for a Period of Three Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary logistics warehouse (excluding dangerous goods) and ancillary office for a period of three years and filling of land at the application site (the Site), which is largely zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years, and filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is largely hard paved and currently used for storage of construction materials without any valid planning permission.
- 1.2 The proposal comprises four single-storey temporary structures (of about 2.5m to 7m in height) for storage of loading/unloading (L/UL) equipment and plywood, and related office and meter room uses. A total of two private car parking spaces and four L/UL bays for medium goods vehicles are proposed within the Site. The operation hours of the proposed development are from 9:00 a.m. to 5:00 p.m. from Mondays to Fridays, with no operation on Saturdays, Sundays and public holidays.
- 1.3 According to the applicant, a total of 28 trees will be planted within and in the vicinity of the Site, and slope maintenance works will be carried out should the application be

¹ A minor portion of the Site of about 171.9m² (i.e. 3% of the Site) falls within an area zoned “GB” on the OZP, which can be regarded as minor boundary adjustment in accordance with the covering Notes of the OZP, and not included in the planning assessment.

approved by the Board (**Drawing A-1**). The applicant also applies for regularization of filling of land for paving the entire site by 0.02m in depth for construction of structures and circulation area. The layout plan submitted by the applicant is shown in **Drawing A-1**.

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

- (a) Application Form with attachments received on 30.8.2023 (Appendix I)
- (b) Supplementary Information (SI) received on 15.9.2023 (Appendix Ia)

2. Justifications from the Applicant

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

- (a) the proposed development would bring job opportunity to the local residents;
- (b) no adverse landscape, drainage, environmental and visual impact arising from the proposed development on the surrounding areas is anticipated. Should the application be approved, the applicant undertakes to improve the drainage and landscape conditions of the area; and
- (c) the proposed development is surrounded by warehouses, some of which are recently approved by the Rural and New Town Planning Committee (the Committee), e.g. the rural workshop (sawmill and timber yard) (Application No. A/NE-MKT/17) in the vicinity of the Site.

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 publishing notices in local newspapers and posting site notice in a prominent position on or near the Site. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, TPB PG-No. 31A is not applicable.

4. Background

- 4.1 The Site is subject to active planning enforcement actions against unauthorized developments (UDs) involving storage use and/or place for parking of vehicles (No. E/NE-MKT/34 and 43).
- 4.2 For E/NE-MKT/34 involving storage use and parking of vehicles, Enforcement Notices (ENs) were issued on 28.11.2022 and 20.1.2023. As the UD had been discontinued, Compliance Notices (CNs) for ENs were on 24.7.2023. Reinstatement Notices (RNs) were issued on 3.8.2023 requiring the concerned parties to remove the leftover materials and to grass the land by 3.11.2023. If the RN is not complied with, prosecution action may be taken.
- 4.2 For E/NE-MKT/43 involving storage use, EN was issued on 16.10.2023 requiring discontinuation of the UD by 16.11.2023, If the EN is not complied with, prosecution

action may be taken.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13G) promulgated by the Board on 14.4.2023 are relevant to the application. The Site falls within Category 3 areas under TPB PG-No. 13G. The relevant extracts of the Guidelines are at **Appendix II**.

6. Previous Application

The Site is not the subject of any previous application.

7. Similar Application

There is no similar application for the same use within the same “AGR” zone in the Man Kam To 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 hard paved and currently used for storage of construction materials without valid planning permission;
- (b) sandwiched between two knolls covered by woodlands within the “GB” zones; and
- (c) accessible via Lin Ma Hang Road to the west.

8.2 The surrounding areas are characterized by temporary domestic/vacant structures, a storage yard, active agricultural land, vegetated areas and tree clusters. To the immediate north is Hong Kong Seeing Eye Dog Training School. To the immediate east and south are woodlands within the “GB” zones.

