

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/637**

|                           |   |  |
|---------------------------|---|--|
| <b><u>Applicant</u></b>   | : | Harvest Hill (Hong Long) Limited represented by Metro Planning & Development Company Limited |
| <b><u>Site</u></b>        | : | Lot 470 in D.D. 107, Fung Kat Heung, Yuen Long   |
| <b><u>Site Area</u></b>   | : | About 1,050 m <sup>2</sup>   |
| <b><u>Lease</u></b>       | : | Block Government Lease (demised for agricultural use)  |
| <b><u>Plan</u></b>        | : | Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9                              |
| <b><u>Zoning</u></b>      | : | “Agriculture” (“AGR”)  |
| <b><u>Application</u></b> | : | Proposed Temporary Shop and Services (Retail of Tail Lift) for a Period of 3 Years           |

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail of tail lift) for a period of 3 years at the application site (the Site). The Site is subject to a previous planning application No. A/YL-KTN/397 for temporary back-up warehouses (storage of new electrical components and garments in packed boxes) for a period of 3 years which was rejected by the Rural and New Town Planning Committee (the Committee) on 11.1.2013. The Site is paved and vacant, about half of the Site is covered by a shelter (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development consists of three single storey structures with building height ranging from 3m to 7.5m and total floor area of about 567m<sup>2</sup> for shop and services (retail of forklift) (540m<sup>2</sup>), site office (25m<sup>2</sup>) and toilet (2m<sup>2</sup>). Two parking spaces for private cars and one loading/unloading space for light goods vehicle will be provided within the Site. The operation hours are from 9 a.m. to 7 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. No repairing, assembling, dismantling or workshop activities will be carried out at the Site. The Site is accessible via a local track leading from San Tam

Road. The layout plan, landscape plan and drainage plan submitted by the applicant are at **Drawings A-1 to A-3**.

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

- (a) Application form with supplementary statement (**Appendix I**) and plans received on 14.11.2018
- (b) Further information (FI) received on 19.12.2018 (**Appendix Ia**) in response to departmental comments
- (c) FI received on 20.12.2018 providing operational (**Appendix Ib**) details and revised access of the proposed development

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the supplementary statement attached to the Application Form in **Appendix I**. They can be summarized as follows:

- (a) The Site is about the same level as the adjoining land zoned “Industrial (Group D)” (“I(D)”) and has a level difference with the land zoned “AGR” in the south. The Site and its vicinity have been hard paved with no agricultural activity.
- (b) The Site is limited in size and the proposed use is compatible with the surrounding warehouse and rural industrial workshop uses.
- (c) The proposed development is temporary in nature and the Site can be converted to agricultural use when necessary, therefore would not jeopardize the long-term planning intention of the “AGR” zone.
- (d) Various tail lifts will be exhibited at the Site where orders will be received from customers. The retail of tail lift at the Site can benefit the industrial/warehouse uses in the adjacent “I(D)” zone. The Site is the only site available for the applicant as the “I(D)” zone has already been filled up.
- (e) There are similar applications for shop and services use approved in the “AGR” zone.
- (f) The proposed development would not generate adverse traffic, environment and drainage impacts to the surrounding area.

## **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 the notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

#### 4. **Background**

The Site is not subject to any active enforcement case.

#### 5. **Previous Application**

The Site is subject to a previous application No. A/YL-KTN/397, which covers a much larger area (about 11,237 m<sup>2</sup>) straddling the adjacent “Village Type Development” (“V”) and “I(D)” zones, for temporary back-up warehouses (storage of new electrical components and garments in packed boxes) for a period of 3 years. It was rejected by the Committee on 11.1.2013 on the grounds that the proposed development was not in line with the planning intention of the “AGR” and “V” zones; it would pose adverse environmental impact on the surrounding residential uses and would generate adverse landscape and drainage impacts on the surrounding areas; and the approval of the application would set an undesirable precedent. Details of the application and its location are shown in **Appendix II** and **Plan A-1b** respectively.

#### 6. **Similar Applications**

6.1 There are nine similar applications (No. A/YL-KTN/413, 446, 447, 448, 531, 540, 541, 624 and 629) for temporary shop and services use within the same “AGR” zone. Six of them were approved with conditions by the Committee between 2013 and 2017 and three were rejected by the Committee between 2016 and 2018. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1a**.

6.2 Application Nos. A/YL-KTN/413, 446, 447, 448, 540 and 541 for temporary shop and services (plant showroom) for a period of 3 years were approved with conditions by the Committee on 6.9.2013, 22.8.2014 (for A/YL-KTN/446 and 447), 26.9.2014, 11.11.2016 and 12.5.2017 respectively mainly for the reasons that the developments were not incompatible with the surrounding land uses; temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; relevant departments including DAFC, except DEP, had no adverse comment and the concern of DEP could be addressed by approval conditions (for A/YL-KTN/413, 446, 447 and 448); and relevant departments had no adverse comment on the application (for A/YL-KTN/540 and 541). Application Nos. A/YL-KTN/446 and 447 were revoked on 22.11.2015 and Application No. A/YL-KTN/448 was revoked on 26.12.2015 due to non-compliance with approval conditions in respect of provision of fencing and submission/implementation of landscape, drainage and fire services installations proposals.

