

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 circumstance 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.13E)

1. On 17.10.2008, 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) 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 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 applications relevant technical assessments/proposals 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) there will be a general presumption against development on sites of less than 1,000m² for open storage uses and 2,000m² for port back-up 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, minimizing sprawl over countryside areas and reducing travel trips;
 - (b) port back-up sites and those types of open storage uses 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 Application covering the application site

Approved Application

	<u>Applications No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Approval Condition(s)</u>
1	A/YL-PH/618	Proposed Temporary Open Storage of Construction Materials and Machinery with Ancillary Office for a Period of 3 Years	28.1.2011	(1), (2), (3), (4), (5), (6), (7), (8), (9)
2	A/YL-PH/682	Renewal of Approval for Proposed Temporary Open Storage of Construction Materials and Machinery with Ancillary Office for a Period of 3 Years	17.1.2014	(1), (2), (3), (4), (5), (6), (7), (8), (9)
3	A/YL-PH/739	Renewal of Approval for Proposed Temporary Open Storage of Construction Materials and Machinery with Ancillary Office for a Period of 3 Years	23.12.2016	(1), (3), (4), (7), (8), (9), (10), (11), (12)

Approval conditions

- (1) Restriction on operation hours/time
- (2) No heavy goods vehicles or container trailers/tractors
- (3) No dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities
- (4) Provision / maintenance of boundary fencing
- (5) Submission and/or implementation of tree / landscaping proposal
- (6) Submission and/or implementation of drainage proposal
- (7) Submission and implementation of fire service installations proposal
- (8) Revocation of the planning approval if any of the planning conditions is not complied with by the specified dated or during the planning approval period
- (9) Reinstatement of the site to an amenity area
- (10) No vehicle is allowed to reverse into or out of the Site, and no queuing back of vehicles to the public road from the Site at any time during the planning approval period
- (11) Submission of record of existing drainage facilities
- (12) Provision of fire extinguisher(s) with a valid fire certificate (FS 251)

Rejected Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration</u> <u>(RNTPC/TPB)</u>	<u>Rejection Reason(s)</u>
1	A/YL-PH/359	Temporary Open Storage of Construction Materials, Machinery and Container Store-rooms for a period of 3 years	10.8.2001 (on review) Appeal dismissed by TPAB on 12.7.2002	(1), (2), (3), (4)
2	A/YL-PH/419	Temporary Open Storage of Construction Machinery for a period of 3 years	3.1.2003	(1), (2), (3), (4)
3	A/YL-PH/474	Proposed Temporary Open Storage of Construction Machinery for a period of 3 years	21.1.2005 (on review)	(1), (2), (3), (4)

Rejection Reasons

- (1) The development was not in line with the planning intention of the “AGR” zone. No strong justification had been given in the submission for a departure from the planning intention even on a temporary basis.
- (2) The development did not comply with the Town Planning Board Guidelines for Application for “Open Storage and Port Back-up Uses”, in that it was not compatible with the surrounding areas and/or no previous approval had been granted at the site.
- (3) There was insufficient information in the submission to demonstrate that the development would not have adverse drainage/environmental impacts on the surrounding areas.
- (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.

Similar Applications within the same “AGR” zone straddling
Kam Tin North OZP and Pat Heung OZP

