

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/496

<u>Applicant</u>	: Merrily Development and Investment Company Limited represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lot 1200 RP (Part) in D.D. 117, Tai Tong, Yuen Long, New Territories
<u>Site Area</u>	: 1,100 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	: “Village Type Development” (“V”) <i>[Restricted to a maximum building height of 3 storeys (8.23m)]</i>
<u>Application</u>	: Proposed Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services for a period of 3 years (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use for the “V” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently mainly used for open storage of construction materials and parking of vehicles without valid planning permission, and with domestic use within a converted container (**Plans A-2, A-4a and A-4b**).
- 1.2 A minor portion of the Site was the subject of a previous application (No. A/YL-TT/321) for temporary eating place which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 23.5.2014. However, the approval was subsequently revoked on 23.5.2015 due to non-compliance with approval conditions. Detailed information of the previous application is at **Appendix II** and the location of the site is shown on **Plan A-1**.
- 1.3 According to the applicant, the Site is intended for a retail shop for hardware accessories. The applicant will offer delivery services, thus large volume of visiting customers are not expected. Furthermore, no medium or heavy goods vehicles will be allowed to be parked or enter the Site. According to the applicant, all the proposed drainage facilities will be constructed and maintained at the

expense of the applicant. Plans showing the site location, site layout, landscape proposal and drainage proposal submitted by the applicant are at **Drawings A-1** to **A-4** respectively.

1.4 The major development parameters of the application are summarised as follows:

Site Area	About 1,100 m ²
Total Floor Area (Non-domestic)	About 268 m ²
No. and Height of Structures	3 <ul style="list-style-type: none">• 1 for retail shop for hardware accessories (Not more than 6m, 1 storey)• 1 for toilet (3m, 1 storey)• 1 for site office (3m, 1 storey)
No. of Loading/unloading Space	2 (3.5m x 7m each (for light goods vehicle (LGV))
Operation Hours	9:00 a.m. to 7:00 p.m. daily

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

- (a) Application Form with annexes and plans received on 31.3.2020 (**Appendix I**)
- (b) Further Information (FI) dated 24.4.2020 in response to the comments of the Transport Department (TD) (**Appendix Ia**)
- (c) FI dated 21.5.2020 clarifying the name of the access road and providing justification on the height of the proposed shop (**Appendix Ib**)
[(b) and (c) accepted and exempted from publication and recounting requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are mainly detailed in Part 7 of the Application Form (**Appendix I**) and the FIs at **Appendix Ia** and **Ib**. They can be summarised as follows:

- (a) The proposed development is temporary in nature and would not jeopardise the long-term planning intention of the “V” zone. The proposed shop would actually benefit the villagers in the vicinity.
- (b) The form, scale and nature of the proposal are not incompatible with the surrounding environment. A 6m headroom for the proposed shop is required for the storage of metal pipe vertically.
- (c) Similar planning application for temporary shop (No. A/YL-TT/475) and canteens have been approved in the proximity of the Site.
- (d) Various assessments undertaken concluded that the proposed development would not generate significant adverse impact. Adequate space is proposed within the Site

for the manoeuvring of vehicle. Only LGV not exceeding 5.5 tonnes will be allowed to enter/park at the Site for the convenience of staff. A proper run-in/out will be provided according to the Highways Department (HyD)'s standard in order to connect the proposed development to the public road.

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 a notice at the Site and sending the notice to the Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently not subject to planning enforcement action.

5. **Previous Application**

A minor portion of the Site was the subject of a previous application (No. A/YL-TT/321) for temporary eating place which was approved with conditions by the Committee for a period of 3 years on 23.5.2014 mainly on the consideration that approval of the development on a temporary basis would not frustrate the long-term planning intention of the “V” zone; not incompatible with the surrounding land uses; would provide catering services to serve nearby villagers and workers; generally complied with Town Planning Board Guidelines for ‘Application for Eating Place within “V” Zone in the Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No.15A); and no adverse departmental comments were received. However, the planning permission was revoked on 23.5.2015 due to non-compliance with approval conditions. Details of the application are summarised in **Appendix II** and the site boundary is shown on **Plan A-1**.

6. **Similar Applications**

There are four similar applications involving two sites for temporary shop and services uses within the subject “V” zone. Applications No. A/YL-TT/300, 320, 370 and 475 (all for real estate agency) were approved with conditions by the Committee each for a period of 3 years between 2012 and 2019 mainly on the considerations that approval of the development on a temporary basis would not frustrate the long-term planning intention of the “V” zone; not incompatible with the surrounding land uses; the proposal could meet any such demand in the area; and no adverse departmental comments were received. However, the approval for application No. A/YL-TT/320 was subsequently revoked on 21.1.2016 due to non-compliance with approval conditions. Details of the applications are at **Appendix III** and the locations of the 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) abutting Tai Tong Shan Road to its north;
- (b) paved and fenced off; and
- (c) currently mainly used for open storage of construction materials and parking of vehicles without valid planning permission, and with domestic use within a converted container.

