

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/952

<u>Applicant</u>	: Profit Max Properties (China) Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 570 (Part) and 571 RP (Part) in D.D. 107, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	: About 2,418m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use) (Lot 570 in D.D. 107) and Tai Po New Grant No. 5927 for agricultural purpose (Lot 571 RP in D.D. 107)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/11 (currently in force) Draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10 (at the time of submission) [No change to the zoning of the application site on the OZP]
<u>Zoning</u>	: “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]
<u>Application</u>	: Temporary Shop and Services (Food Retail Shop) with Ancillary Facilities for a Period of Five Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (food retail shop) with ancillary facilities for a period of five years at the application site (the Site), which falls within an area zoned “I(D)” on the approved Kam Tin North OZP No. S/YL-KTN/11 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services (not elsewhere specified)’ is a Column 2 use within the “I(D)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently paved, fenced-off and occupied by temporary structures including a two-storey structure for wholesale trade¹ and the applied use without

¹ ‘Wholesale Trade’ is a Column 1 use within the subject “I(D)” zone which is always permitted.

valid planning permission (**Plans A-2 to A-4**).

- 1.2 According to the applicant, the applied use involves two structures of one to two storeys as well as three canopy structures with a total floor area of about 986m² and heights of 3m to 11m for food retail shop, wholesale trade and ancillary storage, office and staff room (**Drawing A-1**). Four loading/unloading (L/UL) spaces for light goods vehicle (LGV) and one L/UL space for medium goods vehicle (MGV) are proposed on the Site. The proposed operation hours are from 7:00 a.m. to 11:00 p.m. daily including public holidays. The Site is accessible from Fung Kat Heung Road via a local track (**Plans A-1 and A-3**). The site layout plan submitted by the applicant is at **Drawing A-1**.
- 1.3 The Site is involved in one previous application (No. A/YL-KTN/655) submitted by the same applicant for the same applied use as the current application (details in paragraph 5 below), with the planning permission revoked due to non-compliance with approval condition. A comparison of the major development parameters of the current application with application No. A/YL-KTN/655 is summarised below:

Parameters	Previous Application No. A/YL-KTN/655 (a)	Current Application No. A/YL-KTN/952 (b)	Difference (b) - (a)
Site area (about)	2,530m ² (including 94m ² Government land)	2,418 m ²	-112m ² (-4.4%)
Floor area (about)	928m ²	986m ²	+58 m ² (+6.3%)
Maximum Height	2 storeys (11m)	2 storeys (11m)	No change
No. of Structures	3 (including 2 canopy structures)	5 (including 3 canopy structures)	+2 (+66.7%)
No. L/UL Spaces	4 for LGV; and 1 for MGV		No change

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary information (**Appendix I**) received on 15.8.2023 and replacement pages received on 16.8.2023
 - (b) Further Information (FI) received on 19.9.2023* (**Appendix Ia**)
 - (c) FI received on 2.1.2024* (**Appendix Ib**)
 - (d) FI received on 6.5.2024* (**Appendix Ic**)
 - (e) FI received on 27.6.2024* (**Appendix Id**)

* accepted and exempted from publication and recounting requirements

- 1.5 On 13.10.2023 and 1.3.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for a period of two months each as requested by the applicant.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI at **Appendices I to Id**. They can be summarised as follows:

- (a) Food products such as packaged food, dried seafood, etc. will be sold at the Site to serve the local residents nearby who visit the Site. The Site will also involve wholesale trade of food products for sale in large quantities to retailers, which is always permitted under the subject “I(D)” zone. The applied shop and services use is temporary in nature and will not jeopardise the planning intention of the “I(D)” zone in the long term.
- (b) The heights and the building form of the structures under the applied use are similar to those of the surrounding areas within the “I(D)” zone which are considered not incompatible with the surrounding environment.
- (c) The Site is subject to an approved previous application No. A/YL-KTN/655 for the same applied use and there are similar applications approved by the Committee within the same “I(D)” zone. Compared with the previous application, the site area/boundary under the subject application is revised to exclude a portion of Government land. Whilst the planning permission under application No. A/YL-KTN/655 was revoked due to non-compliance with the approval condition related to the implementation of fire service installations (FSIs) proposal, a FSIs proposal is submitted under the current application and the applicant will comply with the approval conditions imposed should the current application be approved.
- (d) The applied use will not create significant nuisance to the surrounding areas. No heavy goods vehicle exceeding 24 tonnes including container tractors/trailers is allowed to enter/exit or park at the Site. Minimum traffic trips of 2 per hour on average for the MGV is anticipated. The applicant will strictly follow the operation hours (i.e. 7 a.m. to 11 p.m.) and ensure no vehicle trip will be generated outside the operation hours. Moreover, the mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” will be followed to minimise any potential environmental nuisance.

3. Compliance with the ‘Owner’s Consent/Notification’ Requirement

The applicant is not a ‘current land owner’ but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the ‘Owner’s Consent/Notification’ Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by posting site notice and sending notice to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Member’s inspection.

4. Background

The Site is currently not subject to any active planning enforcement action.

5. Previous Application

5.1 The Site is involved in one previous application No. A/YL-KTN/655 covering a slightly larger site area for the same applied use submitted by the same applicant as the current application. The previous application was approved with conditions by the Committee on 17.5.2019 mainly on the considerations that approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “I(D)” zone; the proposed use was not incompatible with the surrounding land uses; and the relevant departments consulted generally had no adverse comment or their technical concerns could be addressed by approval conditions. The planning permission was subsequently revoked in April 2023 due to non-compliance with the approval condition related to the implementation of FSIs proposal.

