

RNTPC Paper No. A/YL-KTS/869
For Consideration by
the Rural and New Town
Planning Committee
on 22.1.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/869

<u>Applicant</u>	: Sunny Sea Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 512 S.A-S.B and 512 S.C-S.E in D.D. 113, Kam Tin, Yuen Long
<u>Site Area</u>	: About 1,527 m 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>	: Proposed Temporary Animal Boarding Establishment for a Period of 5 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for proposed temporary animal boarding establishment for a period of 5 years and filling of land. According to the Notes of the OZP, ‘animal boarding establishment’ is a Column 2 use in “AGR” zone which requires planning permission from the Town Planning Board (the Board). Filling of land in the “AGR” zone also requires planning permission from the Board. The Site is currently used as open storage of construction materials and machinery without planning permission (**Plans A-2 to A-4b**).
- 1.2 The Site is subject to a previous application for temporary open storage of construction machinery, materials, equipment and containers with ancillary office which was rejected by the Rural and New Town Planning Committee (the Committee) on 21.8.2020.

- 1.3 According to the applicant, the proposed development involves two 2-storey structures (about 7m in height) with a total floor area of about 440m² for animal boarding establishment, site office and storage of pet goods. About 550m² (about 36% of the Site) will be filled with concrete by not more than 0.2m (from 18.4mPD to not more than 18.6mPD) for site formation of structures and circulation. The remaining area (about 977m²/64%) will be landscaping area. Two private car parking spaces and one light goods vehicle space will be provided within the Site. The business hour will be from 9am to 6pm daily including public holidays with 24-hour animal boarding services. Not more than 70 dogs will be accommodated at the Site. All dogs will be kept inside the enclosed structures with soundproofing materials and mechanical ventilation and air-conditioning system. No dogs will be allowed outdoor at all times. No public announcement system or blowing of whistle will be allowed at the Site. The Site is accessible from Kam Ho Road via a local access. The layout and paved ratio plans submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with plans received on 23.11.2020 (Appendix I)
 - (b) Further Information (FI) received on 14.1.2021 providing 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 and FI at **Appendices I to Ia**. They can be summarized as follows:

- (a) The applicant would like to use the Site for a new animal boarding establishment (dog kennel) to serve pet owner. The proposed development is temporary in nature and will not jeopardize the long-term planning intention of the “AGR” zone. The applicant will reinstate the Site to a condition which is suitable for agricultural use after the planning approval period.
- (b) No medium or heavy goods vehicles exceeding 5.5 tonnes will park/store at the Site. The applicant will strictly follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Departmental (EPD) to minimise adverse environmental impacts and nuisance to the surrounding area. The applicant will also follow the Professional Persons Environmental Consultative Committee Practice Notes for sewerage treatment at the Site. The proposed development will not create significant adverse traffic, environmental, landscape and drainage impact on the surrounding areas. Animal carcass/parts will be properly wrapped or bagged before disposal in accordance with relevant legislation by the applicant.

- (c) The land filling is proposed for site formation of the structures and for circulation purposes to stabilize the soil ground and prevent erosion from surface run-off, and provide ground reinforcement to withstand the heavy load of structures and vehicles.

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 section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notices to Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is currently subject to an on-going planning enforcement action (E/YL-KTS/440) against an unauthorized development (UD) involving storage use (**Plan A-2**). Enforcement Notice was issued on 28.4.2020 requiring the discontinuation of the UD. Since the EN has not been complied with, further action is being considered.

5. **Previous Application**

The Site is subject to a previous application (A/YL-KTS/853) submitted by a different applicant for temporary open storage of construction machinery, materials, equipment and containers with ancillary office for 3 years which was rejected by the Committee on 21.8.2020 on the grounds that the development was no in line with the planning intention of the “AGR” zone; the application did not comply with the Town Planning Board Guidelines No. 13F in that there was no previous approval granted at the Site and there were adverse departmental comments on the application; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. Details of the application are summarized in **Appendix II** and the location of the site is shown on **Plan A-1**.

