

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/51

<u>Applicant</u>	Best Creation Development Limited
<u>Site</u>	Lots 736 RP (Part), 738 RP (Part) and 739 RP in D.D. 95 and Adjoining Government Land, Kwu Tung North, New Territories
<u>Site Area</u>	2,283 m ² (including 836 m ² of Government land)
<u>Lease</u>	Old Schedule lots held under the Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<u>Zoning</u>	“Open Space” (“O”) (about 57%); “Other Specified Uses” annotated “Business and Technology Park” (“OU(BTP)”) (about 33.2%); and an area shown as ‘Road’ (about 9.8%)
<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 for temporary warehouse and vehicle repair workshop with ancillary office and staff rest room at the application site (the Site) for a period of 3 years. The Site falls within Kwu Tung North New Development Area (KTN NDA) and is zoned “O”, “OU(BTP)” and an area shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, temporary use not exceeding a period of 3 years in area zoned “O”, “OU(BTP)” or ‘Road’ requires permission of the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied uses without planning permission (**Plan A-3**).
- 1.2 According to the applicant’s submission, the development comprises two structures of 2 storeys with a total gross floor area (GFA) of 1,508 m². One structure is for warehouse use (913 m²) and ancillary office (325 m²), and another is for vehicle repair workshop use (195 m²) and ancillary staff rest room (75 m²) with the maximum heights of 11.34 m and 6.9 m respectively (**Drawing A-1**). The Site is accessible from Castle Peak Road – Kwu Tung via a village road. Vehicular access

is at the south of the Site. There are 2 heavy goods vehicle parking spaces and 1 private car parking space in the Site. There will be no reserving of vehicles on public road. 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.

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

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|-----|---|----------------------|
| (a) | Application form received on 20.8.2018 | (Appendix I) |
| (b) | Traffic Impact Assessment (TIA) received on 20.8.2018 | (Appendix Ia) |
| (c) | Supplementary information received on 20.8.2018 | (Appendix Ib) |
| (d) | Further Information (FI) dated 19.9.2018 | (Appendix Ic) |
| (e) | FI dated 8.10.2018 | (Appendix Id) |
| (f) | FI dated 3.11.2018 | (Appendix Ie) |

1.4 The application was originally scheduled for consideration by the Committee on 19.10.2018. On 19.10.2018 and 21.12.2018, the Committee agreed to defer a decision on the application as requested by the applicant to allow time for the applicant to prepare FI to address department comments. On 15.2.2019, the applicant informed the Board that no further information would be submitted (**Appendix If**). Thus, the application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They are summarized as follows:

- (a) The applicant is the owner of the Site, which has been used for logistics, warehouse and car repairing purposes for more than 30 years. Rebuilding is required due to dilapidation of the structures over the years.
- (b) If the planning approval cannot be granted, the applicant's company would encounter difficulties in operation. The livelihood of the staffs would be affected and the company might even be closed down.
- (c) The Site was zoned "Industrial (Group D)" ("I(D)") on the previous Kwu Tung North OZP, and warehouse use was permitted. Thus, the applicant hopes that planning approval can be granted considering that the existing warehouse was a permitted use under the previous OZP.

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. For the portion of Government Land, the "Owner's Consent/Notification" Requirements is not applicable.

4. **Background**

The Site is currently not a subject of any active enforcement case. Should there be sufficient evidence to prove that the current use on the Site constitutes an Unauthorized Development under the Town Planning Ordinance, enforcement action would be taken.

5. **Previous Application**

The Site is involved in one previous application No. A/DPA/NE-KTN/37. Details of this previous application are summarized at **Appendix II** and its location is shown on **Plan A-1**. This previous application covering a larger area and for low density residential development, mainly on an area zoned “Industrial (Group D)” (“I(D)”) at that time, was rejected by the Rural and New Town Planning Committee (the Committee) on 15.7.1994 on the grounds that the proposed development was not in line with the planning intention for the area at that time and was incompatible with the industrial/storage uses in the vicinity; and there was insufficient information to demonstrate that the proposed development would not have any adverse traffic, drainage and landscape impacts on the development and/or adjacent areas.

