

**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: 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 Application

Rejected Application

Application No.	Uses/Development	Date of Consideration	Rejected Reasons
A/NE-TKL/302	Proposed Temporary Open Storage of Building Materials and Equipment with Ancillary Office for a Period of 3 Years	18.1.2008	R1

- R1. The application did not comply with the Town Planning Board Guidelines 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 adverse departmental comments on the application. Insufficient information had been submitted to demonstrate that the proposed use would not generate adverse environmental and landscape impacts on the surrounding areas.

**Similar S.16 Applications for Open Storage
within “Agriculture” Zone in the vicinity of the Application Site
in the Ping Che and Ta Kwu Ling Area**

Rejected Applications

Application No.	Proposed Development	Date of Consideration	Approval Conditions
A/NE-TKL/560	Proposed Temporary Open Storage of Construction Materials, and Metal Machineries and Materials, and Ancillary Office for a Period of 3 Years	26.5.2017	R1 - R3
A/NE-TKL/615	Proposed Temporary Open Storage of Building Materials for a Period of 3 Years	21.6.2019	R4 - R5

Rejection Reasons

- R1. The temporary use under application was not in line with the planning intention of the “Agriculture” (“AGR”) zone for the Ping Che and Ta Kwu Ling 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 PG-No. 13E in that there was no previous approval of open storage use granted for the Site and no exceptional circumstances to justify sympathetic consideration of the application; there were adverse departmental comments on the applications; and the applicant failed to demonstrate that the proposed development would not cause adverse traffic, environmental and landscape impacts on the surrounding areas.

- R3. The approval of the application would set an undesirable precedent for similar applications within the same "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- R4. The proposed development was not in line with the planning intention of "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.
- R5. 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 there was no previous planning approval for open storage use granted at the site; there were adverse comments from the relevant government departments and local objections against the application; and the applicant had failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.

Recommended Advisory Clauses

- (a) 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 that:
 - (i) the Site comprises private lots and they are Old Schedule lot held under the Block Government lease (demised for agricultural use) without any guarantee of right of access. The applicants should make his own arrangement for acquiring access, and there is no guarantee that any adjoining Government land will be allowed for the vehicle access of the use;
 - (ii) the existing structures on Lot 51 were erected without approval from her office. The aforesaid structures are not acceptable under the Leases concerned. Her office reserves the right to take enforcement actions against the aforesaid structures;
 - (iii) some of the existing structures on Lot 50 are covered by Modification of Tenancy (MOT) No. 35743 involves four structures for the purposes of domestic use, shade, kitchen and latrine or Letter of Approval (LoA) No. 3053 involves two structures for the purposes of storage and pigesty. However, their dimensions and users are not acceptable under the Conditions of the respective MOT and LoA. Further, some of the existing structures on the Lot which are neither covered by the MOT nor the LoA were erected without approval from her office. These structures are not acceptable under the Leases concerned. Her office reserves the right to take enforcement actions against them;
 - (iv) the Government land (GL) adjacent to the Site is occupied without approval from her office. The applicants are required to cease the illegal occupation of GL (**Plan A-2**); and
 - (v) should the application be approved, the owners of the lots concerned shall apply to her office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. 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 and 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 fees as considered appropriate by her office;
- (c) to note the comments of the Commissioner for Transport that the vehicular access between the site and Ping Yuen Road are not managed by her office. 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 Ping Yuen Road and the access road leading to the subject lots are not maintained by his office. It is prudent to check with the maintenance party concerned to ascertain whether these roads can sustain the heavy traffic load from the operation of the

proposed open storage;

- (e) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department that:
- (i) there is no record of approval by the Building Authority (BA) for the existing buildings / structures at the Site. There is also no record of submission of the proposed building/ structure to the BA for approval;
 - (ii) before any new building works are to be carried out on the Site, the prior approval and consent of the 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 Buildings Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
 - (iii) for UBW erected on leased land, enforcement action may be taken by 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) any temporary shelters or converted containers for storage or other uses are considered temporary buildings and subject to the control of Part VII of the Building (Planning) Regulations;
 - (v) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulations 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D;
 - (vi) if the Site does not abut a specified street having a width not less than 4.5m wide, the development intensity shall be determined under the Building (Planning) Regulations 19(3) at the building plan submission stage; and
 - (vii) detailed consideration will be made at building plan submission stage;
- (f) to note the comments of the Director of Fire Services that:
- (i) in consideration of the design/ nature of the proposed use, the applicants are advised to submit relevant layout plans incorporated with the proposed FSIs to his satisfaction;
 - (ii) 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 FSIs to be installed should be clearly marked on the layout plans;
 - (iii) having considered the nature of the open storage, the approval condition on the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS should be added. To address this additional approval condition, the applicants should submit a valid fire certificate (FS 251) for his approval; and

- (iv) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans;
- (g) to note the comments of the Chief Engineer/Construction, Water Supplies Department that:
 - (i) existing water mains are inside the proposed lots and will be affected. The applicants are required to either divert or protect the water mains found on Site;
 - 1. if diversion is required, existing water mains inside the Site are needed to be diverted outside the site boundary of the proposed development to lie in Government land. A strip of land of minimum 1.5m in width should be provided for the diversion of existing water mains. The cost of diversion of existing water mains upon request will have to be borne by the grantee/applicant. The applicant shall submit all relevant proposal to WSD for consideration and agreement before the works commence;
 - 2. if diversion is not required, the following conditions shall apply:
 - existing water mains are affected and no development which requires resiting of water mains will be allowed;
 - details of site formation works shall be submitted to the Director of Water Supplies for approval prior to commencement of works;
 - no structures shall be built or materials stored within 1.5m from the centrelines of water mains. Free access shall be made available at all times for staff of the DWS or their contractor to carry out construction, inspection, operation, maintenance and repair works;
 - no trees or shrubs with penetrating roots may be planted within the Water Works Reserve or in the vicinity of the water mains. No change of existing site condition may be undertaken within the aforesaid area without the prior agreement of the DWS. Rigid root barriers may be required if the clear distance between the proposed tree and the pipe is 2.5m or less, and the barrier must extend below the invert level of the pipe;
 - no planting or obstruction of any kind except turfing shall be permitted within the space of 1.5m around the cover of any valve or within a distance of 1m from any hydrant outlet; and
 - tree planting may be prohibited in the event that the DWS considers that there is any likelihood of damage being caused to water mains;
- (h) to note the comments of the Chief Engineer/Mainland North, Drainage Services Department that:
 - (i) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse impact to the adjacent area. In their submission, the applicant requires assessing and identifying the project's potential drainage impacts and

demonstrate in their submission with the implementation of necessary mitigation measures, the project will not cause an unacceptable increase in the risk of flooding in areas upstream of, adjacent to or downstream of the development; and

- (ii) there is public sewerage near the Site;
- (i) to note the comments of the Chief Town Planner/Urban Design & Landscape, Planning Department that the applicants are reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation clauses/conditions under the Lease. The applicants should seek comments and approval from the relevant authorities for any proposed tree works; and
- (j) to note the comments of Director of Environmental Protection that the applicant is advised to follow the relevant mitigation measures and requirements 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.