

**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 Application

Rejected Application

Application No.	Uses/ Development	Date of Consideration	Rejection Reasons
A/NE-HLH/39	Temporary Open Storage of Construction Materials for a Period of 3 Years	17.1.2020	R1 - R3

Rejection Reasons

- R1 The development was not in line with the planning intention of the “Agriculture” zone for the Hung Lung Hang area, which was 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. There was no strong 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 Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance in that there was no previous approval for open storage granted for the site; and there were adverse comments from the relevant government departments and local objections against the application.
- R3 The applicant failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.

**Similar S.16 Applications for Temporary Open Storage
within the "Agriculture" zone in the vicinity of the Site in the
Hung Lung Hang Area**

Rejected Applications

Application No.	Uses/Developments	Date of Consideration	Rejection Reasons
A/NE-HLH/17	Temporary Open Storage of Construction Machinery and Mechanical Spare Parts for a Period of 3 Years	29.4.2011 (on review) (appeal dismissed on 27.12.2012)	R1 - R3
A/NE-HLH/20	Proposed Temporary Open Storage of Construction Machinery and Construction Materials with Ancillary Site Office for a Period of 3 Years	6.9.2013	R2 - R4
A/NE-HLH/21	Proposed Temporary Open Storage of Construction Materials for a Period of 3 Years	13.12.2013	R2, R3 & R5
A/NE-HLH/32	Temporary Storage of Agriculture Tool and Machine and Open Storage of Building Materials for a Period of 3 Years	3.8.2018	R2, R6 - R8
A/NE-HLH/33	Proposed Temporary Open Storage of Construction Machineries and Ancillary Office for a Period of 3 Years	4.1.2019	R2, R6, R8 & R9
A/NE-HLH/38 ¹	Temporary Open Storage of Construction Materials and Machinery, Office, Staff Rest Room and Store Room for a Period of 3 Years	3.1.2020	R2, R10 & R11
A/NE-HLH/43 ¹	Temporary Open Storage of Construction Materials and Machinery, Office, Staff Rest Room and Store Room for a Period of 3 Years	26.6.2020	R2, R10 & R11

Remarks

*1: The application no. A/NE-HLH/38 involves the same site as the application no. A/NE-HLH/43

Rejection Reasons

- R1 The use under application 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 no previous planning approval had been granted to the application site and the applicant had failed to demonstrate that the development under application would not have adverse environmental impact on the surrounding areas.
- R2 The use under application was not in line with the planning intention of the “Agriculture” (“AGR”) zone for the area which was primarily intended 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 planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- R3 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.
- R4 The application did not comply with 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. 13E) in that the 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 departmental comments against the application; and there was insufficient information in the application to demonstrate that the development would had no adverse environmental and landscape impacts on the surrounding areas.
- R5 The application did not comply with the Town Planning Board Guidelines No. 13E in that there was no previous planning approval granted at the site; the proposed development was not compatible with the surrounding land uses which are predominantly rural in character; there were adverse departmental comments on the application; and the applicant had failed to demonstrate that the development would have no adverse environmental and landscape impacts on the surrounding areas.
- R6 The development did not comply with the Town Planning Board Guidelines No. 13E for ‘Application for Open Storage and Port Back-up Uses under Section 16 of Town Planning Ordinance’ in that no previous planning approval had been granted at the Site and there were adverse departmental comments and local objections on the application.
- R7 The applicant failed to demonstrate that the development would not generate adverse traffic and landscape impacts on the surrounding areas.
- R8 The approval of the application, even on a temporary basis, 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.
- R9 The applicant failed to demonstrate that the development would not generate adverse traffic and environmental impacts on the surrounding areas.

- R10 The application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance in that there was no previous approval for open storage granted for the site; and there were adverse comments from the relevant government departments and local objections against the application.
- R11 The applicant failed to demonstrate that the development would have no adverse traffic 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 comments of the District Lands Officer/North, Lands Department as follows:
 - (i) the applicant should make his own arrangement. The Government shall accept no responsibility in such agreement and there is no guarantee that any adjoining Government land will be allowed for the applied use;
 - (ii) the existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under lease concerned. His office reserves the right to take enforcement actions against the aforesaid structure; and
 - (iii) if the application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office;
- (c) to note the comments of Commissioner for Transport that the vehicular access between the Site and Kong Nga Po Road is not managed by TD. The applicant should seek comment from the responsible party;
- (d) to note the comments of the Chief Highway Engineer/New Territories East, Highways Department that the access road to the Site is not maintained by Highways Department;
- (e) to note the comments of the Director of Environmental Protection that the applicant should follow the environmental mitigation measures as set out in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by DEP in order to minimize any possible environmental nuisances;
- (f) to note the comments of Chief Engineer/Mainland North, Drainage Services Department that the Site is in an area where no public sewerage connection is available;
- (g) to note the comments of Chief Engineer/Construction, Water Supplies Department that for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards;
- (h) to note the comments of the Chief Building Surveyor/ New Territories West, Buildings Department as follows:
 - (i) if the existing structures are erected on leased land without approval of his department, they are unauthorized under the Buildings Ordinance (BO) and should not be designated

for any approved use under the application;

- (ii) before any new building works 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 (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
 - (iii) 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;
 - (iv) the temporary converted containers for site office / storage are considered as temporary buildings are subject to control under the Building (Planning) Regulations (B(P)R) Part VII.;
 - (v) the Site shall be provided with means of obtaining access thereto from a street under the B(P)R 5 and emergency vehicular access shall be provided under B(P)R 41D;
 - (vi) if the Site is not abutting on a specified street having a width not less than 4.5m wide, the development intensity shall be determined by the BA under B(P)R19 (3) at the building plan submission stage; and
 - (vii) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be given at building plan submission stage;
- (i) to note the comments of the Director of Fire Services as follows:
- (i) in consideration of the design/nature of the proposed use, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations (FSIs) to his satisfaction;
 - (ii) the applicant should be advised that 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 and attached good practice guidelines for open storage should be adhered to; and
 - (iii) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.