5.2 Details of the previous application are summarised in **Appendix II** and the location is shown on **Plan A-1**.

6. Similar Applications

6.1 There are five similar applications (No. A/YL-KTN/707, 727, 734, 741 and 902), involving four sites, for various temporary shop and services uses (including one renewal of temporary approval) within the same “I(D)” zone in the vicinity of the Site in the past five years. All these applications were approved with conditions by the Committee between May 2020 and May 2023 on the similar considerations as mentioned in paragraph 5.1 above. The planning permissions under applications No. A/ YL-KTN/727, 734 and 741 were subsequently revoked between August 2022 and March 2024 due to non-compliance with the approval conditions.

6.2 Details of the similar applications are summarised in **Appendix II** and the locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently paved, fenced-off and occupied by temporary structures including a two-storey structure for wholesale trade and the applied use without valid planning permission; and
- (b) accessible from Fung Kat Heung Road via a local track.

- 7.2 The surrounding areas are mainly rural in character intermixed with open storage/storage yards, warehouses, workshop and parking of vehicles. There are also residential dwellings/structures (the nearest one within about 5m to the southeast) and animal boarding establishment within the “I(D)” zone which are without valid planning permission. To the west across a local track is an area zoned “R(A)” planned for public housing development with tentative target completion by 2031. To the further north across Fung Kat Heung Road are Lam Tsuen Country Park and an area zoned “Conservation Area”.

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 Apart from the government department as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III** and **IV** respectively.
- 9.2 The following government department does not support the application:

Environment

Comments of the Director of Environmental Protection (DEP):

- (a) according to the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application as sensitive receivers, i.e. residential dwellings/structures are found in the vicinity of the Site and the applied use will cause traffic of heavy vehicle, thus environmental nuisance is expected; and
- (b) there was one substantiated environmental complaint on noise aspect concerning the Site in the past three years.

10. Public Comment Received During Statutory Publication Period (Appendix V)

The application was published for public inspection. During the statutory publication period, one public comment was received from an individual objecting to the application mainly on the grounds that there was previous non-compliance with the approval condition related to fire safety and there would be fire risk; and the Site should be used for industrial compound and temporary uses would hinder the development of brownfield sites into modern premises.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (food retail shop) with ancillary facilities for a period of five years at the Site zoned “I(D)” (**Plan A-1**). The planning intention of the “I(D)” zone is primarily for industrial uses that cannot be accommodated in conventional flattened 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 applied use is not entirely in line with the planning intention of the “I(D)” zone. Nevertheless, there is no known long-term development proposal for the Site. Whilst a two-storey temporary structure is currently erected at the Site with wholesale trade use which is a Column 1 use within the “I(D)” zone, the applied use is not incompatible with the wholesale trade use. According to the applicant, the applied use is intended to serve the local residents. It is considered that approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “I(D)” zone.
- 11.2 The applied use is considered not incompatible with the surrounding uses mainly intermixed with open storage/storage yards, warehouses, workshop and residential dwellings/structures. The Chief Town Planner/Urban Design and Landscape of the Planning Department considers that no significant landscape impact is anticipated.
- 11.3 DEP does not support the application as the applied use involves use of heavy vehicle and environmental nuisance is expected as there are sensitive receivers in the vicinity. There was also one substantiated environmental complaint on noise aspect concerning the Site in the past three years. In this regard, the applicant proposes the operation hours to be between 7 a.m. to 11 p.m. The operation is also subject to the relevant pollution control ordinances. To address DEP’s concerns, the applicant is advised to follow the revised “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” issued by DEP to minimise potential environmental nuisance generated by the applied use.
- 11.4 Other relevant departments consulted including the Commissioner for Transport, the Chief Engineer/Mainland North of Drainage Services Department and the Director of Fire Services (D of FS) have no objection to or no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below.
- 11.5 The Site is involved in an approved previous application (No. A/YL-KTN/655) submitted by the same applicant for the same applied use as the current application as detailed in paragraph 5.1 above. Whilst the planning permission was revoked in April 2023 due to non-compliance with the application condition related to the implementation of FSIs proposal, the applicant has submitted FSIs proposal under the current application which is accepted by D of FS. Should the Committee decide to approve the application, the applicant will be advised that

should he fail to comply with the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.

- 11.6 There are five approved similar applications for temporary shop and services as detailed in paragraph 6.1 above. Approving the current application is in line with the Committee's previous decisions.
- 11.7 Regarding the objecting public comment as stated in paragraph 10, the departmental comments and planning assessments above are relevant.

12. Planning Department's View

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comment as mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 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 five years until 5.7.2029. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions:

- (a) the existing drainage facilities on the site shall be maintained at all times during the planning approval period;
- (b) the submission of a condition record of the existing drainage facilities on the site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 5.10.2024;
- (c) the implementation of the accepted 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 5.4.2025;
- (d) if the above planning condition (a) 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
- (e) if any of the above planning condition (b) or (c) 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 applied use 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

Appendix I	Application form with supplementary information received on 15.8.2023 and replacement pages received on 16.8.2023
Appendix Ia	FI received on 19.9.2023
Appendix Ib	FI received on 2.1.2024
Appendix Ic	FI received on 6.5.2024
Appendix Id	FI received on 27.6.2024
Appendix II	Previous and similar applications
Appendix III	Government department’s general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public Comment
Drawing A-1	Site layout plan
Plan A-1	Location plan with similar applications
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos