

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

**APPLICATION NO. A/YL-KTN/655**

- Applicant** : Profit Max Properties (China) Limited represented by R-Riches Property Consultants Limited
- Site** : Lots 570 (Part) and 571 RP (Part) in D.D.107 and Adjoining Government Land, Fung Kat Heung, Kam Tin, Yuen Long
- Site Area** : About 2,530 m<sup>2</sup> (including about 94 m<sup>2</sup> of Government land (about 3.72%))
- Lease** : Block Government Lease (demised for agricultural use) and New Grant Agricultural Lot
- Plan** : Approved Kam Tin North Outline Zoning Plan No. S/YL-KTN/9
- Zoning** : “Industrial (Group D)” (“I(D)”) [a maximum plot ratio of 1.6, a maximum site coverage of 80% and a maximum building height of 13m]
- Application** : Proposed Temporary Shop and Services (Food Retail Shop) with Ancillary Storage and Office for a Period of 5 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (food retail shop) with ancillary storage and office for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services (not elsewhere specified)’ is a Column 2 use under the “I(D)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is not the subject of any previous application and is currently vacant and covered with vegetation (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the proposed development involves 1 two-storey structure with building height of about 11m and total floor area of about 892m<sup>2</sup> for shop and services with ancillary storage and office, and 2

canopies for staircases with total covered area of 36m<sup>2</sup>. The operation hours will be between 10 a.m. and 5 p.m. from Mondays to Saturdays. There will be no operation on Sundays and public holidays. 4 loading/unloading spaces for light goods vehicle and 1 loading/unloading space for medium goods vehicle will be provided within the Site. Septic tank will be used at the Site. The Site is accessible from San Tam Road via Fung Kat Heung Road and a local track. The site layout plan, internal layout plan and vehicular access plan submitted by the applicant are shown in **Drawings A-1 to A-3**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with supplementary information (**Appendix I**) received on 27.3.2019 and replacement page received on 4.4.2019
  - (b) Further Information (FI) received on 9.5.2019 in (**Appendix Ia**) response to departmental comments

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

The justifications put forth by the applicant in support of the application are detailed in the supplementary information and FI in **Appendix I** and **Ia**. They can be summarized as follows:

- (a) The proposed use is to serve the local residents nearby and storage of food for sale. It is temporary in nature and will not jeopardize the planning intention in long term.
- (b) The Site is fenced and no land filling and excavation works will be involved which will minimize adverse impact on the surrounding area. Sufficient manoeuvring space will be provided within the Site. Staffs will need to take public transport and visitors will need to make prior appointment to park at the Site to minimize traffic impact.
- (c) The applicant will comply with the conditions as required by the concerned departments on drainage, fire service installations (FSIs) and landscape aspects after planning permission has been obtained.
- (d) Packaged food will be sold at the Site, including packaged snacks and dried seafood etc.

## **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 Kam Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection.

**4. Background**

The Site is not subject to any active enforcement action.

**5. Previous Application**

The Site is not the subject of any previous application.

**6. Similar Applications**

There are three similar applications for proposed temporary shop and services for retail shop (No. A/YL-KTN/573), vehicle parts with ancillary storage and office (No. A/YL-KTN/582) and food with ancillary storage and office (No. A/YL-KTN/607) in the same "I(D)" zone on the OZP which were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 22.9.2017, 26.1.2018 and 15.6.2018 respectively mainly for the reasons that temporary approval would not frustrate the long-term planning intention of the "I(D)" zone; the proposed shop and services uses could serve the residents and workers in the locality; and the relevant departments have no adverse comment on the application. Details of the applications are summarized in **Appendix II** and the locations of the application sites are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) fenced, currently vacant and covered by vegetation; and
- (b) accessible via a local track connecting to Fung Kat Heung Road and San Tam Road.

7.2 The surrounding areas are predominantly rural in character occupied by residential dwellings/structures, open storage/storage yards, a lard boiling factory, godown, kennel and vacant/unused land:

- (a) to its north and northeast are open storage/storage yards, a lard boiling factory, vacant/unused land and a site subject to an approved application (No. A/YL-KTN/607) for shop and services. To its further north across Fung Kat Heung Road is the Lam Tsuen Country Park and area zoned "Conservation Area";

- (b) to its east and southeast are residential dwellings/structures (the nearest about 40m), a monastery and vacant/unused land; and
- (c) to its south and west are open storage/storage yards, godown, kennel and a site subject to an approved planning application (No. A/YL-KTN/582) for shop and services.

## **8. Planning Intention**

The planning intention of the “I(D)” zone is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements. It is also intended for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings.

## **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 Schedule Agricultural Lot (OSAL) (i.e. Lot No. 570 in D.D. 107) held under the Block Government Lease and a New Grant Agricultural Lot (NGAL) (i.e. Lot No. 571 RP in D.D. 107) held under Tai Po New Grant No. 5927. The OSAL contains the restriction that no structures are allowed to be erected without the prior approval of the Government. The NGAL contains the restriction on user for agricultural purpose.
- (b) No permission is given for occupation of Government Land (GL) (about 94 m<sup>2</sup> subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) Within the Site, Lot No. 570 in D.D. 107 is currently covered by Short Term Waiver (STW) No. 1757 to permit structures erected thereon for the purpose of “Storage of building construction materials and no open storage of dusty materials”.