Approved Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration</u> <u>(RNTPC/TPB)</u>	<u>Approval Condition (s)</u>
Kam Tin North OZP				
1	A/YL-KTN/338	Temporary Open Storage of Second-hand Vehicles for Export for a Period of 3 Years	15.1.2010 (for 1 year) [revoked on 15.11.2010]	(1), (2), (3), (4), (5), (6), (7), (8), (9)
2	A/YL-KTN/339	Temporary Open Storage of Excavators for a Period of 3 Years	15.1.2010 (for 1 year) [revoked on 15.11.2010]	(1), (2), (3), (4), (5), (6), (7), (8), (9)
3	A/YL-KTN/341	Temporary Open Storage of Vehicles and Vehicle Parts for Export for a Period of 3 Years	29.1.2010 (for 1 year) [revoked on 29.11.2010]	(1), (2), (3), (4), (5), (6), (7), (8), (9)
4	A/YL-KTN/343	Proposed Temporary Open Storage of Construction Materials with Ancillary Office for a Period of 3 Years	27.8.2010 (for 3 years) [revoked on 27.8.2011]	(1), (2), (3), (4), (5), (6), (7), (8), (9)
5	A/YL-KTN/355	Temporary Open Storage of Second-hand Vehicles for Export for a Period of 3 Years	1.4.2011 (for 3 years)	(1), (2), (3), (4), (5), (6), (7), (8), (9)
6	A/YL-KTN/363	Temporary Open Storage of Construction Materials with Ancillary Office and Storage for a Period of 3 Years	20.5.2011 (for 3 years)	(1), (2), (3), (4), (6), (7), (8), (9)
7	A/YL-KTN/364	Temporary Open Storage of Vehicles and Vehicle Parts for Export for a Period of 3 Years	21.10.2011 (for 3 years)	(1), (2), (3), (4), (5), (6), (7), (8), (9)
8	A/YL-KTN/373	Temporary Open Private Car Park for Medium Goods Vehicles and Storage of Construction Materials for a Period of 3 Years	10.2.2012 (for 1 year) [revoked on 10.11.2012]	(1), (2), (3), (4), (5), (6), (7), (8), (9)
9	A/YL-KTN/399	Temporary Private Car Park for Medium Goods Vehicles and Storage of Construction Materials for a Period of 3 Years	24.5.2013 (for 3 years)	(1), (2), (3), (4), (5), (6), (7), (8), (9)
10	A/YL-KTN/441	Renewal of Planning Approval for Temporary Open Storage of Construction Materials with Ancillary Office and Storage for a Period of 3 Years	9.5.2014	(1), (2), (3), (4), (7), (8), (9), (10), (11), (12), (13), (14)

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Condition (s)</u>
11	A/YL-KTN/442	Temporary Open Storage of Building Materials with Ancillary Site Office and Staff Restroom for a Period of 3 Years	23.5.2014	(1), (2), (3), (4), (5), (7), (8), (9), (12), (14)
12	A/YL-KTN/452	Temporary Open Storage of Vehicles and Vehicle Parts for Export for a Period of 3 Years	17.10.2014	(1), (2), (3), (5), (7), (8), (9), (12), (14), (15), (16), (17)
13	A/YL-KTN/517	Temporary Private Car Park for Medium Goods Vehicles and Storage of Construction Materials for a Period of 3 Years	22.4.2016	(1), (2), (3), (4), (5), (7), (8), (9), (10), (14), (17), (18), (19)
14	A/YL-KTN/553	Renewal of Planning Approval for Temporary Open Storage of Building Materials with Ancillary Site Office and Staff Lunge for a Period of 3 Years	7.4.2017	(1), (2), (3), (4), (5), (7), (8), (9), (10), (12), (14)
15	A/YL-KTN/559	Renewal of Planning approval for Temporary Open Storage of Construction Materials with Ancillary Office and Storage for a Period of 3 Years	12.5.2017	(1), (2), (3), (4), (7), (8), (9), (10), (11), (12), (13), (14), (17)
16	A/YL-KTN/578	Temporary Open Storage of Vehicles and Vehicle Parts for Export for a Period of 3 Years	22.12.2017	(1), (2), (3), (7), (8), (9), (10), (12), (14), (17)
17	A/YL-KTN/648	Renewal of Planning Approval for Temporary Private Car Park for Medium Goods Vehicles and Storage of Construction Materials for a Period of 3 Years	3.5.2019	(1), (2), (3), (4), (7), (8), (9), (10), (11), (12), (14), (17), (18), (19)
18	A/YL-KTN/654	Temporary Open Storage of Construction Materials for a Period of 3 Years	17.5.2019 [revoked on 28.6.2019]	(1), (2), (3), (6), (7), (8), (9), (10), (17)