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 impacts 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 paragraph 10.2 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 provided at **Appendices III** and **IV** respectively.
- 10.2 The following government departments have objection to/adverse comments on 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 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;
 - (b) no consent is given for inclusion of GL (i.e. 1,230m² as proposed by the applicant) for the proposed use. The GL within the Site is found fenced off without any permission. Any occupation of GL without Government's prior approval is an offence. LandsD objects to the application since there is illegal occupation of GL in which regularization would not be considered according to the prevailing land policy. The lot owner(s)/the applicant should immediately cease any occupation of the GL and LandsD reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice;
 - (c) there are unauthorized structures erected on the private lots which are already subject to lease enforcement action according to the case priority. The lot owner(s) should immediately rectify the lease breaches and LandsD reserves the rights to take necessary lease enforcement action against the breaches without separate notice; and
 - (d) as land filling works are proposed in the planning submission, the applicant should comply with all the filling requirements imposed by the government departments. GL should not be disturbed unless with prior approval.

Landscape

- 10.2.2 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) has some reservations on the application from landscape planning perspective;
 - (b) with reference to the aerial photo of 2022 (**Plan A-3a**), the Site is located in an area of rural inland plains landscape character comprising woodland within the adjoining "GB" zones, tree clusters, farmland and temporary structures. Based on the site photos of 2023 and the recent site inspection,

the Site is mainly hard paved and occupied by temporary structures, goods and cargo vehicles. New cut slopes have been formed along the northeastern boundary of the Site and within the “GB” zone due to excavation/site formation works. Some trees of common species are found along the site boundaries. Two mature trees, *Cinnamomum camphora* 樟 with 420mm to 850mm diameter at breast height (DBH) (**Plan A-2**), are observed in close proximity to the northeastern boundary of the Site, which may be in conflict with the proposed slope retaining works;

- (c) it is observed in the layout plan (**Drawing A-1**) that there are discrepancies in the number of tree planting as shown on plan, and the location of tree plantings between the layout plan and its remarks. While the remarks claims that the proposed tree plantings at the northeast along the slope toe fall within the site area, these trees are marked outside the Site. According to **Drawing A-1**, 28 *Ficus microcarpa* 細葉榕 are proposed under the application, of which 20 of them are proposed at the northeast along the slope toe while eight of them are proposed at the southwest outside the site boundary. As some of the plantings are proposed outside the Site, the viability and maintenance responsibility cannot be ascertained; and
- (d) Compared the aerial photo in 2022 (**Plan A-3a**) and our record, tree/vegetation clearance, hard paving and site excavation/formation works were observed within and in close proximity of the Site. Adverse impact on the landscape resources has taken place. There is concern that approval of the application may further alter the landscape character and degrade the landscape quality of the surrounding areas.

Environment

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

- (a) does not support the application from environmental perspective because there are sensitive receivers in the vicinity of the Site (the nearest residential dwelling being located in about 37m away) (**Plan A-2**) and the proposed use involves the use of heavy vehicles. Environmental nuisance is expected; and
- (b) no substantiated environmental complaint has been received for the Site over the past three years.

Agriculture and Nature Conservation

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

Agriculture

- (a) does not support the application from agricultural perspective; and
- (b) 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. The Site possesses potential

for agricultural rehabilitation.

Nature Conservation

- (a) no comment on the application from nature conservation perspective.

Drainage

10.2.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) the applicant should advise if there is existing streamcourse within or in the vicinity of the Site, without which potential drainage impact arising from the proposed development and the applied filling of land could not be reasonably ascertained.

Traffic

10.2.6 Comments of the Commissioner for Transport (C for T):

- (a) the applicant should provide the following information/assessment for his consideration:
 - (i) to advise and substantiate the traffic generation from and attraction to the Site and the traffic impact on the nearby road links and junctions;
 - (ii) to advise the width of the vehicular access leading to the Site;
 - (iii) to demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and L/UL spaces, preferably using the swept path analysis;
 - (iv) to advise the management/control measures to be implemented to ensure no queueing of vehicles outside the Site;
 - (v) to advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (vi) to advise the measures in preventing illegal parking by visitors to the Site.

Slope Safety

10.2.7 Comments of the Chief Building Surveyor/Slope Safety, Buildings Department (CBS/SS, BD):

- (a) has adverse comments on the application from slope safety perspective;
- (b) unauthorized site formation works (USFW) was first identified in 2022 and it was observed to have further extended with an unauthorized steel portal frame (unauthorized building works (UBW)) built at the Site

during a recent site inspection on 23.5.2023. Both the USFW and UBW are being monitored by Buildings Department and Geotechnical Engineering Office of Civil Engineering and Development Department; and

- (c) for USFW on private land, enforcement action may be taken by the Building Authority under Buildings Ordinance (BO) Section 27A if dangerous hillside is identified or under BO Section 24(1) to require the removal of the USFW pursuant to the current enforcement policy.

10.2.8 Comments of the Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO)/CEDD):

- (a) illegal site formation works were identified within the captioned site and its adjoining GL, which are within and close to the Site;
- (b) the Site is overlooked by a steep natural terrain and meets the alert criteria for a Natural Terrain Hazard Study (NTHS); and
- (c) the applicant is required to submit a Geotechnical Planning Review Report (GPRR) in support of the application. The GPRR should include a geotechnical review of the natural terrain hazards, a geotechnical review of how that the cut slopes may affect or be affected by the proposed development, and an assessment of the geotechnical feasibility of the proposed development. However, no such information/assessment has been submitted under the application.

District Officer's Comments

10.2.9 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 Muk Wu object to the application mainly on grounds that the proposed development would induce adverse environmental and traffic impacts on the surrounding areas;
- (b) the incumbent North District Councilor of N16 Constituency has no comment on the application; and
- (c) Ta Kwu Ling District Rural Committee, the Chairman of Fung Shui Area Committee, the RR of Nga Yiu, the IIR and RR of San Uk Ling do not reply.

11. Public Comments Received During Statutory Publication Period

On 19.9.2023, the application was published for public inspection. During the statutory public inspection period, three public comments were received (**Appendix V**), including one from a member of the North District indicating no comment on the application and Kadoorie Farm & Botanic Garden Corporation and an individual objecting to the application. The major grounds of objection are that the Site is subject to active enforcement action; the Site is not subject to previous approval; not compatible with the surrounding areas; and approval of the application will encourage the proliferation of brownfield operations along Lin Ma Hang Road.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed temporary logistics warehouse (excluding dangerous goods godown) and ancillary office for a period of three years with associated filling of land at the Site zoned “AGR” on the OZP. The planning intention of the “AGR” zone is 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. The proposed development is considered not in line with the planning intention of the “AGR” zone. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- 12.2 Filling of land within “AGR” zone requires planning permission as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, CE/MN of DSD advises that the applicant should provide information/assessment on whether there is any existing streamcourse within or in vicinity of the Site and whether the applied filling of land would induce adverse impact on the streamcourse, without which potential drainage impact arising from the applied filling of land could not be reasonably ascertained. DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures, in the vicinity of the Site (the closest one located about 37m away from the Site) and the proposed use involves the use of heavy vehicles.
- 12.3 The Site falls within Category 3 area under the TPB PG-No. 13G promulgated by the Board on 14.4.2023. The following conditions in the Guidelines are relevant:
- Category 3 areas: application 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). Sympathetic consideration may be given if genuine efforts have been demonstrated in compliance with approval conditions of the previous applications and/or relevant technical assessments/proposals have been included in the fresh applications, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. 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, planning permission could be granted on a temporary basis up to a maximum period of three years.
- 12.4 The Site is located in an area of rural inland plains landscape character comprising woodlands within the “GB” zones, tree clusters, farmland and temporary structures. Compared the aerial photo of 2022 (**Plan A-3a**) and the recent record, tree/vegetation clearance, hard paving works and site excavation/formation works were conducted within and in close proximity of the Site. Adverse impact on the landscape resources arising from the formation works has been occurred. While the applicant proposes to plant 28 trees within and in the vicinity of the Site, it should be noted that as some of the plantings are proposed outside the Site, the viability and maintenance responsibility cannot be ascertained. CTP/UD&L of PlanD has some reservations on the application from landscape planning perspective and advises that approval of the application may further alter the landscape character and degrade the landscape quality of the surrounding areas.
- 12.5 With regards to the site formation/excavation works at the Site and its adjoining area, CBS/SS, BD has adverse comments on the application from slope safety perspective as