- 6.3 Application No. A/YL-KTN/531 for temporary shop and services (pet shop with ancillary office and guard room) for a period of 3 years was rejected by the Committee on 29.7.2016 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; DAFC did not support the application; and the approval of the application would set an undesirable precedent.
- 6.4 Application Nos. A/YL-KTN/624 and 629 for temporary shop and services (plant showroom) for a period of 3 years were rejected by the Committee on 19.10.2018 and 2.11.2018 respectively on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; DAFC did not support the application; and the applicant failed to demonstrate that the proposed development would not generate environmental nuisance to the surrounding areas.

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

- 7.1 The Site is:
- (a) paved and vacant, about half of the Site is covered by a shelter; and
  - (b) accessible via a local track leading from San Tam Road.
- 7.2 The surrounding areas are rural in character predominated by open storage/storage yards, warehouses, parking of vehicles, residential dwellings/structures and vacant/unused land (**Plan A-2**):
- (a) to its north and northwest are various open storage yards and warehouses within the adjacent “I(D)” zone ; and
  - (b) to its immediate south is a site office. To its east, south and southwest within the “AGR” zone are parking of vehicles, storage yards, warehouse and unused land. To its further south are residential dwellings/structures and open storage yard within the adjacent “V” zone. The site office, parking of vehicles, warehouse and open storage/storage yards are suspected unauthorized developments subject to enforcement action by the Planning Authority.

## **8. Planning Intention**

The planning intention of the “AGR” zone is 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. Comments from Relevant Government Departments**

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

### **Land Administration**

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

- (a) The Site comprises an Old Scheduled Agricultural Lot 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.
- (b) The Site is accessible from San Tam Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area (SKAHRA).
- (d) Should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

### **Traffic**

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

- (a) He has no comment on the application from traffic engineering point of view.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.

- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highways Engineer/ New Territories West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain any access connecting the Site and San Tam Road. The applicant should be responsible for his own access arrangement.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

**Environment**

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

There was no environmental complaint received for the Site in the past three years. The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites” issued by DEP.

**Landscape**

9.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) She has some reservations on the application from the landscape planning point of view.
- (b) Based on the aerial photo of 2018, the surrounding area is in rural landscape setting comprises of temporary structures, open storage, farmland and tree group. The proposed use is considered not incompatible with the landscape setting in proximity. As observed from the aerial photos of 2008, 2013 and 2018, existing tree(s) and vegetation within the Site were gradually cleared and the Site was gradually hard paved.
- (c) According to the site visit conducted on 30.11.2018, the Site was hard paved with temporary structure erected. The Site was in operation. No vegetation was found within the Site. Though landscape impact arising from the temporary use under the application is not expected, the proposed development, if approved, would set an undesirable

precedent of site modification prior to application. The cumulative impact of such approval would further degrade the existing landscape quality in the surrounding area.

- (d) Should the application be approved, approval conditions on the submission and implementation of landscape proposal should be included.

### **Agriculture and Nature Conservation**

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

- (a) The Site is paved and part of it is occupied by a metallic shelter. Nevertheless, agricultural activities are found in the vicinity. Agricultural infrastructures such as road access and water source are available. He does not support the application from agricultural point of view as the Site possesses a potential for agricultural rehabilitation.
- (b) It is noted that run-off from the Site would be drained into a watercourse which is located within a piece of managed wetland of the Sha Po North development. Should the application be approved, the applicant shall be advised to adopt necessary measures to prevent/minimize pollution to the watercourse from sewage (if any) and polluted run-off generated from the Site.

### **Drainage**

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

- (a) He has no in-principle objection to the proposed development.
- (b) Should the application be approved, approval conditions requiring the submission and implementation of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Town Planning Board (the Board) should be included.
- (c) Detailed comments of the drainage proposal are at **Appendix IV**.

### **Fire Safety**

#### 9.1.8 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 (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Water Supply**

#### 9.1.9 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the connection, operation and maintenance of any sub-main within the private lots to WSD's standards.

### **Building Matters**

#### 9.1.10 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (b) 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.

- (c) Before any new building works (including containers/ open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (d) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (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 B(P)R at the building plan submission stage.

#### **District Officer's Comments**

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

His office has not received any local's comment on the application and has no comment on the application.

