

**Relevant Extract of Town Planning Board Guidelines for
Application for Open Storage and Port Back-up Uses
Under Section 16 of the Town Planning Ordinance
(TPB PG-No. 13F)**

1. On 27.3.2020, the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13F) were promulgated, which set out the following criteria for the various categories of area:
 - (a) Category 1 areas: Favourable consideration will normally be given to applications with these areas, subject to no major adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments should be submitted if the proposed uses may cause significant environmental and traffic concerns;
 - (b) Category 2 areas: Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. 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, planning permission could be granted on a temporary basis up to a maximum period of 3 years;
 - (c) Category 3 areas: Applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. In that connection, 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. 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, planning permission could be granted on a temporary basis up to a maximum period of 3 years;
 - (d) Category 4 areas: Applications for open storage and port back-up uses would normally be rejected except under exceptional circumstances. For applications on sites with previous planning approvals, and subject to no adverse departmental comments and local objections, 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 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. The intention is however to encourage the phasing out of such non-conforming uses as early as possible. A maximum period of 2 years may be allowed upon renewal of planning permission for an applicant to identify suitable sites for relocation. No further renewal of approval will be given unless under very exceptional circumstances and each application for renewal of approval will be assessed on its individual merits; and
 - (e) Taking into account the increasing demand for cross-boundary car parking facilities, applications for cross-boundary parking facilities at suitable sites in San Tin area,

particularly near the existing cross-boundary link in Lok Ma Chau, may also be considered. Application of such nature will be assessed on its own merits, including its nature and scale of the proposed use and the local circumstances, and subject to satisfactory demonstration that the proposed use would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas, and each case will be considered on its individual merits.

2. In assessing applications for open storage and port back-up uses, the other major relevant assessment criteria are also summarised as follows:
 - (a) port back-up sites and those types of open storage generating adverse noise, air pollution and visual intrusion and frequent heavy vehicle traffic should not be located adjacent to sensitive receivers such as residential dwellings, hospitals, schools, and other community facilities;
 - (b) adequate screening of the sites through landscaping and/or fencing should be provided at the periphery of the site within the boundary, especially where sites are located adjacent to public roads or are visible from surrounding residential areas;
 - (c) there will be a general presumption against development on sites of less than 2,000 m² for port back-up uses, and below 1,000 m² for open storage uses in rural areas, other than sites located in major corridors, industrial/godown/workshop areas, quarrying activities or where it is demonstrated that optimum use is made of the site. This is to prevent the further proliferation of small sites in rural areas and concentrate activities within appropriate surroundings, thus minimising sprawl over countryside areas and reducing travel trips;
 - (d) port back-up uses are major generators of traffic, with container trailer/tractor parks generating the highest traffic per unit area. In general, port back-up sites should have good access to the strategic road network, or be accessed by means of purpose built roads;
 - (e) there is a general presumption against conversion of agricultural land and fish ponds to other uses on an ad-hoc basis in rural areas, particularly in flood prone areas or sites which would obstruct natural drainage channels and overland flow; and
 - (f) for applications involving sites with previous planning approvals, should there be no evidence to demonstrate that the applicants have made any genuine effort to comply with the approval conditions of the previous planning applications, the Board may refuse to grant permission, or impose a shorter compliance period for the approval conditions, notwithstanding other criteria set out in the Guidelines are complied with.

Previous S.16 Applications

Rejected Applications

Application No.	Uses/ Development	Date of Consideration	Rejection Reasons
A/NE-MUP/75	Temporary Open Storage of New and Second-hand Vehicles (including 2 Private Cars and 4 Light Goods Vehicles) for a Period of 3 Years	7.12.2012	R1 - R4
A/NE-MUP/146	Proposed Temporary Animal Boarding Establishment and Ancillary Office for a Period of 3 Years	17.1.2020	R5 - R7

Rejection Reasons

- R1 The application was not in line with the planning intention of the "Agriculture" zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- R2 The application did not comply with the Town Planning Board (TPB) Guidelines No.13E for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' in that the proposed development was not compatible with the surrounding land uses which were predominantly rural in character; there was no previous planning approval granted at the site; and there were adverse comments from the relevant government departments and local objections against the application.
- R3 The proposed development was incompatible with the rural character of the surrounding area which was predominantly agricultural land with domestic structures in its close vicinity.
- R4 There was no information in the application to demonstrate that the proposed development would have no adverse environmental and landscape impact on the surrounding areas.
- R5 The proposed development was not in line with the planning intention of the

“Agriculture” (“AGR”) zone which was primarily to retain and safeguard good 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. There was no strong justification in the submission for a departure from such planning intention, even on a temporary basis.

- R6 The applicant failed to demonstrate that the proposed development would not cause adverse environmental and traffic impacts on the surrounding areas.
- R7 The approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.