6. **Similar Application**

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

7. **The Site and Its Surrounding Areas** (Plans A-1, A-2 and photos on Plans A-3, A-4a, A-4b and A-4c)

7.1 The Site is:

- (a) hard paved, fenced off and currently occupied by two structures for warehouse and vehicle repair workshop respectively without planning permission; and
- (b) accessible from Castle Peak Road – Kwu Tung.

7.2 The surrounding areas have the following characteristics:

- (a) to the east and north-east are some domestic structures, vehicle repair workshops, open storages of construction materials and trading company;
- (b) to the south are restaurant, village office and car parks;
- (c) to the west are some domestic structures, a plant nursery and open storage of construction materials; and
- (d) to the north and north-west are some domestic structures, open storage of construction machinery and warehouses.

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 development.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views on the application received are summarized as follows:

Land Administration

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

- (a) the Site comprises private lots, namely lots No. 736 RP, 738 RP and 739 RP in D.D. 95, and adjoining Government land. The lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access;
- (b) there are unauthorized structures erected on aforesaid lots and the adjoining Government land within the Site without prior approval from his office. It is also noted that the total built-over area and the numbers of the aforesaid structures do not tally with the one mentioned in the planning application. The aforesaid structures are not acceptable under the Leases concerned and his office reserves the right to take necessary lease enforcement and land control actions against the aforesaid structures;
- (c) unauthorized occupation of the Government land adjoining the Site is detected. The applicant should cease occupation of the said portion of the Government land with demolition of the gate and hoarding. His office reserves the right to take necessary land control actions against the irregularities. Meanwhile, the applicant should make her own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement; and
- (d) if the planning application is approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by the Government in its landlord’s capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their

commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his office.

Traffic

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

- (a) to address the comments of Transport Department (TD), the applicant has confirmed that there will be only one vehicular ingress/egress to the Site and no vehicular traffic will be reversing on the public roads. In view of this, he considers that the application can be tolerated from traffic engineering viewpoint; and
- (b) the Site connects Castle Peak Road – Kwu Tung via a local village track, which is not managed by his department. The applicant should check the land status of the access with the lands authority, and clarify its management and maintenance responsibilities with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

he has no comment on the application. The vehicular access adjacent to the Site is not maintained by HyD.

Future Development

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

he has no comment on the application from the project interface point of view. The Site falls within the Remaining Packages of KTN NDA project.

9.1.5 Comments of the Chief Estate Surveyor/Acquisition, Lands Department (CES/A, LandsD)

his office has not received any application for resumption of the Site and has no comment on the application.

Environment

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

- (a) he does not support the application as there are sensitive uses in the vicinity of the Site (the nearest domestic structures are to the immediate west of the Site). Environmental nuisance to nearby residents is anticipated;
- (b) there is no environmental complaint case related to the Site in the past

3 years up to July 2018; and

- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites'.

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

the Site is in an area where no public sewer connection is available.

Landscape

9.1.8 Comments of the Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD):

- (a) he has no objection to the application from the landscape perspective;
- (b) compared aerial photos in the 1990's with that of 2017, there is no significant change in the area which is of distributed rural landscape character predominately comprising of open storages, temporary structures and scattered tree groups. The applied use is not incompatible with the landscape setting in proximity. According to his site visit conducted on 20.9.2018, the Site is hard paved and fenced off with a few temporary structures. As there is no tree found within the Site, significant change or disturbances to the existing landscape resources arising from the development is not anticipated; and
- (c) should the application be approved by the Board, an approval condition for the submission and implementation of landscape proposal is recommended.

Drainage

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

- (a) he has no objection in principle to the application from the public drainage point of view; and
- (b) should the application be approved, a condition requiring the submission and implementation of drainage proposal for the Site should be included to ensure that it will not cause adverse drainage impact to the adjacent areas. The general requirements in the drainage submission are at **Appendix III**.