9.2 The following Government departments have no comment on the application:

- (a) Chief Engineer/Railway Development, Railway Development Office, Highways Department (CE/RD, RDO, HyD);
- (b) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

#### **10. Public Comments Received During Statutory Publication Period**

- 10.1 On 23.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.12.2018, five public comments from Kadoorie Farm and Botanic Garden Corporation and individuals were received (**Appendices V-1 to V-5**).
- 10.2 The commenters object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the "AGR" zone; the Site should be retained for agricultural use; the proposed development would generate adverse traffic and drainage impacts; and storage operations should be accommodated in high-rise, custom built industrial complex.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for proposed temporary shop and services (retail of tail lift) at the Site zoned “AGR”. The planning intention of the “AGR” zone is 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. Although the proposed use is not in line with the planning intention of the “AGR” zone and DAFC does not support the application as the Site processes a potential for agricultural rehabilitation, it is considered that approval of the application on a temporary basis of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The site is located in the fringe of the “AGR” zone and adjoining the “I(D)” zone in the north. According to the applicant, the proposed development is to serve the industrial/warehouse uses in the adjacent “I(D)” zone. The proposed use is considered not incompatible with the surrounding land uses which are predominated by open storage/storage yards, warehouses, parking of vehicles, residential dwellings/structures and vacant/unused land.
- 11.3 In view of the scale of the current application (about 1,050 m<sup>2</sup> in area and 567 m<sup>2</sup> of total gross floor area), it is unlikely that the proposed temporary shop and services use would generate significant adverse traffic and drainage impacts and environmental nuisance to the surrounding area. Relevant departments consulted including C for T, DEP, D of FS and CE/MN of DSD (except DAFC and CTP/UD&L of PlanD) have no adverse comment on the application. CTP/UD&L of PlanD has reservations on the application as approval of the application would set an undesirable precedent of site modification prior to application and the cumulative impact of such approval would further degrade the existing landscape quality in the surrounding area. In this regard, approval conditions on the submission and implementation of landscape proposal as requested by CTP/UD&L of PlanD are recommended in paragraph 12.2 (f) and (g). To minimize the possible environmental nuisance generated by the proposed use, approval conditions restricting the operation hours, the type of vehicles and prohibiting workshop-related activities are recommended in paragraph 12.2 (a) to (d) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact. Moreover, the technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (e) and (h) to (k) below.
- 11.4 The Site is subject to a previous planning application No. A/YL-KTN/397 rejected by the Committee in 2013. However, the application was for warehouse use and covered a much larger area (about 11,237 m<sup>2</sup>) straddling other zones. Also, there are six similar applications (No. A/YL-KTN/413, 446, 447, 448, 540 and 541) for temporary shop and services (plant showroom) use within the same “AGR” zone approved with conditions by the

Committee. Although there are three other similar applications (No. A/YL-KTN/531, 624 and 629) for temporary shop and services (pet shop with ancillary office and guard room/ plant showroom) rejected by the Committee, these applications are subject to circumstances different from the current application, including that they were situated at the inner part of the “AGR” zone, whereas the current application is located at the fringe of the “AGR” zone adjoining active industrial uses.

- 11.5 Five public comments objecting to the application were received during the statutory publication period mainly on the grounds as set out in paragraph 10 above. In this regard, temporary approval would not jeopardize the long-term planning intention. The planning assessments and considerations above are also relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments as mentioned in paragraph 10 above, the Planning Department considers that the proposed temporary shop and services (retail of tail lift) 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 4.1.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no operation between 7:00 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 Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of landscape proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 4.7.2019;

- (g) in relation to (f) 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 4.10.2019;
- (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 4.7.2019;
- (i) in relation to (h) above, the implementation of drainage proposal 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 4.10.2019;
- (j) the submission of 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 4.7.2019;
- (k) in relation to (j) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.10.2019;
- (l) if any of the above planning conditions (a), (b), (c), (d) 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;
- (m) if any of the above planning conditions (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; and
- (n) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

#### Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

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

the proposed development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good agricultural land for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justification has been given in the submission for a departure from the planning intention, even on temporary basis.

### **13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

### **14. Attachments**

|                             |  |
|-----------------------------|--|
| <b>Appendix I</b>           | Application form with supplementary statement and plans received on 14.11.2018                                   |
| <b>Appendix Ia</b>          | FI received on 19.12.2018 in response to departmental comments   |
| <b>Appendix Ib</b>          | FI received on 20.12.2018 providing operational details of the proposed development with a revised location plan |
| <b>Appendix II</b>          | Previous application covering the application site   |
| <b>Appendix III</b>         | Similar applications within the same “AGR” zone on the Kam Tin North OZP   |
| <b>Appendix IV</b>          | Detailed comments from CE/MN, DSD  |
| <b>Appendices V1 to V-5</b> | Public comments received during statutory publication period   |
| <b>Appendix VI</b>          | Advisory clauses   |
| <b>Drawing A-1</b>          | Layout Plan  |
| <b>Drawing A-2</b>          | Landscape Plan   |
| <b>Drawing A-3</b>          | Drainage Plan  |
| <b>Plan A-1a</b>            | Location Plan with Similar Applications  |
| <b>Plan A-1b</b>            | Previous Application Plan  |
| <b>Plan A-2</b>             | Site Plan  |
| <b>Plan A-3</b>             | Aerial Photo   |

**Plan A-4**

Site Photos

**PLANNING DEPARTMENT  
JANUARY 2019**