

Legislative Council
Panel on Planning, Lands and Works

Planning for Open Storage
and Port Back-up Uses in the Rural New Territories

Introduction

This paper recapitulates on the background to the proliferation of open storage (OS) and port back-up (PBU) uses in the rural areas and explains how our planning mechanism helps to regulate such uses and meet market demand.

Proliferation of OS and PBU uses in the rural New Territories

2. For historical reasons, a lot of land in the rural New Territories was subject to the Block Crown Leases. In 1983, the High Court ruled, in the "Attorney General v Melhado Investment Ltd [1983] HKLR 327", that "use of land listed in the schedule of the lease was descriptive only and no implied covenant of the type contended for". The court ruled that only clamorous, noisome and offensive trades could not be operated on the land under the Block Crown Leases and no unauthorized building/structure should be erected on the land. Following the handing down of this judgment, a large amount of uncultivated agricultural land in the New Territories was converted for uses such as open storage, car dumps, car repairing workshops, container depots and vehicle parks in view of market demand which was fuelled by the increasing urbanization of the rural areas and growing cross-boundary economic activities.

3. To help arrest haphazard proliferation of the OS and PBU uses, the Town Planning Ordinance (TPO) was amended in 1991 to extend statutory planning control to the rural areas. The Town Planning Board (TPB) was empowered to prepare statutory plans to cover the rural New Territories and the Director of Planning designated as the Planning Authority to take enforcement action against unauthorized developments¹ within these areas. With the introduction of the foregoing provisions, OS and PBU uses would only be permitted in the areas specifically zoned for these purposes or are

¹ Under the TPO, unless a development is an "Existing Use", i.e. a use that was in existence immediately before the publication of the first statutory plan covering the concerned area, or permitted under the relevant statutory plan, or covered by valid planning permission, it would be regarded as unauthorized development.

subject to valid planning permission². However, an "Existing use", that is, an OS and PBU use which had already been in existence prior to the publication of the first relevant statutory plan is allowed to continue to exist. These pre-plan OS and PBU uses are found scattering in various rural areas, and many fall outside areas designated for such uses in the current statutory plans.

Land Use Planning Mechanism

Designating Suitable Sites for OS and PBU Uses

4. The objective of introducing and extending statutory control to the rural areas is to regulate, rather than getting rid of, OS and PBU uses in the rural New Territories. In due recognition of the demand for OS and PBU uses and its contribution to our economy, the TPB has carefully and pragmatically designated suitable areas for OS and PBU uses. In the process, all relevant considerations, including land use compatibility, availability of transport infrastructure, impacts on transport, environment, drainage and local residents, traveling distance and proximity to boundary control points etc., are taken into account. Comments from all relevant Government Departments are sought and considered by the TPB before land is zoned for OS and PBU uses.

5. Currently, some 603 ha of land are designated for OS and PBU uses to meet the demand of the trade. Of this, 372 ha of land are in the North West New Territories (mainly in Ngau Tam Mei, Pat Heung, San Tin and Ha Tsuen) and the remaining 231 ha are in the North East New Territories (mainly in Ping Che and Ta Kwu Ling). Falling within designated areas notwithstanding, specific uses such as container storage, storage of dangerous goods and container trailer/tractor park which may cause significant environmental nuisance, safety hazards or transport problems are still required to seek planning permission from the TPB to ensure that such uses are subject to proper control. The designation of suitable sites for OS and PBU uses can help regularize the already haphazard proliferation of such uses in the New Territories, prevent further uncontrolled sprawl of such activities

² Land designated for OS and PBU uses are zoned "Open Storage" ("OS"), "Other Specified Uses" ("OU") annotated "Port Back-up Uses" ("OU(PBU)") or annotated "Container Back-up Area" or annotated "Container Storage and Repair Depot", and "Industrial (Group D)" ("I(D)"). In these zones, specific OS and PBU uses such as container storage, storage of dangerous goods and container trailer/tractor park which may cause significant environmental nuisance, safety hazards or transport problems require planning permission from the TPB. OS and PBU uses outside these zoned areas also require planning permission.

and minimize adverse traffic and environmental impacts resulting from these land uses.

Seeking Planning Permission for OS and PBU Uses Outside Designated Areas

6. To provide greater flexibility in the planning permission system to cater for short-term operations as required by the trade, temporary OS and PBU uses not exceeding three years may be allowed on application to the TPB in areas outside the zones specifically designated for such purpose. Applications to operate such uses in environmentally/ecologically sensitive areas are however not allowed. The TPB has promulgated clear guidelines setting out the criteria in assessing such planning applications and guidance for applications in making such applications.

