

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/853

<u>Applicant</u>	: Sunny Sea Limited
<u>Site</u>	: Lots 504 RP and 512 S.A to S.E in D.D. 113, Kam Tin South, Yuen Long
<u>Site Area</u>	: About 1,960m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Open Storage of Construction Machinery, Materials, Equipment and Containers with Ancillary Office 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 open storage of construction machinery, materials, equipment and containers with ancillary office for a period of 3 years. The Site is zoned “AGR” and the applied use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the Notes of the OZP, temporary use or development not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently partly vacant and partly used for open storage of construction materials and machinery without valid planning permission (**Plans A-2 to A-4b**). The Site is not subject to any previous planning application.
- 1.2 The Site involves two portions. The northern portion of the Site will be used for open storage of construction machinery and materials. The southern portion of the Site involves two 1-storey (8m high) shelters with 6 one- to two-storey (2-4m high) containers underneath for storage of construction materials and tools and office uses with a total floor area of about 389.4m². The open area will be used for open storage of construction machinery and materials and placing 5 containers. A total of 6 parking spaces for light,

medium and heavy goods vehicles will be provided on-site. The operation hours are from 8:00 a.m. to 6:00 p.m. on Mondays to Saturdays, and there is no operation on Sundays and public holidays. The Site is accessible via a local track from Kam Ho Road and Pat Heung Road. The layout plan submitted by the applicant is shown on **Drawing A-1**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form and plans received on 24.6.2020 (**Appendix I**)
 - (b) Further Information (FI) received on 12.8.2020 in response to departmental comments (**Appendix Ia**)
[Exempted from publication requirement]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** and is summarized as follows:

This application is submitted as it is difficult to find a large area for storage in the metro area.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Member’s inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13F) promulgated by the Board on 27.3.2020 is relevant to the application. The Site falls within the Category 3 areas under the TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The Site involves two active enforcement cases. The southern portion (**Plan A-2**) is subject to an enforcement case (No. E/YL-KTS/440) involving unauthorized development (UD) of storage use. Enforcement Notice (EN) was issued on 28.4.2020. Part of the northern portion of the Site is subject to another enforcement case (No. E/YL-KTS/436) involving UD of storage use. EN was issued on 15.10.2019 and Compliance Notice was issued on 31.3.2020. Reinstatement Notice was issued on 27.5.2020 requiring removal of the leftovers, debris and fill materials (including hard paving) on the land and to grass the land. If the requirements in the notices were not complied with, further action may be considered.

6. Previous Application

The Site is not subject to any previous application.

7. Similar Applications

- 7.1 There are four similar applications for temporary open storage use within the same “AGR” zone on the OZP since the promulgation of the TPB PG-No. 13E on 17.10.2008. All were rejected. Details of these applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-KTS/529, 710, 732 and 781 for various temporary open storage uses were rejected by the Rural and New Town Planning Committee (the Committee) or the Board on review between 2011 and 2018 (Application No. A/YL-KTS/781 was dismissed by the Appeal Board in 2020) mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; the application did not comply with the TPB PG-No. 13E in that there was no previous approval granted at the site and there were adverse departmental comments; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and/or landscape impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

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

- 8.1 The Site is:
- (a) paved, partly vacant and partly used for open storage of construction materials and machinery without valid planning permission; and
 - (b) accessible to Kam Ho Road and Pat Heung Road via a local track.
- 8.2 The surrounding area is rural in character intermixed with open storage/storage yards, warehouse, a pig farm, cultivated agricultural land, residential dwellings/structures and vacant land. The open storages/storage yards and warehouse are suspected UD subject to enforcement action by the Planning Authority:
- (a) to its southeast is a pig farm;
 - (b) to its north and northeast are open storage yards, warehouse, residential dwellings/structures (the nearest one being about 40m away) (**Plan A-2**), cultivated agricultural land and unused land;
 - (c) to its south and west are open storage/storage yards and vacant land; and
 - (d) to its further northwest is an area zoned “Conservation Area” and further west is Tsing Long Highway (**Plan A-1**).

9. **Planning Intention**

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. **Comments from Relevant Government Departments**

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

Land Administration

10.1.1 Comments of the District Lands Officer, Yuen Long, Lands Department (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) Should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) 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 the LandsD.

Traffic

10.1.2 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.

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

- (a) His department shall not be responsible for the maintenance of any access connecting the Site and Pat Heung Road/ Kam Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) In accordance with the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application as there are sensitive receivers, i.e. residential dwellings/structures in the vicinity of the Site (the nearest about 40m to the northeast) and the development involves the use of heavy vehicles, and hence environmental nuisance is 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 DEP.

Landscape

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

- (a) She has reservation on the application from the landscape planning point of view.
- (b) Based on the aerial photo taken on 12.9.2019, the Site is situated in an area of disturbed rural landscape character comprising scattered tree groups, temporary structures, vehicle parks and open storages. Although the development is not entirely incompatible with the existing landscape character of the area within the “AGR” zone, those open

storage yards and vehicle parks are suspected UD subject to enforcement action.

