

Frequently-asked Questions (FAQs) on Non-building Area (NBA)

(A) General

Q1: Am I debarred from building any buildings or structures on NBA?

A1: Depending on the objectives of the NBA, specified structures may be allowed. One is advised to make reference to the specific provision/clause under Outline Zoning Plans (OZPs) or the relevant clause under lease conditions.

Q2: How NBA is imposed under the current development control regimes?

A2: NBA restriction is imposed on specific sites in some OZPs to serve statutory planning objectives. Besides, the Lands Department (LandsD) as requested also imposes NBA restriction under leases to reflect the requirements of another bureaux / departments (B/Ds). The Buildings Department does not impose NBA restriction.

(B) NBA Stipulated under OZP

Q3: Why NBA is stipulated under OZPs?

A3: NBA may be stipulated for specific sites in some OZPs for the purposes of enhancement of air ventilation, visual permeability, streetscape and/or landscape quality as well as street widening.

Q4: How NBA is specified under OZPs to achieve the specific planning objectives? Any examples?

A4: Please refer to Annex A for some general examples showing how the NBA restriction is imposed to achieve the specific planning objectives mentioned in A3 above.

Q5: Does the Planning Department (PlanD) check compliance of NBA restriction while vetting general building plan (GBP)? What could the lot owner do if there is technical difficulty prohibiting him from complying the restriction?

A5: PlanD will consider and vet the compliance of NBA restriction in OZPs during GBP submission stage. If structures are proposed to be erected on NBA, PlanD would consider whether these structures could be permitted taking into account the provisions under OZPs and the purpose of the NBA. In accordance with the Notes of some OZPs, there is provision for minor relaxation of the NBA restrictions on application to the Town Planning Board under section 16 of the Town Planning Ordinance.

Q6: Are there any features or structures that are generally allowable to be erected/constructed within the NBAs stipulated in OZPs?

A6: Unless otherwise specified under the Notes and/or Explanatory Statement of OZPs, the following features/structures are generally allowed within the NBAs stipulated for air ventilation and/or visual permeability purposes, given that they would unlikely defeat the purposes of the designation of the NBA.

- (a) boundary fence/wall or minor structure with high air porosity / with visual permeability
- (b) landscaping
- (c) underground uses

Some OZPs may specify that footbridge / covered walkway would be allowed in the NBA in some sites on the OZPs.

(C) NBA Restriction Stipulated under Lease

Q7: What kinds of NBA restriction would be imposed under lease?

A7: Currently, LandsD would impose NBA restrictions under lease based on other Departments' request, and the followings are the common reasons –

- (a) Planning reasons - Please refer to A3 to A6 above.
- (b) Maintenance access and protection of underground utilities (for example: drainage reserve, waterworks reserve, cable reserve)
 - In these cases, minor structures, subject to not defeating the intended purpose of the NBA, might be acceptable.
 - To cater for the possible diversion of underground utilities, the lease conditions might be drafted in consultation with the proponent department to build in flexibility such that the location of the NBA may be changed arising from any approval to divert the underground utilities.
- (c) Sightline for traffic grounds
 - In these cases, no aboveground structure would be permitted which prejudice Transport Department's intention for imposition of the NBA clause.
- (d) Other reasons (for example: future road widening, public open space)
 - No structure would be permitted which prejudice the proponent department's intention and the restrictions specified in the NBA clause.

Please refer to Annex B for some general examples showing the structures / features allowed to be erected within NBA.

Q8: Does LandsD check compliance of NBA restriction while vetting general building plan? What could the lot owner do if there is technical difficulty prohibiting him from complying the restriction?

A8: LandsD will consider and vet the compliance of NBA clause during the submission of general building plan stage. If structures are proposed to be erected on NBA, LandsD would consult the proponent department on whether the proposed structures could be permitted other than those structures as specified in the NBA clause. Where the lessee applies for consent under the NBA clause to permit particular structures within the NBA other than those permitted under the NBA clause, such consent may be given subject to appropriate terms and conditions including payment of premium.

Q9: Are there any ways that the Government can facilitate practitioner in compliance with the NBA restriction under lease?

