

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/419

<u>Applicant</u>	: Melody Gain Limited represented by Mr. KWOK Chi Man
<u>Site</u>	: Lots 1400 and 1401 in D.D. 105, Ngau Tam Mei, Yuen Long
<u>Site Area</u>	: About 1,780 m ²
<u>Land Status</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. A/YL-NTM/12
<u>Zoning</u>	: “Residential (Group C)” (“R(C)”)
<u>Application</u>	: Temporary Shop and Services (Sales of Gardening and Building Materials) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (sales of gardening and building materials) for a period of 3 years. The Site falls within an area zoned “R(C)” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12 (**Plan A-1a**). According to the Notes for the “R(C)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use without planning permission.
- 1.2 The Site is the subject of 3 previous applications (No. A/YL-NTM/175, 227 and 369) (**Plan A-1b**). The first 2 applications (No. A/YL-NTM/175 and 227) were submitted by other applicants for different uses, which were rejected by the Rural and New Town Planning Committee (the Committee) in 2004 and 2008 respectively. The last application (No. A/YL-NTM/369) was submitted by the current applicant for temporary shop and services (sales of building materials) for a period of 3 years which was approved on 6.7.2018, but the planning approval was revoked on 6.12.2020 due to non-compliance with the approval condition on implementation of the drainage proposal.
- 1.3 Planning permission is now sought for the existing shop and services use at the Site. Apart from sales of building materials, the applicant has included sales of

gardening materials in the current application. According to the layout plan (**Drawing A-1**) submitted by the applicant, ingress/egress (8m wide) to the Site is located at the northwest site boundary (**Plan A-2**), which is accessible to San Tam Road through the adjoining private land. There are 6 single-storey (5m high) structures with a gross floor area of 759.63m² at the Site (including 4 structures with canopies for shop and services, 1 electrical meter room and a movable toilet). Besides, 2 parking spaces (7m x 3.5m) for light goods vehicles (LGVs) and 2 LGV loading/unloading spaces (7m x 3.5m) are provided with vehicle manoeuvring space set aside in the western portion of the Site. The operation hours are between 10:00 a.m. to 7:00 p.m. on Mondays to Saturdays (closed on Sundays and public holidays).

- 1.4 The layout of the current application is similar to the last approved Application No. A/YL-NTM/369 and there is no change in terms of site area, the number of parking spaces/loading or unloading bays and operation hours as compared to the last application. However, the proposed business nature has expanded to included sale of gardening materials in addition to building materials.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received on 22.3.2021. **(Appendix I)**
 - (b) Further Information (FI) received on 4.5.2021 clarifying the number of structures with revised layout plan. **(Appendix Ia)** *

Remark: * *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 detailed in **Appendices I to Ia**. They can be summarised as follows:

- (a) The temporary shop and services use under application is operated by residents in the locality. It is mainly for selling of building/home decoration materials including ceramic tiles, sanitary equipment and gardening materials/landscape plantings to nearby contractors. The development is not incompatible with the planning intention of the “R(C)” zone. It would not affect the rural character of the surrounding areas. Its development parameters are more or less the same as the previous application (No. A/YL-NTM/369). The structures are of simple design. The development will not affect the long term development for the Site.
- (b) The applicant has complied with all previous approval conditions, except that the implementation of drainage proposal has been delayed due to the COVID-19. The applicant has included records of the completed fencing, run-in/out, fire services installations (FSIs) and drainage facilities to support the current application.
- (c) The traffic impact generated by the development is insignificant. There are only 2-3 staff members working at the Site. The visitors and staff members will access the Site mainly by private cars/LGVs. It is estimated that there are 2-5 vehicle trips

to/from the Site per hour. There are sufficient parking spaces, loading and unloading bays and manoeuvring space for vehicles on the Site to avoid queuing back of vehicles outside the Site. No container vehicles and/or heavy goods vehicles will enter into/park on the Site. Delivery of goods and replenishment of supplies will be carried out by LGVs twice a day and once or twice a month respectively and rush hours will be avoided. The negligible increase in traffic would not aggravate the traffic condition of nearby road networks.

- (d) The development would not generate adverse environmental and ecological impacts. The development would not involve tree removal, pond filling, drilling, hazardous materials, etc. No neon-light advertising sign, night lighting system and speakers will be installed. No noise and light nuisance will be resulted.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner” of the private land within the Site and 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 San Tin Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

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

5. Previous Applications

- 5.1 The Site is involved in 3 previous applications. Applications No. A/YL-NTM/175 for proposed temporary logistics use and container vehicle park and No. A/YL-NTM/227 for proposed temporary sales centre for new private vehicles and lorries (include medium goods vehicles and container tractors) with larger site area were submitted by other applicants which were rejected in 2004 and 2008 respectively.
- 5.2 The last application (No. A/YL-NTM/369) was submitted by the current applicant for temporary shop and services (sales of building materials) for a period of 3 years which was approved on 6.7.2018 as the application would not frustrate the long term planning intention of the “R(C)” zone; the development was not incompatible with the surrounding land uses; it would unlikely generate any adverse environmental, traffic, drainage and fire safety impacts and there were no adverse departmental comments. Approval conditions relating to provision of boundary fencing, submission and implementation of run-in/out and FSIs, and submission of drainage proposal had been fulfilled, but the planning approval was revoked on 6.12.2020 due to non-compliance with the condition on implementation of the drainage proposal.

