

# Change in Use of Land

A Practical Guide to Development  
in Hong Kong

Third Edition

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Hong Kong University Press  
The University of Hong Kong  
Pokfulam Road  
Hong Kong  
www.hkupress.org

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ISBN 978-988-8390-69-4 (*Hardback*)

ISBN 978-988-8390-70-0 (*Paperback*)

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

10 9 8 7 6 5 4 3 2 1

Printed and bound by Hang Tai Printing Co., Ltd. in Hong Kong, China

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# Preface to the Third Edition

In this new edition, the list of Town Planning Board guidelines has been updated to April 2016 and the tables on success rates of planning applications and reviews for key zones in Appendix 2 have been updated to 31 December 2015. Appendix 3 which presents the planning history of all 380 development projects under Comprehensive Development Area zoning from 1 January 1990 to 31 December 2015 has been added. This new Appendix 3 is an updated version of Appendix 1(b) of L. W. C. Lai, D. C. W. Ho, K. W. Chau, M. H. Chua, and R. K. K. Yu (2015), 'Repeated Planning Applications by Developers under Statutory Zoning: A Technical Note on Delays in Private Residential Development', *Surveying and Built Environment*, Vol. 24, No. 1, pp. 8–36.

Furthermore, Appendix 4 (Appendix 3 in the previous edition) has been amended with new information and the references list has been updated accordingly. A new Appendix 5 on PNAPs has also been added.

The authors acknowledge the funding support for the relevant research by the Central Policy Unit Grant No. CPU (2013.A8.014.14C).

Lawrence W. C. Lai  
10 May 2016

# 1 The Importance of Use and Change in Use

The concepts of 'use' and 'change in use' of land (which legally include buildings) are probably the most important and, at the same time, most difficult concepts in planning, building and development, and property management practice in Hong Kong.

## Why Must a Landowner Understand the Nature of Use and Change in Use?

These two concepts are important to the property owner (the lessee or grantee of government land or assignee of shares in property developed on such land) because the use of land, and therefore the change in the use of land, is not a matter of unconstrained or unconditional free choice of the property owner.

Indeed, both the use of land and the change in use of land are *heavily regulated* and prior permissions from various authorities of the Hong Kong Special Administrative Region (the government) are often required. In case the property owner is a company these concepts are important to the investor who buys shares of the company.

The concept of 'use' is important to the property owners, as investors and consumers, for a number of reasons:

- (a) First, a necessary factor in the *valuation* or *value appraisal* of a piece of property is the accurate determination of all possible and permissible existing and future uses of the property. This factor is important to the investor for assessing investment return to land or shares in companies that hold land property.
- (b) Second, an important constraint that delimits *the extent of private property rights in land* is the correct identification of all permitted uses for, and/or uses prohibited/excluded from, the land. This constraint must be accurately identified by the owner or user of land because action or inaction based on mistaken or negligent identification by the owner, user or the property manager may lead to various 'enforcement'

measures by the government (which may result in fines, title defects or even loss of title). Such measures may be a matter of breach of the land contract/grant and/or violation of the written law as embodied in various ordinances. Correct identification of the relevant constraint is also significant to the neighbour of land if that neighbour owns a legal estate or an equitable interest (such as an easement in the form of a right of way) that may be affected by any proposed change in use of the servient land.

### **Why Must An Estate Surveyor Know about the Nature of Use and Change in Use?**

An *estate surveyor* must understand the nature of use and change in use because of at least six reasons:

- (a) In a *valuation* exercise, there is a need to interpret not only the uses (often expressed as ‘user’) and building covenants specified in the lease but also the effects of the provisions of statutory town plans on the covenants and various types of notices issued under the Town Planning Ordinance (Chapter 131, Laws of Hong Kong) to regulate unauthorized change in use.
- (b) In ascertaining the possibility for *lease modification* or *short-term waiver*, there is a need to interpret not only the user and building covenants in the lease, but also the effects of the provisions of statutory plans on the covenants as well as the implications of administrative zoning delineated in administrative town plans.
- (c) A surveyor can help make a planning application, attend a review or appeal (under the Town Planning Ordinance). In processing a planning application, planning review or planning appeal for a *change in use*, there is a need to understand the provisions of the Town Planning Ordinance.
- (d) In negotiating *compensation* payment in land resumption under the Lands Resumption Ordinance (Chapter 124, Laws of Hong Kong), there is a need to consider relevant administrative town plans or development plans.
- (e) In processing conveyancing matters for property in the rural New Territories, there is a need to appreciate the nature and implications of *enforcement notices* under the Town Planning Ordinance as encumbrances.
- (f) In processing *lease enforcement* matters of a site, there is a need to appreciate the legal and valuation implications of statutory plans applicable to the site.

