

**Relevant Extract of Town Planning Board Guidelines No. 34C on
“Renewal of Planning Approval and Extension of Time for Compliance
with Planning Conditions For Temporary Use or Development”
(TPB PG-No. 34C)**

1. The criteria for assessing applications for renewal of planning approval include:
 - (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
 - (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
 - (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
 - (d) whether the approval period sought is reasonable; and
 - (e) any other relevant considerations.

2. Under normal circumstances, the approval period for renewal should not be longer than the original validity period of the temporary approval. In general, the Board is unlikely to grant an approval period exceeding three years unless there are strong justifications and the period is allowed for under the relevant statutory plans. Depending on the circumstances of each case, the Board could determine the appropriate approval period, which may be shorter than the time under request.

**Relevant Extracts of Town Planning Board Guidelines on
Application for Open Storage and Port Back-up Uses
(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: considered suitable for open storage and port-backup uses. Favourable consideration will normally be given to applications within 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: 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. 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;
 - (c) 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; and
 - (d) Category 4 areas: applications 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 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. 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 merit.

2. In assessing applications for open storage and port back-up uses, the other major relevant assessment criteria are also summarized as follows:
 - (a) The use of sites less than 1,000m² for open storage uses and 2,000m² for port back-up uses in rural areas, is generally not encouraged, 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, minimizing sprawl over countryside areas and reducing travel trips;
 - (b) 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;
 - (c) 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;
 - (d) adequate screening of the sites through landscaping and/or fencing should be provided where sites are located adjacent to public roads or are visible from surrounding residential areas;
 - (e) there is a general presumption against conversion of agricultural land and fish ponds to other uses on an ad-hoc basis, 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, planning permission may be refused, or a shorter compliance period for the approval conditions may be imposed, notwithstanding other criteria set out in the Guidelines are complied with.

Previous s.16 Applications covering the Application Site

Approved Applications

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Conditions</u>
1	A/YL-PH/296	Temporary open storage of new private cars, vehicle parts and construction materials for a period of 3 years	10.9.1999 [Revoked on 10.6.2000]	(1), (2), (3), (4)
2	A/YL-PH/375	Temporary open storage of construction materials for a period of 3 years	14.12.2001 [on review]	(1), (2), (3), (4), (5), (6)
3	A/YL-PH/392	Temporary open storage of construction materials for a period of 3 years	15.3.2002	(1), (2), (3), (4), (5)
4	A/YL-PH/555	Temporary open storage of construction machinery (electricity generator), vehicle parts and container for storage of plastic barriers for a period of 3 years	1.2.2008	(1), (2), (3), (4), (7), (8)
5	A/YL-PH/627	Temporary open storage of construction machinery (electricity generator), vehicle parts, temporary transit shipment particles and container for storage of plastic barriers for a period of 3 years	21.10.2011 [Revoked on 21.9.2013]	(1), (2), (3), (4), (7), (8), (9), (10)
6	A/YL-PH/685	Temporary open storage of construction machinery (electricity generator), vehicle parts, temporary transit shipment particles and container for storage of plastic barriers for a period of 3 years	4.4.2014	(1), (2), (3), (4), (7), (8), (10), (11)

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Conditions</u>
7	A/YL-PH/741	Renewal of planning approval for temporary open storage of construction machinery (electricity generator), vehicle parts, temporary transit shipment particles and container for storage of plastic barriers for a period of 3 years	3.3.2017 [for approval period 5.4.2017 to 4.4.2020]	(1), (2), (3), (4), (7), (8), (10), (11), (12), (13)

Approval Conditions

- (1) Submission/implementation of landscaping/tree preservation proposals /maintenance of existing landscape plantings.
- (2) Submission/implementation / maintenance of drainage facilities.
- (3) If any of the planning conditions was not complied with by the specified time limit / during the planning approval period, the approval given shall cease to have effect and shall on the same date be revoked without further notice.
- (4) Reinstatement of the application site upon expiry of the planning permission.
- (5) Submission/implementation of environmental mitigation measures proposals.
- (6) Provision of fencing and paving of the application site.
- (7) No repairing, maintenance, dismantling, cleansing, paint spraying and workshop activities are allowed on the site.
- (8) Restriction on operation hours.
- (9) No storage of used electricity appliances or other type of electrical waste on the open area of the Site.
- (10) No medium or heavy vehicles exceeding 5.5 tonnes were allowed to be parked / stored on the Site.
- (11) Submission / Implementation of FSIs proposal / provision of the fire extinguisher(s).
- (12) No vehicle is allowed to queue back to or reverse onto / from public road.
- (13) Submission of record of existing drainage facilities