5.3 Details of the applications are summarised at **Appendix II**.

6. Similar Applications

6.1 There are two similar applications for temporary shop and services use within the same “R(C)” zone on the OZP (**Plan A-1a**).

6.2 Applications No. A/YL-NTM/375 for temporary shop and services (metalware shop) and No. A/YL-NTM/381 for temporary shop and services (sales of building materials) were approved by the Committee in 2018 and 2019 respectively on considerations that the developments would not frustrate the long term planning intention of the “R(C)” zone and were not incompatible with the surrounding land uses; the developments would unlikely generate any adverse impacts and there were no adverse departmental comments.

6.3 Details of the applications are summarised at **Appendix III**.

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

7.1 The Site is:

- (a) currently used for temporary shop and services for building/home decoration/gardening materials without planning permission; and
- (b) accessible at its northwestern boundary to San Tam Road (which connects to Castle Peak Road-Mai Po) through the adjoining private land.

7.2 The surrounding areas have the following characteristics:

- (a) to its north are open storage of planters (suspected Unauthorised Development (UD)), a watercourse and San Tam Road; across San Tam Road is Mai Po Substation falling within “Other Specified Use (Electric Sub-station)” zone;
- (b) to the immediate west is a vacant site with temporary planning permission for eating place (restaurant) under Application No. A/YL-NTM/407. To the further southwest are unused land/ruin and an open storage yard of construction materials (suspected UD);
- (c) to the immediate south is a site with temporary planning permission for shop and services use (sales of building materials) approved under Application No. A/YL-NTM/381. Further south are open storage yards, unused land and residential dwellings; and
- (d) to its east are fallow agricultural land and residential dwelling. To its northeast are residential dwellings, unused land and open storage of construction materials (suspected UD).

8. Planning Intention

The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood 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, LandsD (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots 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 private land of Lots No. 1400 and 1401 in D.D. 105 is covered by Short Term Waiver (STW) No. 4962 to permit structures for the purpose of “Temporary Shop and Services (Sales of Building Materials)”.
- (c) Illegal Occupation of Government Land (IOGL) was detected adjoining to the Site. No permission is given for occupation of Government Land (GL) of about 178m² in area (subject to verification). The act of occupation of GL without Government’s prior approval is not allowed.
- (d) Should planning approval be given to the subject application, the STW holder will need to apply to his office for modification of the STW conditions where appropriate. The applicant has to either cease the IOGL or apply for a formal approval prior to the actual occupation of the GL. 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 LandsD 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 LandsD.

Traffic

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

- (a) The Site is connected to San Tam Road via a section of local access which is not managed by the Transport Department (TD). The land status of the local access should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) No vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

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

- (a) The proposed access arrangement of the Site from San Tam Road should be approved by TD;
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and San Tam Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

9.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

He has no comment from railway development viewpoint as the Site falls outside any administrative route protection boundary, gazetted railway schemes boundary or existing railway protection boundary of any rail systems.

Environment

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

- (a) The applicant is advised to follow the environmental mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP) issued by DEP.
- (b) According to record, there was one substantiated waste complaint relating to the Site in the past 3 years.

Landscape

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

The Site is not located in landscape sensitive zoning and no significant adverse landscape impact is anticipated. There is no public frontage around the Site. It is considered not necessary to impose a landscape

condition should the application be approved, as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) He has no objection in principle to the application from the drainage operation and maintenance point of view.
- (b) The applicant shall make a drainage submission to demonstrate how rain water falling onto or flowing to the Site will be collected, conveyed and discharged. A clear drainage plan showing full details of the existing drains and the proposed drains (e.g. cover and inverted levels of pipes/catchpits/outfalls and ground level justifying waterflow, etc.) with supporting design calculations according to the 'Guideline on Preparation of the Drainage Proposal' available at DSD's homepage should be included. Approval of the drainage proposal must be sought prior to the implementation of drainage works on site.
- (c) After completion of the drainage works, the applicant shall provide DSD for reference a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan. DSD will inspect the completed drainage works jointly with the applicant with reference to the set of photographs.
- (d) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (e) No public sewerage maintained by his office is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (f) The applicant is reminded that the proposed drainage works as well as the site boundary should not cause encroachment upon areas outside his jurisdiction.
- (g) All the proposed drainage facilities should be constructed and maintained by the applicant at his own cost. The applicant should ensure and keep all drainage facilities on site under proper maintenance during occupancy of the Site.
- (h) The applicant should consult DLO/YL regarding all the proposed drainage works outside the lot boundary in order to ensure unobstructed discharge from the Site in future.