A9: Except in circumstances such as road widening which warrant the adoption of the absolute NBA clause, NBA clause is usually drafted to allow the flexibility whereby consent may be sought from the Director of Lands to permit structures other than those specified under the clause. In granting such consent, no objection from the proponent department of the NBA clause is a pre-requisite. LandsD would consider under NBA clause whether the proposed structures would be permitted. Practitioners are suggested to consult the proponent department or through the workshop approach as introduced in LAO Practice Note Issue No. 4/2018, on the relevant NBA clause in an earlier stage.

Q10: What has been streamlined in terms of NBA is concerned?

A10: As a streamlined measure to facilitate development approval, in cases where NBA restriction is stipulated under OZP as a statutory requirement, there will no longer be a corresponding NBA clause under lease as the restriction could effectively be enforced when PlanD considers and vets the GBP during submission stage.

On the other hand, an NBA which is not imposed as a statutory requirement under OZP would continue to be controlled through a NBA clause under lease.

Disclaimer:-

The information contained in the FAQs is for general reference only. Owing to the different advices from individual proponent departments, each case will be considered on its own merits. It must be noted that nothing in the FAQs and the examples in the Annexes shall in any way fetter or affect the rights of the Government, the Director of Lands and their officers under the relevant government lease or land grant or their rights as lessor/landlord, who are exercising such rights in the capacity of a lessor/landlord and who hereby reserve all such rights, and that nothing in the FAQs including any words and expressions used shall in any way affect or bind the Government regarding interpretation of the terms and conditions of the relevant government lease or land grant.

END

(Version dd 17 Oct 2019)

Examples of Statutory Non-building Area (NBA) Requirements Stipulated under Outline Zoning Plans (OZP)

	Location, Use and OZP No.	NBA Requirements on the OZP¹ <i>(Specifications in the Notes and/or Explanatory Statement (ES) of the OZP)</i>	Intended Purpose of NBA Requirements
1	“Government, Institution or Community” (“G/IC”) in S/H5/28 at Wan Chai	<p>A NBA is designated at the north-eastern corner of the Lady Trench Training Centre site at 44 Oi Kwan Road to facilitate air penetration from Morrison Hill through Tak Yan Street to Tonnochy Road. As designation of NBA is primarily for the purpose of above ground air ventilation, the NBA requirement will not apply to underground developments. No above ground structure is allowed, except that landscape feature, boundary fence/boundary wall or minor structures that is designed to allow high air porosity may be allowed.</p> <p>Minor relaxation clause in Notes.</p>	Air Ventilation
2	“Residential (Group A) 4” (“R(A)4”) in S/FLN/2 at Fan Ling North	<p>A NBA running in south to north direction is designated within “R(A)4” at the riverside in Planning Area 15 to maintain a wider vista to High Hill from the entrance of the major open space corridor stretching from Wo Tai Street.</p> <p>Minor relaxation of the NBA restriction may be considered by the Board on application under section 16 of the Ordinance. Within the NBAs stipulated on the OZP, landscaping and street furniture and underground structures will be permitted. For residential sites, fence or boundary walls that are designed to allow for high visual/air porosity will be allowed in the NBAs.</p> <p>Minor relaxation clause in Notes.</p>	Visual Permeability

¹ The examples serve to illustrate various types of NBA requirements and they are not exhaustive. Each case will be considered on its own merits.