- (c) Referring to the site visit on 13.7.2020, the Site is paved and occupied with some temporary structures, containers, construction materials and machineries. One existing tree *Mangifera indica* (杧果) is recorded within the Site. A few common countryside trees such as *Ficus hispida* (對葉榕), *Ficus variegata* (青果榕), *Michelia x alba* (白蘭) and *Sterculia monosperma* (蘋婆) are found along the boundary of the southern portion of the Site. Referring to the submitted layout plan, the development is in conflict with the existing tree at the eastern portion of the Site. Noting the affected existing tree *Mangifera indica* (杧果) is common fruit species, adverse impact on significant landscape resources is not anticipated. However, comparing the aerial photos taken on 2010, 2011 and 2018, it is apparent that trees and vegetation within the northern and southern portion of the Site has been cleared since 2018 and 2010 respectively. Should the application be approved, it would set an undesirable precedent for such unauthorized site alteration within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone.
- (d) The applicant is reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation/removal scheme under the lease. The applicant could seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Drainage

10.1.6 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 public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal and implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning permission.

Agriculture and Nature Conservation

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

- (a) The Site falls within the “AGR” zone and is currently comprised of paved open storage, temporary structures and abandoned land. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water sources are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) Considering the Site is partly paved and abandoned, he has no adverse comments on the application from nature conservation point of view.

Fire Safety

10.1.8 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 layout plan 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. The good practice guidelines for open storage (**Appendix IV**) should be adhered to.
- (c) Moreover, having considered the nature of the open storage, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be included in the planning permission. To address this condition, the applicant should submit a valid fire certificate (FS251) to his department for approval.
- (d) 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

10.1.9 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, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the 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.
- (d) Before any new building works (including containers/ open shed as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be considered as two separate sites and 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.
- (f) The two sites do not abut on a specified street of not less than 4.5m wide and the permitted development intensity of each individual site shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

District Officer's Comments

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

He has not received any comments from locals upon close of consultation and has no particular comment on the application.

10.2 The following Government departments have no objection to/ no comment on the application:

- (a) Director of Electrical and Mechanical Services;
- (b) Chief Engineer/Construction, Water Supplies Department;
- (c) Project Manager (West), Civil Engineering and Development Department; and
- (d) Commissioner of Police.

11. Public Comments Received During Statutory Publication Period

On 3.7.2020, the application was published for public inspection. During the three-week statutory publication period, six public comments from Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong, World Wide Fund for nature Hong Kong and individuals (**Appendices V-1 to V-6**) were received. All of them object to the application mainly on the grounds that the application is not in line with the planning intention of the “AGR” zone; the development is not compatible with the agricultural and rural residential uses in the surrounding area; there is increasing demand for farm produce in Hong Kong and the Site should be reverted to agricultural use; approval of the application would reward “destroy first, develop later” practice; the Site is close to “Conservation Area” zone which is buffer to country park; the applied use will cause adverse ecological, environmental and landscape impacts and the increase in heavy vehicles will affect safety of the nearby villagers; and approval of the application would set an undesirable precedent for similar applications and lead to a general degradation of the natural environmental of the area.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of construction machinery, materials, equipment and containers with ancillary office in “AGR” zone. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purpose, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The applied use is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

12.2 The surrounding area is rural in character intermixed with a pig farm, cultivated agricultural land, residential dwellings/structures, open storage/storage yards, warehouse and vacant land. While there are some open storage/storage yards and warehouse in the vicinity of the Site (**Plan A-2**), they are suspected UD subject to enforcement action by the Planning Authority.

- 12.3 The Site falls within Category 3 areas under the TPB PG-No. 13F. The following considerations in the Guidelines are relevant:

Category 3 areas: within these areas, “existing” and approved open storage and port back-up uses are to be contained and further proliferation of such uses is not acceptable. Applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions.

- 12.4 The development is not in line with the TPB PG-No. 13F in that there is no previous approval for open storage use granted at the Site. Also, there are adverse departmental comments on the application. DEP does not support the application as there are sensitive receivers, i.e. residential dwellings/structures in the vicinity of the Site (the nearest about 40m to the northeast) and the development involves the use of heavy vehicles, and hence environmental nuisance is expected. Also, CTP/UD&L of PlanD has reservation on the application as approval of the application would set an undesirable precedent of unauthorized site alteration within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone. Hence, the current application does not warrant sympathetic consideration.
- 12.5 The Site is not subject to any previous planning application. There are four similar applications for temporary open storage uses within the same “AGR” zone which were all rejected as stated in paragraph 7.2 above. Approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 12.6 Six public comments were received during the statutory publication period objecting to the application mainly on the grounds as stated in paragraph 11 above. In this regard, the departmental comments as well as planning considerations and assessments as stated above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. This

zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;

- (b) the application does not comply with the TPB PG-No. 13F in that there is no previous approval granted at the Site and there are adverse departmental comments on the application; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

13.2 Alternatively, 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 21.8.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 8:00a.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 dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (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 21.2.2021;
- (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 21.5.2021;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the provision of fire extinguisher(s) with a valid fire certificate (FS 251) within **6** weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.10.2020;

- (i) 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 21.2.2021;
- (j) in relation to (i) 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 21.5.2021;
- (k) 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;
- (l) if any of the above planning condition (e), (f), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (m) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

15. Attachments

- Appendix I** Application form and plans received on 24.6.2020
- Appendix Ia** FI received on 12.8.2020
- Appendix II** Relevant extract of TPB PG-No. 13F
- Appendix III** Similar applications within the same “AGR” zone on the Kam

Tin South OZP

Appendix IV	Good Practice Guidelines for Open Storage Sites
Appendices V-1 to V-6	Public comments received during the statutory publication period
Appendix VI	Advisory Clauses
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-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2020**