- (d) The Site is accessible from Fung Kat Heung Road via GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) The Site does not fall within the Shek Kong Airfield Height Restriction Area (SKAHRA).
- (f) Should planning approval be given to the planning application, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. The owner(s) of the lot(s) without STW 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 erection of temporary structure(s) will be considered. No construction of New Territories Excepted Building(s) will be considered or allowed. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a direct grant STT for use of the Site. 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 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 perspective.
- (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 his 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 Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain any access (including Fung Kat Heung Road) connecting the Site and San Tam Road.
- (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):

- (a) According to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application as there are residential dwellings in the surrounding of the Site (the nearest about 40m to the southeast) (**Plan A-2**) and the proposed use involves use of heavy vehicles, and environmental nuisances are expected.
- (b) 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 the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by his department to minimise any potential environmental nuisances.

**Landscape**

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

- (a) He has no objection to the application from landscape planning point of view;
- (b) With reference to the aerial photo taken in 2018, the surrounding area of the Site is comprised of temporary structures, storages, car parks and scattered tree groups. The proposed use is considered not incompatible with existing landscape setting in the proximity.
- (c) According to the site visit conducted on 18.4.2019, the Site was vacant and fenced off. Existing trees of common species were found in the southeastern part of the Site. With

reference to the revised layout plan, it is observed that several existing trees would be in conflict with the proposed maneuvering space and tree felling is anticipated. These trees are common species in local environment.

- (d) Should the application be approved by the Board, landscape condition is not recommended, in view that the Site is not adjoining any prominent public frontage.
- (e) For the anticipated tree felling, the applicant is reminded to seek approval from the relevant tree authority prior to commencement of works.

### **Drainage**

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

- (a) He has no objection in-principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, the 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 Board should be included in the planning approval.

### **Nature Conservation**

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

- (a) Noting that the Site is paved or disturbed, she has no adverse comment on the application from nature conservation point of view.
- (b) Should the application be approved, the applicant is advised to adopt appropriate measures to avoid causing disturbance or pollution to the Lam Tsuen Country Park to the north of the Site.

### **Building Matters**

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

- (a) 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 should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (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) 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.
- (d) 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.

### **Fire Safety**

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

- (a) He has no objection in-principle to the proposal subject to fire service installations 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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

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

He has not received any comments from locals and he has no particular comment on the application.

9.2 The following departments have no objection to or no comment on the application:

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

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

On 9.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 30.4.2019, one public comment was received from an individual (**Appendix III**). The commenter objected to the application mainly on the grounds that the Site zoned "I(D)" should be used for high-rise industrial premises to accommodate a variety of industrial uses and approval of the proposed use is hindering the development of brownfield sites into high tech parks.

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

11.1 The application is for proposed temporary shop and services (food retail shop) with ancillary storage and office at the Site zoned "I(D)". The planning intention of the "I(D)" zone is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements. It is also intended for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings. The proposed shop and services is not entirely in line with the planning intention of the "I(D)" zone. However, there is no known permanent development proposal for the Site. It is considered that approval of the application on a temporary basis of 5 years would not jeopardize the long-term planning intention of the "I(D)" zone.

- 11.2 According to the applicant, the proposed use is to serve the nearby residents and storage of food for sale. It is considered not incompatible with the surrounding land uses which are predominated by residential dwellings/structures, open storage/storage yards, godown, kennel and vacant/unused land.
- 11.3 Relevant departments consulted including C for T, CE/MN of DSD, CTP/UD&L of PlanD and D of FS (except DEP) have no objection to or adverse comment on the application. DEP does not support the application as there are residential dwellings (the nearest about 40m to the southeast) and the proposed use involved use of heavy vehicles, and environmental nuisance is expected. To minimize the possible environmental nuisance, approval conditions restricting the operation hours and the type of vehicles are recommended in paragraph 12.2 (a) to (c) 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”. 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 (d) to (h).
- 11.4 There is no previous application in respect of the Site. There are 3 similar applications for temporary shop and services use (including one which was for the same use in current application (No. A/YL-KTN/607)) within the same “I(D)” zone which were all approved with conditions by the Committee between 2017 and 2018 (**Plan A-1**) as mentioned in paragraph 6 above. Approval of the current application is in line with the Committee’s previous decisions.
- 11.5 One public comment was received during the statutory publication period objecting to the application mainly on the grounds that the Site should be used for industrial development. In this regard, temporary approval would not jeopardize the long-term planning intention. The relevant government departments’ comments and planning considerations and assessments 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 comment as mentioned in paragraph 10 above, the Planning Department has no objection to the proposed temporary shop and services (food retail shop) with ancillary storage and office for a period of 5 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 5 years until 17.5.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 10:00 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 heavy goods vehicles exceeding 24 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 vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) 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 17.11.2019;
- (f) in relation to (e) 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 17.2.2020;
- (g) 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 17.11.2019;
- (h) in relation to (g) 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 17.2.2020;
- (i) 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 immediately without further notice; and
- (j) if any of the above planning conditions (e), (f), (g) or (h) 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 at **Appendix IV**.

- 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 "I(D)" zone which is primarily for industrial uses that cannot be accommodated in conventional flatted factories due to extensive land and/or high ceiling requirements. It is also intended for the redevelopment of existing informal industrial uses, which are operated in workshop premises in rural area, to properly designed permanent industrial buildings. No strong justification has been given in the submission for a departure from the planning intention, even on a 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 information received on 27.3.2019 and replacement page received on 4.4.2019
<b>Appendix Ia</b>	FI received on 9.5.2019 in response to departmental comments
<b>Appendix II</b>	Similar applications within the same "I(D)" zone on the Kam Tin North OZP
<b>Appendix III</b>	Public comment received during the statutory publication period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan

<b>Drawing A-2</b>	Internal Layout Plan
<b>Drawing A-3</b>	Vehicular Access Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT**  
**May 2019**