	Location, Use and OZP No.	NBA Requirements on the OZP¹ <i>(Specifications in the Notes and/or Explanatory Statement (ES) of the OZP)</i>	Intended Purpose of NBA Requirements
3	“Commercial” in S/YL-KTN/9 at Kam Tin North	A NBA of about 20m wide is designated at the northern boundary of the site as this piece of Government land has the potential for providing a continuous riverside promenade in the southern bank of Kam Tin River connecting with the “OU” annotated “Amenity Area” zone to the southeast. Minor relaxation clause in Notes.	Streetscape/ landscape purpose
	“Comprehensive Development Area (1)” (“CDA(1)”) in S/MOS/22 at Ma On Shan	Area (b) includes two sites on the western side of the “CDA(1)” site which are designated as a NBA for tree preservation and replanting purposes and would not be accountable for site area calculation. Minor boundary adjustment of Areas (a) and (b) may be permitted at the master layout plan submission stage provided that the total NBA not accountable for site area calculation remains unchanged.	
4	“Residential (Group E)” in S/K11/29 at San Po Kong	A minimum of 3m-wide “NBA” from the lot boundary abutting King Fuk Street and a minimum of 1.5m-wide “NBA” abutting Prince Edward Road East shall be provided. Such designation would largely tie in with the proposed Traffic Improvement Works for Industrial Land in San Po Kong by Transport Department since 2001 requiring setbacks from public roads for future road widening. Minor relaxation clause in Notes.	Street Widening

Examples of Non-building Area (NBA) Clause under Lease already Executed

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
1	<p>Except with the prior written consent of the Director, no building or structure or support for any building or structure shall be erected, constructed or placed on, over or above the ground level of the Pink Hatched Black Area or the ground level of the Pink Hatched Black Stippled Black Area or both except:</p> <ul style="list-style-type: none"> (i) boundary walls or fence or both; and (ii) landscaping works provided in accordance with Special Condition No. (__) hereof. 	Wind Corridor
2	<p>(a) Subject to the Special Condition No. (__) hereof, except with the prior written consent of the Director, no building, structure, support for any building or buildings or structure or structure, or projection shall be erected or constructed or placed on, over, above, under, below or within those portions of the lot as shown coloured pink hatched black and pink hatched black stippled black on the plan² annexed hereto and the Pink Hatched Black Hatched Blue Area except:</p> <ul style="list-style-type: none"> (i) landscape features; (ii) boundary walls or fences or both, which are designed to allow high air porosity; (iii) minor structures for footbridge connections or covered walkways; and (iv) underground structures. 	Air Ventilation

¹ The examples serve to illustrate various types of NBA and they are not exhaustive. Each case will be considered on its own merits.

² No plan is attached in examples of NBA clause.

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
	(b) For the purpose of this Special Condition, the decision of the Director as to what constitutes a landscape feature, a minor structure and an underground structure and as to whether any boundary wall or fence is designed to allow high air porosity shall be final and binding on the Purchaser.	
3	<p>Except with the prior written consent of the Director, no building, structure, support for any building or structure, or projection shall be erected or constructed within the Pink Hatched Black Area and the Pink Hatched Black Stippled Black Area at or above the ground level of the Pink Hatched Black Area except the following:</p> <p>(i) boundary walls or fences or both provided that if the boundary walls or fences or both shall front onto any pedestrian street or path located between the points B and C as shown and marked on the plan² annexed hereto, such boundary walls or fences or both shall be erected or constructed in all respects to the satisfaction of the Director to achieve visual and physical porosity of not less than 50% along the horizontal plane per linear metre from one metre above the general formation level of the adjacent pedestrian street or path; and</p> <p>(ii) landscaping features and associated facilities.</p>	View Corridor
4	(a) Except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, the Grantee shall at his own expense and in all respects to the satisfaction of the Director of Agriculture, Fisheries and Conservation designate an ecological corridor in the width of 30 metres running east-west across the lot (hereinafter referred to as ‘the Ecological Corridor’).	Ecological Corridor

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
	<p>(b) Except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, no building, structure, support for any building or buildings or any structure or structures, or projection shall be erected or constructed within the Ecological Corridor above 25 metres from the ground level of the lot.</p> <p>(c) For the purpose of this Special Condition, the decision of the Director as to what constitutes the ground level shall be final and binding on the Grantee.</p>	
5	<p>The Purchaser acknowledges that as at the date of this Agreement, there are in existence some 132KV transmission cables and communication cables and the associated cable works, structures, facilities or installations (hereinafter collectively referred to as ‘the Cables’):</p> <p>(i) below the ground level of that part of the lot falling within the purple lines shown on the plan² annexed hereto and thereon marked “CABLE RESERVE” (that part of the lot is hereinafter referred to as ‘the Cable Reserve within the lot’); and</p> <p>(ii) below the ground level of those parts of the Yellow Area falling within the purple lines shown on the plan² annexed hereto and thereon marked “CABLE RESERVE” (those parts of the Yellow Area are hereinafter collectively referred to as “the Cable Reserve within the Yellow Area”).</p>	Cable Reserve