Fire Safety

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

- (a) He has no objection in principle to the application subject to 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 also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs 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.

Building Matters

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

- (a) There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site. If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BA, they are unauthorised building works (UBW) under 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 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 BO.
- (c) His detailed comments are at **Appendix V**.

Others

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no comments on the application from a town gas safety point of view.
- (b) There is a high pressure underground town gas transmission pipeline (running along San Tam Raod) in the vicinity of the Site. For the sake of public safety and continuity of gas supply, the applicant should approach the Hong Kong and China Gas Company Limited (HKCG) for requisition of gas pipe layout plan(s) to investigate if there is any underground gas pipe within and/or in vicinity of the Site and liaise with HKCG any required minimum set back distance away from it during the design and construction stages of the development. His detailed comments are at **Appendix V**.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Commissioner of Police;
- (d) Project Manager (West), Civil Engineering and Development Department (CEDD);
- (e) Head of Geotechnical Engineering Office, CEDD; and
- (f) District Officer (Yuen Long), Home Affairs Department.

10. Public Comments Received During Statutory Publication Period

On 30.3.2021, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period which ended on 20.4.2021, 6 public comments were received (**Appendix IV**). Amongst them, 4 comments from the San Tin Rural Committee and individuals support the application as the development would make better use of land resources; provide local job opportunities; and no adverse traffic, noise and environmental impacts. The 2 remaining comments are from individuals raising objection mainly on the ground that the development would induce drainage problem; and the applicant failed to fulfill the approval conditions of the last application.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (sales of gardening and building materials) for a period of 3 years at the Site zoned “R(C)”. The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Although the applied shop and services (sales of gardening and building materials) use is not entirely in line with the planning intention of the “R(C)” zone. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “R(C)” zone as there is no immediate permanent development

proposal for the Site. According to the applicant, the temporary shop and service use under the application could serve the local residents and contractors nearby.

- 11.2 The Site is located at the fringe of the “R(C)” zone with access connected to San Tam Road. The development is not incompatible with the surrounding land uses with a site approved for similar shop and services use (sale of building materials), agricultural land, scattered residential dwellings and unused land.
- 11.3 The applied use under application would unlikely cause significant adverse impacts on the area. There are no adverse comments from the concerned Government departments including C for T, CE/MN of DSD and D of FS from traffic, drainage and fire safety perspectives. Should the application be approved, technical requirements of C for T, CE/MN of DSD and D of FS can be imposed as the approval conditions recommended in paragraphs 12.2 (d) to (i) below. While there was a waste complaint relating to the Site in the past 3 years, DEP has no adverse comment on the current application. The applicant will be advised to follow the relevant mitigation measures and requirements in the latest COP. Besides, approval conditions restricting the operation hours and type of vehicles to be used are recommended in paragraphs 12.2 (a), (b) and (c) below to mitigate potential environmental impacts on the surrounding areas.
- 11.4 Previous approval had been granted to the current applicant for similar shop and services use (sale of building materials) at the Site (No. A/YL-NTM/369). The applicant had fulfilled the approval conditions relating boundary fencing, run-in/out and FSIs and submission of drainage proposal. However, the approval was revoked on 6.12.2020 due to non-compliance with the approval condition on the implementation of drainage proposal. The applicant has explained that the drainage works was delayed due to the COVID-19. The applicant has included drainage and FSIs proposals and records of the completed drainage works, FSIs, run-in/out and boundary fencing to support the current application. As there are no adverse comments from the relevant departments, sympathetic consideration may therefore be given to the current application. However, shorter compliance periods are recommended to closely monitor the progress of compliance with the approval conditions if the current application is approved. Moreover, the applicant will be advised that should the applicant fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration would not be given to any further application.
- 11.5 4 supporting and 2 opposing public comments were received during the statutory public inspection period of the application as detailed in paragraph 10. The planning assessment and departmental comments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, 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 14.5.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00p.m. and 10:00a.m. on Monday to Saturday, 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) only private cars and light goods vehicles not exceeding 5.5 tonnes as defined in the Road Traffic Ordinance are allowed to park on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reserve onto/from public road at any time during the planning approval period;
- (e) the submission of drainage proposal 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 14.8.2021;
- (f) in relation to (e) above, the implementation 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 14.11.2021;
- (g) the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 14.8.2021;
- (i) in relation to (h) above, the implementation 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 14.11.2021;
- (j) if any of the above planning condition (a), (b), (c), (d) 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 (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 attached at **Appendix V**.

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

the development is not in line with the planning intention of the "R(C)" zone which is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board. 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 received on 22.3.2021
Appendix Ia	FI received on 4.5.2021
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Public comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2021**