7.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) predominately rural residential in nature intermixed with scattered parking of vehicles, eating places, latrine, pump house, real estate agency, open storage/storage yards, a vehicle repair workshop and an animal farm;
- (b) there are residential structures in the vicinity of the Site with the nearest one located 5m to its southwest. There are on-going construction works for NTEHs to its immediate south; and
- (c) except for the eating places to its northeast and southeast, the real estate agency to its further north, as well as the vehicle workshop to its further southeast, the other open storage/storage yards, eating places and parking of vehicles in the vicinity of the Site are mostly suspected unauthorised development (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application are summarised 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 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) Her office's recent site inspection found that an existing container converted structure not included in the s.16 proposal was found within the Site and suspected being used for domestic purposes. Her office will consider taking lease enforcement actions against the owner for the structure. Besides, her office will not consider to regularise any unauthorised structures for domestic use.
- (c) There are no Small House applications located within the boundary of the Site.
- (d) Should planning approval be given to the application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by her department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by her department.

Traffic

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

The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) If the proposed access arrangement is agreed by TD, a proper road connection or run-in/out should be constructed to the satisfaction of TD and his department.
- (b) The construction of the vehicular access may affect the existing gullies, the applicant should submit the relocation plan, before commencement of any site works as necessary to the satisfaction of his department.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (d) His department shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Shan Road.

Environment

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

Should the planning application be approved, the applicant should be 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” (Code of Practice) issued by the Environmental Protection Department to minimise any potential environmental nuisances on the surrounding area.

Landscape

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

- (a) She has no objection to the application from landscape planning perspective.
- (b) According to the aerial photo of 2019 (**Plan A-3**), the western portion of the Site appears to be hard paved while the rest of the area is covered with patches of wild grasses. Tree and other significant vegetation is not observed within the Site. The Site is located in an area of miscellaneous rural fringe landscape character predominated by village houses, car parking areas, warehouses, temporary structures and tree clutters. The proposed development is considered not incompatible to the landscape character of the surrounding area. No significant adverse landscape impact is envisaged.
- (c) According to the submitted layout plan (**Drawing A-2**), it is noted that the proposed temporary structure may conflict with the crown of a large existing tree adjacent to northwest of the Site. The applicant should consider setting back the temporary structure away from the concerned tree to avoid potential damage to the tree.

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 and no adverse comment on the submitted drainage proposal (**Drawing A-4**).
- (b) The applicant should implement the drainage facilities on site in accordance with the agreed drainage proposal.
- (c) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and

demands arising out of damage or nuisance caused by a failure of the drainage system.

- (d) The proposed development would neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
- (e) The applicant should consulted DLO/YL, LandsD and seek consent from relevant lot owners for any works to be carried out outside his lot boundary before commencement of the drainage works.
- (f) Should the Board consider that the application is acceptable from the planning point of view, conditions requiring implementation of the agreed drainage proposal to the satisfaction of the Director of Drainage Services or of the Board and maintenance of the implemented drainage facilities should be stipulated.

Fire Safety

9.1.7 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 (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 applicant should be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, 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.

Building Matters

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

The applicant's attention is drawn to the following points:

- (i) Before any new building works (including containers/ open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised

building works (UBW). An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (ii) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing 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.
- (iii) 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.
- (iv) The Site does not abut on a specified street of not less than 4.5m wide and 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

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

His office has not received any comment from the village representatives in the vicinity.

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

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

10. Public Comment Received During the Statutory Publication Period

On 7.4.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one comment was received from a member of the public (**Appendix IV**) alleging that part of the Site is being occupied by unauthorised eating place and car park use.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services for a period of 3 years at a site zoned "V" on the OZP. Although the proposed use is not entirely in line with the planning intention of the "V" zone, which is primarily intended for development of Small House by indigenous villagers, nevertheless, the proposed

shop and services use could serve any such demand in the area. As advised by DLO/YL, LandsD, no Small House application has been received/ under processing within the Site. As such, approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.

- 11.2 The Site abuts Tai Tong Shan Road and the proposed use is considered not incompatible with the surrounding uses which are predominately rural residential in nature intermixed with scattered parking of vehicles, eating places, open storage/storage yards and vehicle repair workshop (**Plan A-2**).
- 11.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to minimise any potential environmental nuisances or to address the technical requirements of other concerned government departments. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.
- 11.4 Given that there are four similar approvals within the subject “V” zone for temporary shop and services uses, approval of this application is generally in line with the Committee’s previous decisions.
- 11.5 There is one public comment received on the application during the statutory publication period as summarised in paragraph 10. The suspected UD in the vicinity of the Site will be subject to enforcement action taken by the Planning Authority.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment summarised 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 3 years until 29.5.2023. 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 medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;

- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the provision of a proper road connection or run-in/out within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 29.11.2020;
- (e) the submission of the relocation plan of the existing gullies before commencement of any site works within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 29.11.2020;
- (f) the implementation of the accepted 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 29.11.2020;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the submission of a 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 29.11.2020;
- (i) in relation to (h) above, the implementation of the 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 28.2.2021;
- (j) if any of the above planning conditions (a), (b), (c) or (g) 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
- (k) if any of the above planning conditions (d), (e), (f), (h) or (i) 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 V**.

- 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 "V" zone which is primarily for development of Small Houses by indigenous villagers. No strong planning 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 annexes and plans received on 31.3.2020
Appendix Ia	FI dated 24.4.2020
Appendix Ib	FI dated 21.5.2020
Appendix II	Previous application covering the Site
Appendix III	Similar applications within the same “V” zone on the OZP
Appendix IV	Public comment received during the statutory publication period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Landscape Plan
Drawing A-4	Drainage Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**