USFW and UBW are identified within the Site. H(GEO)/CEDD advises that the Site is overlooked by a steep natural terrain and the applicant is required to submit a GPRR for his consideration. However, no such information/assessment is submitted under the application. C for T advises that information/assessment in relation to traffic generation/attraction, adequacy of parking and L/UL spaces and management of pedestrian facilities, etc. should be provided, without which potential traffic impact arising from the proposed development could not be ascertained. DLO(N), LandsD objects to the application as there is illegal occupation of GL in which regularization would not be considered according to the prevailing land policy. Other government departments consulted, including D of FS and CE/C of WSD, have no comment on/no objection to the application.

- 12.6 The Site is not the subject of any previous application and there is no similar application within the same “AGR” zone in the vicinity of the Site over the past five years. Regarding the application as quoted by the applicant (i.e. Application No. A/NE-MKT/17), it should be noted that the application was approved by the Committee in 2021 mainly on consideration that the application was to facilitate the relocation of brownfield operations affected by Kwu Tung North New Development Area and that policy support was rendered by Development Bureau to the application. Besides, there were no adverse departmental comments on the application, or the concern could be addressed by imposition of approval conditions. As such, circumstances of that application are not applicable to the subject application.
- 12.7 The application does not comply with TPB PG-No. 13G in that the Site is not the subject of any previous approval and there are adverse departmental comments and local objections to the application. The applicant has failed to demonstrate that the proposed use would have no adverse traffic, drainage, landscape, environmental and slope safety impacts on the surrounding areas.
- 12.8 Regarding the objecting comments as detailed in paragraph 11 and the local views/comments conveyed by DO(N) in paragraph 10.2.9 above, the 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 the local views conveyed by DO(N), HAD and the public comments mentioned in paragraphs 10.2.9 and 11 respectively, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development 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 planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the proposed development does not comply with TPB PG-No. 13G for “Application for Open Storage and Port Back-up Uses” in that no previous approval has been granted to the Site and there are adverse departmental comments and local objections; and

- (c) the applicant fails to demonstrate in the submission that the proposed development would not generate adverse traffic, drainage, landscape, environmental and slope safety impacts on the surrounding areas.

13.2 Alternatively, 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 27.10.2026. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 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 on Saturdays, 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 27.4.2024;
- (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 27.7.2024;
- (e) in relation to (d) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (f) the submission of proposals for fire service installations and water supplies for firefighting 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 27.4.2024;
- (g) in relation to (f) above, the implementation of the proposals for fire service installations and water supplies for firefighting 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 27.7.2024;
- (h) the submission of a traffic management proposal within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 27.4.2024;
- (i) in relation to (h) above, the implementation of the traffic management proposal within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 27.7.2024;
- (j) the submission of the design of vehicular run-in/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 27.4.2024;
- (k) in relation to (j) above, the provision of vehicular run-in/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 27.7.2024;
- (l) the submission of a geotechnical planning review report within **6** months from the date of planning approval to the satisfaction of the Director of Civil Engineering

and Development or of the Town Planning Board by 27.4.2024;

- (m) in relation to (l) above, the provision of the mitigation measures as identified in the geotechnical planning review report within **9** months from the date of planning approval to the satisfaction of the Director of Civil Engineering and Development or of the Town Planning Board by 27.7.2024;
- (n) if any of the above planning condition (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;
- (o) if any of the above planning condition (c), (d), (f), (g), (h), (i), (j), (k), (l) or (m) 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
- (p) 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 IV**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form received on 30.8.2023
Appendix Ia	SI received on 15.9.2023
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Government Department's Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3a	Aerial Photo
Plan A-3b	UAV Photo
Plans A-4 and A-4b	Site Photos