Building Matters

9.1.10 Comments of the Chief Building Surveyor/New Territories West, Buildings

Department (CBS/NTW, BD):

- (a) if the existing structures are erected on leased land without approval of Buildings Department (BD) (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
- (b) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (c) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (d) in connection with (b) above, the Site shall be provided with means of obtaining access thereto from a street and EVA in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively; and
- (e) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Fire Safety

9.1.11 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of his department. Emergency Vehicular Access (EVA) arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

9.1.12 Comments of the District Officer/North, Home Affairs Department (DO/N, HAD):

he has consulted the locals from 7.9.2018 to 21.9.2018. All respondents

including the North District Council (NDC) member of the subject Constituency, the Chairman of Sheung Shui District Rural Committee (SSDRC) and the Resident Representatives (RRs) of Kwu Tung (North) and Kwu Tung (South) have no comments on the application. The RR of Kwu Tung (South) advises that no objection was received from the villagers on the application.

9.2 The following Government departments have no objection/adverse comment on the application. Their comments, if any, are at **Appendix III**:

- (a) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (b) Commissioner of Police (C of P);
- (c) Director of Leisure and Cultural Services (DLCS);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (e) Director of Electrical and Mechanical Services (DEMS).

10. Public Comments Received During Statutory Publication Period

On 31.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.9.2018, no public comment was received.

11. Planning Considerations and Assessments

11.1 The application is for temporary warehouse and vehicle repair workshop with ancillary office and staff rest room for a period of 3 years. The Site falls within an area zoned "O" and "OU(BTP)" and an area shown as 'Road' on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). The applied use is not in line with the planning intention of the above zonings. Pointing out that the Site falls within the Remaining Packages of KTN NDA projects, PM/N, CEDD has no objection to the application in relation to the implementation of the NDA. In view of this, approval of the application on a temporary basis would not jeopardize the long-term development of the concerned zonings on the OZP.

11.2 The applied use is not incompatible with the existing surrounding land uses which comprise mainly vehicle repair workshops, warehouses, open storages and vacant/unused land intermixed with some domestic structures. Some of such workshops, warehouses and open storages were in existence when the area was zoned "I(D)" before 20.12.2013 where such uses were always permitted. CE/MN, DSD, CTP/UD&L, PlanD and D of FS have no adverse comment on the application from drainage, landscape and fire safety points of view. Although DEP does not support the application due to concern on possible environmental nuisance to the sensitive uses near the Site, the concern of DEP could be addressed through the incorporation of approval conditions restricting the operating hours and days as proposed in paragraph 12.2. Non-compliance with the approval conditions will result in revocation of the planning permission. Besides, TD considers that the application can be tolerated from traffic perspective in view that the applicant has reduced the ingress/egress point to one and confirmed that no vehicular traffic will be reversing on the public roads. Relevant approval conditions are proposed in

paragraph 12.2.

11.3 There is no public comment received (paragraph 10 refer).

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comment in paragraphs 9.1.12 and 10, the Planning Department considers that the temporary warehouse and vehicle repair workshop with ancillary office and staff rest room could be tolerated for a period of 3 years.

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 3 years until **8.3.2022**. 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) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the provision of a vehicular ingress/egress point within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by **8.9.2019**;
- (f) the submission of proposal for fire service installations and water supplies for fire-fighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **8.9.2019**;
- (g) in relation to (f) above, the implementation of proposal for fire service installations and water supplies for fire-fighting within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **8.12.2019**;
- (h) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **8.9.2019**;
- (i) in relation to (h) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of

Drainage Services or of the Town Planning Board by **8.12.2019**;

- (j) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **8.9.2019**;
- (k) in relation to (j) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **8.12.2019**;
- (l) if any of the above planning conditions (a), (b), (c) or (d) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked without further notice; and
- (m) if any of the above planning conditions (e), (f), (g), (h), (i), (j) or (k) 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 III**.

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

the applicant fails to demonstrate that the development would not generate adverse environmental impact on the surrounding areas.

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. Attachment

Appendix I	Application form received on 20.8.2018
Appendix Ia	TIA received on 20.8.2018
Appendix Ib	Supplementary information received on 20.8.2018
Appendix Ic	FI dated 19.9.2018

Appendix Id	FI dated 8.10.2018
Appendix Ie	FI dated 3.11.2018
Appendix If	Email dated 15.2.2019
Appendix II	Previous Application
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**