**Similar S.16 Applications for Temporary Open Storage
in the vicinity of the application site within the "Agriculture" zone
in the Man Uk Pin Area**

Rejected Applications

Application No.	Uses/ Development	Date of Consideration	Rejection Reasons
A/NE-MUP/63	Temporary Open Storage of New and Scrap Stainless Steel for a Period of 3 Years	11.11.2011 (on review) 9.12.2013 (appeal dismissed)	R1 - R4
A/NE-MUP/86	Temporary Open Storage of Recycled Materials (Plastic) for a Period of 1 Year	16.8.2013	R4 - R6

Rejection Reasons

- R1 The development under application was not in line with the planning intention of the "AGR" zone for the area which was primarily intended to retain and safeguard good agricultural land/farm/fishponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- R2 The development under application did not comply with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and there were local objections to the application.
- R3 The development under application was not compatible with land uses of the surrounding areas which were largely rural and agricultural in character.
- R4 The approval of the application would set an undesirable precedent for similar applications within the "AGR" zone, the cumulative impact of approving similar applications would result in a general degradation of the environment in the area.

- R5 The application was not in line with the planning intention of the "Agriculture" ("AGR") zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- R6 The application did not comply with the Town Planning Board (TPB) Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No.13E) in that the proposed development was not compatible with the surrounding land uses which were predominantly rural in character; there was no previous planning approval granted at the site; there were adverse comments from the relevant Government departments and local objections against the application; and there was no information in the application to demonstrate that the proposed development would have no adverse traffic, environmental and landscape impact on the surrounding areas.

Recommended Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the Site;
- (b) to note the following comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):
 - (i) the lots are an Old Schedule Lots held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. The applicant should make his own arrangement, and there is no guarantee that any adjoining Government land (GL) will be allowed for the vehicular access of the proposed use;
 - (ii) the existing structures on the subject lots were erected without approval from her office. The aforesaid structures are not acceptable under the Lease concerned and she reserves the right to take necessary lease enforcement actions against the aforesaid structure;
 - (iii) the structures on the subject lots will include a structure for toilet use. The applicants should note that any proposed septic tank and soakage pit system should meet current health requirements, and that they should apply for Certificates of Exemption for Building Works and Drainage Works from her office;
 - (iv) the GL between Lots 50 and 52 RP is being occupied without approval from her office. Her office reserves the right to take land control actions against the unauthorized occupation of GL; and
 - (v) if the planning application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) for the erection of animal boarding establishment and site office, and regulation of the unauthorized occupation of GL respectively. The application for STW and STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fee as considered appropriate by her office.
- (c) to note the comments of the Commissioner for Transport (C for T) that the vehicular access between the Site and Wo Keng Shan Road is not managed by TD. The applicants should seek comment from the responsible party;
- (d) to note the comments of the Chief Highway Engineer/NT East, Highways Department (CHE/NTE, HyD) that The access road leading from Wo Keng Shan Road to the Site is not maintained by his office;
- (e) to note the following comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (i) should the application be approved, a condition should be included to request the applicants to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area;

- (ii) the Site is in an area where no public sewerage connection is available; and
 - (iii) the applicants should avoid discharging the surface runoff from the Site to the upstream of the blocked section of the channel in order to avoid further deteriorate the existing condition. The applicant should also ensure that the flow from his lot will not overload the existing drainage system.
- (f) to note the following comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
- (i) before any new building works are to be carried out on the Site, prior approval and consent of Building Authority (BA) should be obtained unless they are exempted building works or commenced under the simplified requirement under the Minor Works Control System. Otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
 - (ii) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's 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) any temporary shelters or converted containers for storage or other uses are considered as temporary buildings are subject to the control of Pt. VII of the Building (Planning) Regulations (B(P)Rs)
 - (iv) the site shall be provided with means of obtaining access thereto from a street under Building (Planning) Regulations (B(P)Rs) 5 and emergency vehicular access shall be provided under B(P)Rs 41D;
 - (v) if the Site is not abutting on a specified street having a width not less than 4.5 m, the development intensity shall be determined by the BA under B(P)Rs 19(3) at the building plan submission stage; and
 - (vi) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.
- (g) to note the following comments of the Director of Fire Services (D of FS):
- (i) the applicants should be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
 - (ii) moreover, having considered the nature of open storage, an approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be incorporated if the application is approved. To address this approval condition, the applicants are required to submit a valid fire certificate (FS 251) to his department for approval; and
 - (iii) the applicants are reminded that if the proposed structure(s) is required to comply

with the Buildings Ordinance (Cap. 123), detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans; and

- (h) to follow the environmental mitigation measures as set out in the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site' issued by the Director of Environmental Protection (DEP) and all pollution control ordinances, in particular the Water Pollution Control Ordinance, since a stream is located at the south-east of the Site.