6. **Similar Application**

6.1 There is one similar application (No. A/YL-KTS/868) for proposed temporary animal boarding establishment within the same “AGR” zone which was approved with conditions by the Committee on 8.1.2021 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention; and the proposed development was considered not incompatible with the surrounding land uses. Details of the application is summarized in **Appendix III** and the location of the site is shown on **Plan A-1**.

6.2 There is no similar application for land filling within the same “AGR” zone.

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

7.1 The Site is:

- (a) currently paved and used as an open storage of construction machinery and materials without planning permission; and
- (b) accessible from Kam Ho Road via a local access.

7.2 The surrounding areas are rural in character intermixed with open storage/ storage yards, vacant and unused land, residential structures/dwellings and pig farm:

- (a) to its north, south and west are storage/open storage yards, vacant/unused land, residential structures/dwellings (the nearest about 30m to the north of the Site) and a stream; and
- (b) to its east are a stream and pig farm.

8. Planning Intention

8.1 The planning intention of the “AGR” zone is primarily 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.

8.2 According to the Explanatory Statement of the OZP for the “AGR” zone, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises 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 the 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

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, the approval condition that 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 Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and 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

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

- (a) No environmental complaint concerning the Site was received in the past three years.

- (b) Provided that the facilities will be properly designed and maintained to minimize any potential environmental nuisance, he has no objection to the application subject to the following approval conditions:
 - (i) All dogs will be kept inside enclosed structures at all time; as proposed by the applicant.
 - (ii) No public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site.
- (c) Moreover, the applicant is also advised (i) to follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; (ii) to provide adequate supporting infrastructure / facilities for proper collection, treatment and disposal of waste / wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" including percolation test; and (iii) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

Landscape

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

- (a) Based on the aerial photo taken on 18.2.2020, the Site is situated in an area of disturbed rural landscape character comprising of scattered tree groups, temporary structures, vehicle parks and open storages. Although the proposed 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 unauthorized development subject to enforcement action.
- (b) Referring to his site visit dated 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 Site. Referring to the submitted layout plan, the proposed

development is not in direct conflict with the existing tree at the eastern portion of the Site. Significant adverse impact on existing landscape resources within the Site is not anticipated. However, comparing the aerial photos taken on 2011 and 2012, it is apparent that trees and vegetation within the Site has been cleared since 2011. Should be application be approved, there is concern that it would set an undesirable precedent of such unauthorised site alteration within the area. The cumulative impact of such approval would further degrade the intactness of landscape quality of the “AGR” zone.

Agriculture and Nature Conservation

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

- (a) The Site falls within “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 source 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 paved, he has no adverse comments on the application from nature conservation point of view.
- (c) The subject address does not associate with any licence granted by his department, nor has he received any application regarding the address. Under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department. The applicant should be reminded that the establishment and ancillary facilities which is licensed under the Cap. 139I Public Health (Animals) (Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations. On the other hand, the dogs kept by the applicant should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and he is reminded to observe Cap. 169 Prevention of Cruelty to Animals Ordinance at all times.

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 proposed development 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.

Fire Safety

- 9.1.8 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 plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
 - (c) The applicant is reminded that if the proposed structure(s) is required to comply with the 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) As 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) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the

BA should be obtained. Otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the coordinator for the proposed building works in accordance with the BO.

- (c) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix V**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Environmental Hygiene

9.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) Proper licence / permit issued by the Food and Environmental Hygiene Department (FEHD) is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.
- (b) If the proposal involves any commercial/trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. Its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the activities in the premises, the applicant should handle on their own/at their expenses.
- (c) Any animal carcass / parts shall be properly wrapped or bagged before disposal.