Rejected Application

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Date of Consideration (RNTPC)</u>	<u>Main Rejection Reasons</u>
1	A/YL-PH/195	Temporary open storage of containers and workshop for converting containers for a period of 12 months	17.7.1998	(1), (2), (3), (4)

Main Rejection Reasons

- (1) The development was not in line with the planning intentions of the “R(D)”/“AGR” zones. There was no strong justification for a departure from the planning intention even on a temporary basis.
- (2) The development did not comply with the TPB Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ in that it was incompatible with the nearby village houses.
- (3) There was insufficient information in the submission to demonstrate that there are no suitable sites within areas zoned “Open Storage”.
- (4) Approval of the application would set an undesirable precedent for other similar applications, which would result in a general degradation of the environment of the area.

Similar Applications for Various Open Storage Uses within the Same “R(D)” Zone or straddling the same “R(D)” and the Adjoining “AGR” Zones on the Pat Heung Outline Zoning Plan

Approved Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Condition (s)</u>
1	A/YL-PH/589	Temporary open storage of new vehicles, vehicle parts and construction materials (electric generators) for a period of 3 years	7.8.2009	(1), (2), (3), (4), (5), (6), (7), (8)
2	A/YL-PH/597#	Proposed Temporary Open Storage of Construction Materials and Machinery for a Period of 3 Years	23.10.2009	(1), (2), (3), (4), (5), (6), (7), (8)
3	A/YL-PH/610	Renewal of Planning Approval for “Temporary Open Storage of Construction Materials and Machinery” use for a Period of 3 Years	27.8.2010 (Revoked on 14.9.2011)	(1), (2), (3), (4), (5), (6), (7), (8)
4	A/YL-PH/613	Temporary Open Storage of Construction Materials and Vehicle Parts for a Period of 3 Years	24.9.2010 (Revoked on 24.9.2011)	(1), (2), (3), (4), (5), (6), (7), (8), (9)
5	A/YL-PH/641	Temporary Open Storage of Construction Materials and Vehicle Parts for a Period of 3 Years	6.7.2012	(1), (2), (3), (4), (5), (6), (7), (8), (9), (10)
6	A/YL-PH/655#	Temporary Open Storage of Construction Materials, Machinery and Second-Hand Vehicles for a Period of 3 Years	21.12.2012 [Revoked on 21.6.2013]	(1), (2), (3), (4), (5), (6), (7), (8), (10)
7	A/YL-PH/656	Temporary Open Storage of Construction Machinery and Second Hand Vehicles for a Period of 3 Years	21.12.2012 [revoked on 21.3.2013]	(1), (2), (3), (4), (5), (6), (7), (8), (10), (12)
8	A/YL-PH/660	Temporary open storage of new vehicles, vehicle parts and construction materials for a period of 3 years	3.5.2013 [Revoked on 3.11.2015]	(1), (2), (3), (4), (5), (6), (7), (8)
9	A/YL-PH/677#	Temporary open storage of construction materials, machinery and second-hand vehicles for a period of 3 years	8.11.2013 [Revoked on 20.12.2013]	(1), (2), (3), (4), (5), (6), (7), (8), (10)
10	A/YL-PH/699#	Temporary open storage of construction materials, machinery and second-hand vehicles for a period of 3 years	26.9.2014	(1), (2), (3), (4), (5), (6), (7), (8), (10)