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
6	<p>(i) The Purchaser hereby acknowledges that as at the date of this Agreement, there is an existing stormwater drain of 900 millimetres in diameter passing through the Green Area, the Yellow Area and a portion of the lot shown coloured pink hatched black and marked “D.R” on the plan² annexed hereto (hereinafter referred to as “the Drainage Reserve Area”), the approximate location and alignment of which for indication purposes only is shown by a blue line on the plan² annexed hereto (hereinafter referred to as “the Existing Stormwater Drain”).</p> <p>(ii) Without prejudice to the generality of the provisions of General Condition No. (___) hereof, the Purchaser shall be deemed to have satisfied himself as to and have accepted the state and condition of the lot as existing at the date of this Agreement subject to the presence and use of the Existing Stormwater Drain and no objection or claim whatsoever shall be made or raised by the Purchaser in respect of or on account of the same.</p> <p>(iii) The Government shall have no responsibility or liability for any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any person by reason of the presence and use of the Existing Stormwater Drain and no claim whatsoever shall be made against the Government by the Purchaser in respect of any such loss, damage, nuisance or disturbance whether arising directly or indirectly out of or in connection with the presence and use of the Existing Stormwater Drain.</p>	Drainage Reserve

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
7	<p>(a) No building or structure or support for an building or structure shall be erected or constructed or placed on, over, above, under, below or within the areas shown coloured pink hatched black and pink cross hatched black on the plan² annexed hereto (hereinafter collectively referred to as “the Waterworks Reserve Areas”) and no material or object of whatever nature shall be placed or stored nor motor vehicles be parked on or within the Waterworks Reserve Areas.</p> <p>(b) Except with the prior written approval of the Director of Water Supplies, the Purchaser shall not plant any trees or shrubs or carry out any site formation works within the Waterworks Reserve Areas.</p> <p>(c) (i) If diversion, removal or relocation of the marked Government water mains laid within the area shown coloured pink cross-hatched black on the plan² annexed hereto (hereinafter referred to as “the Pink Cross Hatched Black Area”) is required by the Purchaser, the Purchaser shall submit the proposed routing and the proposed new boundaries of the Waterworks Reserve Areas to the Director of Water Supplies for his prior written approval and the Purchaser shall be responsible for all costs arising out of the diversion, removal or relocation. The decision of the Director of Water Supplies as to the routing of the new Government water mains and the new boundaries of the Waterworks Reserve Areas for the purposes of Special Condition No. (__) hereof shall be final and binding on the Purchaser. Where new Government water mains are laid pursuant to this sub-clause (__), the provisions in Special Condition No. (__) hereof shall be applicable to the new government water mains with the references to “the marked Government water mains” under the said Special Condition No. (__) being replaced and substituted by the new Government water mains. All diversion, removal or relocation works that the Director of Water Supplies may approve to carry out under this sub-clause (__) shall only be carried out by such persons as the Director of Water Supplies may appoint at his absolute</p>	Waterworks Reserve

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
7	<p>discretion.</p> <p>(ii) Without prejudice to Special Condition No. (___) hereof, the Purchaser shall pay to the Government on demand from time to time the entire cost, including both the estimated cost and the actual cost, of diverting, removing or relocating the marked Government water mains laid on, over, above, under, below or within the Pink Cross Hatched Black Area. The estimated cost and the actual cost of such diversion, removal or relocation shall be determined by the Director of Water Supplies whose determination shall be final and binding on the Purchaser.</p> <p>(iii) No diversion, removal or relocation of any Government water mains laid within the area shown coloured pink hatched black on the plan² annexed hereto, including but not limited to be marked Government water mains within the said coloured pink hatched black area, shall be carried out.</p> <p>(d) Without prejudice to Special Condition No. (___) hereof, the Purchaser shall pay to the Government on demand the costs of repair and reinstatement to any Government water mains (including any new government water mains that may be laid pursuant to sub-clause (___) of this Special Condition, valves, valve pits or chambers or structures and the like relating to the Government water mains which the Director of Water Supplies at his discretion may consider necessary at any time during the term hereby agreed to be granted as a result of damage caused by the Purchaser or other activities carried out upon the lot or the Coloured Areas by the Purchaser, his servants, workmen and contractors and the Purchaser shall indemnify the keep indemnified the Government from and against all actions, proceedings, liabilities, claims, costs, losses, damages, expenses, charges and demands whatsoever arising therefrom.</p>	Waterworks Reserve