7. Under the current guidelines, the TPB has classified areas under the rural statutory plans into four broad areas. The intention of the categorization is to channel the uses to specific areas, thereby preventing them from proliferating into the much wider unspoiled rural areas. While Category 1 and 2 areas are generally considered suitable for OS and PBU uses, applications in Category 3 and 4 areas would normally not be favourably considered. Category 1 areas generally cover areas specifically zoned for such purposes as well as sites in close proximity to the existing and proposed cross boundary links in the North West New Territories. Category 2 areas are areas mostly without clear planning intention for the time being or fixed development programme, within or close to clusters of OS and PBU sites which are regarded as “Existing Use” under the TPO and/or subject of previous approvals, and areas not subject to high flooding risks. Category 4 covers areas with ponds or wetland or with extensive vegetation or close to environmentally or ecologically sensitive areas, areas which are mostly used for residential purpose or proposed for such purposes or areas subject to extremely high flooding risk. Category 3 areas are those outside the Category 1, 2 and 4 areas. Within Category 3 areas, “existing” and approved OS and PBU uses are to be contained and further proliferation of such uses is not acceptable.

8. These guidelines are kept under regular review, taking account of the experience gained by the Planning Department (PlanD) in administering the guidelines, and changing circumstances (e.g. improved infrastructural provision). Views from the local community and relevant stakeholders are sought on the guidelines and discussions held to refine them. These guidelines are transparent and are available on the TPB’s website.

Liaison with the Trade

9. We have been closely monitoring the supply and demand for OS and PBU uses and have not detected major shortage of such land in Hong Kong. It has to be recognized however the areas planned for OS and PBU sites might not be fully taken up, as take-up rate would depend on individual operational need and preference. It is also affected by other factors such as land ownership and rental charged, etc. To keep the needs of the trade in view, we maintain regular liaison with the representatives of associations of owners and operators of OS and PBU sites and other related businesses in the New Territories.

Stepping Up Enforcement against Unauthorized OS and PBU Uses

10. Following the implementation of the Town Planning (Amendment) Ordinance in mid 2005 and with the provision of strengthened enforcement powers, PlanD acting as the Planning Authority has stepped up enforcement action. The action cycle for handling unauthorized developments has also been shortened as enforcement/prosecution action could be taken without waiting for the completion of planning application proceedings. As a result, the number of unauthorized development cases has decreased and the area occupied by unauthorized developments has gradually decreased from 185 ha in 1995 to 125 ha in 2006.

The Fairview Park – A Case in Point

11. The area in the vicinity of Fairview Park is mainly planned for low-density residential developments. No OS and PBU site has been designated nor the TPB approved any planning application for OS and PBU uses near Tai Sang Wai and Man Yuen Chuen³. Since the gazettal of the first statutory plan for the area in 1990, PlanD has carried out 63 rounds of statutory enforcement and prosecution action against unauthorized developments in the area with the areas occupied by unauthorized developments substantially reduced. At present, most of OS and PBU uses in the vicinity of Fairview Park Boulevard are "Existing Use" (see paragraph 3 above) tolerated under the TPO. Any material change or intensification of

³ With the exception of one application which was for a temporary warehouse located near Tai Sang Wai on a piece of land with an area about 0.2 hectare. It was allowed by the Town Planning Appeal Board for a period of 2 years up to September 2007. Besides, there are two unauthorized developments in the area currently subject to Planning Authority's enforcement action.

these "Existing Use" will be subject to enforcement action.

12. To meet the needs of the trade, over 90 ha of land have been earmarked for OS and PBU uses at Ngau Tam Mei, which is some 3 km away from Fairview Park across San Tin Highway. Flexibility is also allowed under the planning permission system for temporary OS and PBU uses (paragraphs 6 – 7 above refer).

Planning for Future Demand for Additional OS and PBU Land

13. Land use planning and transport planning are interactive. Upon the impending opening of the Hong Kong-Shenzhen Western Corridor and the Deep Bay Link and leveraging on the development of the Pearl River Delta area, cross boundary traffic is expected to increase and this would lead to a corresponding increase in demand for land for OS & PBU uses in the North West New Territories. In this regard, the PlanD is exploring the scope for provision of additional OS and PBU land in the Ha Tsuen area to take advantage of the improved accessibility from the opening of the Hong Kong-Shenzhen Western Corridor and the Deep Bay Link. The findings of the land use review, when available, will be submitted to the TPB and the public will be consulted thereafter.

Conclusion

14. We have since the 1990s implemented a coherent planning mechanism for OS and PBU uses. There is close coordination among the concerned Government Departments and there is a regular dialogue between the Government and the trade and other stakeholders. We will continue closely monitoring the demand and supply of OS and PBU uses in the rural areas and remain vigilant in stepping up enforcement action against unauthorized developments. With the support of the stakeholders and the community at large, the OS and PBU uses will be better regulated to keep pace with the needs of the trade as driven by our economic and infrastructural developments.

**HOUSING, PLANNING AND LANDS BUREAU
PLANNING DEPARTMENT
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