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Condition (s)</u>
11	A/YL-PH/710	Temporary open storage of construction machinery and second hand vehicles for a period of 3 years	27.3.2015	(1), (2), (3), (4), (5), (6), (7), (8)
12	A/YL-PH/716	Temporary open storage of Construction Materials and Vehicle Parts for a Period of 3 Years	19.6.2015	(1), (2), (3), (4), (5), (6), (7), (8)
13	A/YL-PH/729	Temporary open storage of new vehicles, vehicle parts and construction materials for a period of 3 years	10.6.2016	(1), (2), (3), (4), (5), (6), (7), (8)
14	A/YL-PH/765#	Temporary open storage of construction materials, machinery, second-hand vehicles and vehicle parts with ancillary office for a period of 3 years	6.4.2018	(1), (2), (3), (4), (5), (6), (7), (8), (10), (13)
15	A/YL-PH/776	Renewal of planning approval for temporary open storage of construction material and vehicle parts for a period of 3 years	20.4.2018	(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13)
16	A/YL-PH/789	Temporary open storage of construction materials and machineries for a period of 3 years	21.9.2018 [revoked on 21.3.2019]	(1), (2), (3), (4), (5), (6), (7), (8), (10), (12), (13)
17	A/YL-PH/810	Temporary Open Storage of Construction Materials and Machineries for a Period of 3 Years	20.9.2019	(1), (2), (3), (5), (6), (7), (10), (12), (13)
18	A/YL-PH/814	Temporary Open Storage of Vehicles, Vehicle Parts and Construction Materials for a Period of 3 Years	16.8.2019	(1), (2), (3), (5), (6), (7), (10), (13)

Remarks:

Application straddles partly within the same "R(D)" and "AGR" zones on the OZP.

Approval conditions

- (1) Restriction on operation hours/time
- (2) No repairing, maintenance, dismantling and workshop activities were allowed on the site at any time during the planning approval period

- (3) Restriction on the types of vehicle allowed for the operation of the site at any time during the planning approval period
- (4) Submission and implementation of landscaping and/or tree preservation proposal / The landscape planting / existing trees and vegetation on the site should be maintained
- (5) Submission and implementation of drainage proposal / The drainage facilities on the site should be maintained / Submission of records of existing drainage facilities
- (6) Submission / implementation of fire service installations proposal
- (7) Revocation of the planning approval if any of the planning conditions is not complied with by the specified date or during the planning approval period
- (8) Reinstatement of the site to an amenity area or to the original state
- (9) The stacking height of construction materials stored within 5 metres of the periphery of the site should not exceed the height of the boundary fence of the site
- (10) Provision of fire extinguisher(s)
- (11) No storage of used electrical appliances or any other types of electronic waste was allowed on the open area of the site
- (12) The fencing on the site should be maintained
- (13) No vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period

Rejected Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Rejection Reason(s)</u>
1	A/YL-PH/585#	Temporary Open Storage of Tires for a Period of 3 Years	24.7.2009	(1), (2)
2	A/YL-PH/821#	Temporary Open Storage of Scrap Vehicles for a Period of 3 Years	29.11.2019	(1), (3), (4), (5)

Remarks:

- # Application straddles partly within the same "R(D)" and "AGR" zones on the OZP.
- * Application straddles partly within the same "V" and "AGR" zones on the OZP.

Main Rejection Reasons

- (1) The development did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13E) in that there were local objections / adverse departmental comments / on environmental and agricultural aspects / the applied use was not the subject of any previous planning approval / there were no exceptional circumstances that warranted sympathetic consideration
- (2) The development would pose adverse environmental / traffic / landscape / drainage / fire safety impacts to the surrounding areas, and no technical assessments had been conducted / no mitigation measures had been proposed to address the potential issues
- (3) The proposed development 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. There was no strong planning justification given in the submission for a departure from the planning intention, even on a temporary basis.
- (4) The approval of the application would set an undesirable precedent, the cumulative effect would result in a general degradation of the environment of the area

- (5) The proposed development was not in line with the planning intention of the “Residential (Group D)” zone, which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for low-rise, low-density residential developments subject to planning permission from the Town Planning Board (TPB). There was no strong planning justification given in the submission for a departure from the planning intention, even on a temporary basis

Advisory clauses

- (a) note DLO/YL's comments that 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. The STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. The owner(s) of the lot without STW will need to apply to his office to permit structures 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 LandsD;
- (b) note C for T's comments that 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;
- (c) note CHE/NTW, HyD's comments that HyD is not / shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Road;
- (d) 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 the DEP to minimize any potential environmental nuisance; and
- (e) note CBS/NTW, BD's comments that if the existing structures are erected on leased land without approval of the BD (not being New Territories Exempted Houses), they are unauthorized under the BO and should not be designated for any use under the application. Before any new building works (including office and rest room as temporary buildings) are to be carried out on the site, the prior approval and consent of the Building Authority (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. The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively. 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. If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