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
8	<p>(a) (i) The Purchaser hereby acknowledges that as at the date of this Agreement, there are structures, facilities, foundations or installations of (___) Road (hereinafter collectively referred to as “the Highways Structures”) upon, over, under or adjacent to or in the vicinity of the lot.</p> <p>(ii) Without prejudice to the generality of the provisions of General Condition No. (___) hereof, the Purchaser shall be deemed to have satisfied himself as to and have accepted the state and condition of the lot as existing at the date of this Agreement subject to the presence of the Highways Structures and no objection or claim of whatsoever nature shall be made or raised by the Purchaser in respect of or on account of the same.</p> <p>(iii) The Government will accept no responsibility or liability for any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the purchaser by reason of the presence of the Highways Structures and the Purchaser shall not make any claim whatsoever against the Government for any damage, nuisance, annoyance, loss or detriment of any kind whatsoever caused to the lot or to the Purchaser arising directly or indirectly out of or in connection with the Highways Structures.</p> <p>(b) Except with the prior written consent of the Director, no building, structure, support for any building or structure, projection, or landscaping works shall be erected, constructed or placed on, over, above, under or below the ground level or levels of that portion of the lot shown coloured pink cross-hatched black on the plan² annexed hereto (hereinafter referred to as “the Maintenance Area”).</p>	Protection of adjoining Highways Structure

	Requirements and Structures/Features to be Allowed in the NBA Clauses¹	Intended Purpose of NBA
9	<p>(a) Except with the prior written consent of the Director, no building or structure or support for any building or structure may be erected or constructed within the areas shown coloured pink hatched black and pink hatched black stippled green on the plan² annexed hereto (hereinafter collectively referred to as “the Non-Building Area”).</p> <p>(b) Notwithstanding sub-clause (a) of this Special Condition and subject to Special Condition No. (__) hereof, the following may be erected or constructed within the area shown coloured pink hatched black on the plan² annexed hereto:</p> <ul style="list-style-type: none"> (i) the Landscaped Walkway referred to in Special Condition No. (__) hereof; (ii) the Public Open Space referred to in Special Condition No. (__) hereof; and (iii) a basement floor or floors to be used solely for the parking or loading and unloading of motor vehicles or for lay-bys for the picking up and setting down of passengers or any combination thereof. <p>For the purpose of this Special Condition, the decision of the Director as to what constitutes a basement floor or floors shall be final and binding upon the Purchaser.</p>	Landscaped Walkway / Public Open Space
10	<p>Except with the prior written consent of the Director, no building or structure or support for any building or structure may be erected or constructed on, over, under, above, below or within the area shown coloured pink hatched black on the plan marked “Plan A²” annexed hereto (hereinafter referred to as “the Pink Hatched Black Area) except:</p>	NBA shown on the Outline Development Plan that needs to be enforced through lease

	<p>Requirements and Structures/Features to be Allowed in the NBA Clauses¹</p>	<p>Intended Purpose of NBA</p>
	<p>(i) boundary walls or fences or both above the ground level of the Pink Hatched Black Area; and</p> <p>(ii) a basement floor or floors under the ground level of the Pink Hatched Black Area to be used solely for the parking of motor vehicles licensed under the Road Traffic Ordinance, any regulations made thereafter and any amending legislation, accommodating lift lobbies or such other ancillary building services facilities as may be approved in writing by the Director, or such other purposes as may be approved by the Director or any combination thereof.</p>	