Approval conditions

- (1) Restriction on operation hours/time
- (2) No medium or heavy goods vehicles or container trailers/tractors
- (3) No dismantling, maintenance, modification, repairing, cleansing, paint spraying or other workshop activities
- (4) Provision / maintenance of boundary fencing
- (5) Submission and/or implementation of landscaping / tree preservation proposal
- (6) Submission and/or implementation of drainage proposal
- (7) Submission and / or implementation of fire service installations proposal

- (8) Revocation of the planning approval if any of the planning conditions is not complied with by the specified dated or during the planning approval period
- (9) Reinstatement of the site to an amenity area
- (10) No vehicle is allowed to queue back to or reverse onto / from public road
- (11) Maintenance of existing trees and landscape plantings
- (12) Maintenance of existing drainage facilities
- (13) The Site should be kept clean and tidy, and materials stored should be covered up
- (14) Submission of record of existing drainage facilities
- (15) No vehicular access to the southeast affecting the passing bay at Kam Tai Road is allowed
- (16) Sufficient manoeuvring spaces and access to the visitor / staff parking spaces shall be maintained
- (17) Provision of fire extinguisher(s)
- (18) No vehicle without valid license issued is allowed to be parked / store on the site
- (19) A notice should be posted at a prominent location to indicate that no heavy goods vehicles are allowed

Rejected Application

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Main Rejection Reasons</u>
Kam Tin OZP				
19	A/YL-KTN/386	Temporary Open Storage of Vehicles with Ancillary Office for a Period of 3 Years	6.7.2012	(1), (2), (3), (4)
Pat Heung OZP				
20	A/YL-PH/697	Proposed Temporary Open Storage of Building Materials with Ancillary Office and Parking Facilities for Lorries and Private Cars for a Period of 3 Years	22.8.2014 29.5.2015 (on review)	(1), (2), (3), (4)
21	A/YL-PH/700	Proposed Temporary Open Storage of private cars and light goods vehicles for a Period of 3 Years	26.9.2014	(1), (2), (3), (4)
22	A/YL-PH/751	Proposed Temporary Open Storage of Vehicle Parts for a Period of 3 Years	11.8.2017	(1), (2), (3), (4)
23	A/YL-PH/774	Proposed Temporary Open Storage of Construction Machinery and Equipment with Ancillary Office and Staff Rest Room for a Period of 3 Years	6.4.2018 27.7.2018 (on review)	(1), (2), (3), (4)

Rejected Reasons

- (1) The development was not in line with the planning intention of the "Agriculture" ("AGR") zone.
- (2) The application did not comply with the Town Planning Board Guidelines No. 13E in that the development was not compatible with the surrounding land uses; there was no previous approval granted at the site and there were adverse comments from the relevant government departments and local objection against the application.

- (3) The applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas.
- (4) The approval of the application, even on a temporary basis, would set an undesirable precedent.

Advisory Clauses

- (a) note DLO/YL, LandsD'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 Site is accessible from Kam Tin Road via Government land (GL) and private land. His office provides no maintenance works for the GL involved and does not guarantee any right-of-way over the GL to the Site. The Site falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within the SKAHRA. 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 the structures to be erected or regularise any irregularities on the 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. No construction of New Territories Exempted Building(s) will be considered or allowed. 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 premium 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 local access road which is not managed by Transport Department. The land status of the road should be checked with 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 his department is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Tai Road;
- (d) follow the relevant environmental mitigation measures as set out in the latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" issued by DEP to minimize any potential environmental nuisances;
- (e) note CE/MN, DSD's comments that for the submission of drainage proposal required under relevant approval conditions, the proposed facilities should discharge as much runoff falling onto and / or passing through the Site as possible to the northern drainage channel;
- (f) note CBS/NTW, BD's comments that if the existing structures are erected on leased land without approval of the Buildings Department (BD) (not being New Territories Exempted Houses), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any use under the application. Before any new building works (including containers / open shed as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD 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 respectively. For UBW erected on leased land, enforcement action may be taken by the BD 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 Building (Planning) Regulation at the building plan submission stage.