District Officer's Comments

9.1.11 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 he has no particular comment on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department;
- (b) Director of Electrical and Mechanical Services;

- (c) Chief Engineer/ Construction, Water Supplies Department; and
- (d) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 1.12.2020, the application was published for public inspection. During the three-week statutory publication period, six public comments from the World Wide Fund for Nature Hong Kong, Hong Kong Bird Watching Society, Designing Hong Kong, Kadoorie Farm & Botanic Garden Corporation and individuals (**Appendices IV-1 to IV-6**) were received. One of them comments that information on minimizing noise and odour and treatment of animal carcass should be provided. The others object to the application mainly on the grounds that the proposed development is not in line with the planning intention; watercourse and ponds are adjacent to the Site and there is no information provided to indicate the sewerage treatment; the Site may be subject to “destroy first, built later” case; approval of the application would set an undesirable precedent for other applications within the “AGR” zone; and there is no information on the applicant’s suitability with regard to caring for animals.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 5 years in the “AGR” zone and filling of land at part of the Site (550m²/36%) by not more than 0.2m. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not entirely in line with the planning intention of the “AGR” zone. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, it is considered that approval of the application on temporary basis for a period of 5 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development is considered not incompatible with the surrounding area which is rural in character intermixed with residential structures/dwellings, pig farm and unused/vacant land. Although there are residential structures/dwellings near the Site (the nearest one about 30m to the north), the applicant advised that all dogs will be kept inside the enclosed structures with soundproofing material and equipped with mechanical ventilation and air conditioning. No dogs will be allowed outdoor as proposed by the applicant. In addition, no public announcement system or whistle blowing will be used at the Site. DEP has no adverse comment on the application. According to the applicant, the filling of land is for site formation of structures and circulation. CE/MN of DSD and DEP have no in-principle objection to the proposal.
- 11.3 Relevant departments consulted, including C for T, DEP, D of FS and CE/MN of DSD, except DAFC, have no adverse comment on the application. While CTP/UD&L of PlanD raised concern that approval of the application may set an

undesirable precedent of unauthorised site alteration within the area and the cumulative impact of such approval may further degrade the intactness of landscape quality of the “AGR” zone, she considers the proposed development is not entirely incompatible to the existing landscape character of the area and significant adverse impact on the existing landscape resources within the Site is not anticipated. To minimise any possible environmental nuisance, approval conditions restricting the operation hours and outdoor animal activities and prohibiting the use of public announcement system and whistle blowing are recommended in paragraphs 12.2 (a) to (c) below. The applicant will also be advised to adopt the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. The technical requirements of C for T, CE/MN of DSD, and D of FS could be addressed by approval conditions (d) to (i) recommended in paragraph 12.2 below.

- 11.4 The Site is subject to is a previous application for temporary open storage of construction machinery, materials, equipment and containers with ancillary office which was rejected by the Committee in 2020 as stated in paragraph 5 above. The current application is submitted by a different applicant for a different use. There is one similar application for proposed temporary animal boarding establishment (dog kennel) within the same “AGR” on the OZP approved on 8.1.2021 for a period of 3 years without filling of land as detailed in paragraph 6 above. There is no similar application for land filling within the same “AGR” zone.
- 11.5 Six public comments were received during the statutory publication period, one comments and the others object to the application as stated in paragraph 10 above. In this regard, the above departmental comments as well as planning considerations and assessments are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the proposed temporary animal boarding establishment for a period of 5 years and filling of land.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 5 years until 22.1.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m. (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed structures on the Site, as proposed by the applicant, at all times during the planning approval

period;

- (c) no public announcement system, portable loudspeaker, any form of amplification system, or whistle blowing is allowed to be used 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 22.7.2021;
- (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 22.10.2021;
- (g) in relation to (f) above, 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 **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 22.7.2021;
- (i) in relation to (h) 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 22.10.2021;
- (j) if any of the above planning conditions (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;
- (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; and
- (l) 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 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 "AGR" zone which is primarily 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. No strong planning justification has been given in the submission for a departure from the planning intention, even on 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 planning statement received on 23.11.2020
Appendix Ia	FI received on 14.1.2021
Appendix II	Previous Application at the Site
Appendix III	Similar Application within the same "AGR" zone on the OZP
Appendices IV-1 to IV-6	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Paved Ratio Plan
Plan A-1	Location Plan
Plan A-2	Site Plan

Plan A-3 Aerial Photo

Plans A-4a to 4b Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**