## Why Must a Lawyer Need to Know about Use and Change in Use?

A lawyer, whether a solicitor or barrister, needs to know about town planning because of at least ten reasons:

- (a) In the *conveyancing of units* in a property, there is a need for the solicitor to check the *user* and this involves the interpretation of 'lease conditions', i.e. covenants in government leases and conditions for land sale, grant, surrender, exchange etc. (which will be further explained), and the 'Deed of Mutual Covenants' (DMC) in the light of relevant statutory town plans and 'planning conditions' (such as the requirements and stipulations of a 'Master Layout Plan' (MLP) (Lai et al. 2004, 2005, 2007, 2009), which may or may not be incorporated as part of the lease or the DMC) affecting the building and its environment (e.g. reclamation/highway/drainage projects).
- (b) In the *conveyancing of a site*, there is a need for the solicitor to check (i) the *user* and this involves the interpretation of lease conditions and the DMC in the light of any statutory town plans and planning conditions (such as the requirements for a Master Layout Plan (MLP), which may or may not be incorporated as part of the lease; an environmental impact assessment (EIA); and other impact assessment) affecting the building and its environment (e.g. reclamation/highway/drainage channel projects); (ii) the site classification and plot ratios for the site under the Buildings Ordinance (Chapter 123, Laws of Hong Kong) as may be affected by a statutory town plan.
- (c) In processing *conveyancing matters* for property in the rural New Territories subject to a past or present Interim Development Permission Area (IDPA) or Development Permission Area (DPA) Plans, there is a need for the solicitor to appreciate the nature and implications of *enforcement notices* under the Town Planning Ordinance as encumbrances.
- (d) In handling litigation involving *defeasibility of titles* in conveyancing, a solicitor/barrister should appreciate the implications of the non-fulfilment or breach of the provisions of the Town Planning Ordinance or planning conditions.
- (e) In negotiating *compensation* payment in resumption, there is a need for a lawyer to consider relevant development plans.
- (f) In processing *lease enforcement* matters of a site, there is a need for a lawyer to appreciate the legal implications of statutory plans applicable to the site.
- (g) A solicitor can make or be involved in matters arising from *planning applications*. In processing a planning application, review or appeal



to a *change in use*, there is a need to understand the provisions of the Town Planning Ordinance.

- (h) In exercising due diligence in raising *title requisitions* regarding latent defects of the property, a solicitor acting for a purchaser in conveyancing needs to visit the property before completion with relevant experts and documents. The documents should include the applicable statutory town plans, occupation permits and approved building plans.
- (i) In exercising due diligence for a client in the acquisition of shares of a company holding land assets, a solicitor needs to understand the effects of amendment to the zoning of the applicable statutory town plans and/or results of planning applications upon the value of the land assets.
- (j) A barrister may be instructed to represent parties to a *planning appeal* before the Appeal Board (and further appeals); an enforcement action under the Town Planning Ordinance before a magistracy court (and further appeals); or a building appeal before the Building Tribunal under the Buildings Ordinance, which may or may not involve issues of the contravention of statutory town plans or a notice of an order under the respective ordinance.
- (k) Direct professional access by planners to barristers is possible nowadays.

To minimize the chance for making negligent statements, it is advisable for lawyers to consult a Registered Professional Planner (RPP) and an Authorized Person (AP) before offering advice in respect of planning and building matters.

### **Why Must an Authorized Person Know about Use and Change in Use?**

An Authorized Person (AP), who may be an architect, a structural engineer or a building surveyor, must understand planning for at least three reasons:

- (a) An AP can make or be involved in matters arising from *planning applications*. In processing a planning application, review or appeal to a *change in use*, there is a need to understand not only fundamental planning principles but also the provisions of the Town Planning Ordinance.
- (b) In the preparation of a building plan application to the Building Authority, there is a need for the AP to ascertain the *user*. This involves the interpretation of lease conditions in the light of statutory town plans and planning conditions, assuming that planning permission

has been granted (such as the requirements for a Master Layout Plan [MLP], which may or may not be incorporated as part of the lease; an Environmental Impact Assessment; and other impact assessment) affecting the building and its environment (e.g. reclamation/highway/drainage channel projects).

- (c) In the preparation of a building plan application to the Building Authority, there is a need for the AP to ascertain the site classification and plot ratios for the site under the Buildings Ordinance as may be affected by a statutory town plan.

### **Why Must a Person Concerned with Environmental Protection and Conservation Need to Know about the Nature of Use and Change in Use?**

A person who is keen on protecting the environment, heritage and ecology must understand town planning because various types of town plans have different implications for environmental protection and heritage conservation in either forward planning or development control (notably planning applications and impositions of planning conditions), which may or may not reinforce the environmental and heritage protection clauses in the lease and/or specific environmental and heritage legislation.

### **Why Must a Homebuyer or Investor Need to Know About the Nature of Use and Change in Use?**

A homebuyer or a property investor needs to know more about town planning before making a purchase decision because of the reasons below:

- (a) A homebuyer must be able to *interpret various types of town plans* and relevant building plans and their inter-relationships in order to ascertain the *present and future state of affairs and environment* of the property. Some of the common questions are: Would present seaviews or 'garden views' be protected in future? What kinds of use will be permitted or built by government on the 'Government/Institution and Community' (G/IC) zones? Would a funeral parlour or a church be built there? When exactly will such facilities be built? What would happen to 'Unspecified' zones?
- (b) A homebuyer or investor must understand the town planning system and procedures in order to make a *proposal* or an *objection* to various types of town plans to protect or further his/her interest.

- (c) A homebuyer and seller should know whether a property has any unauthorized use or unauthorized building work that may contravene the lease or Buildings Ordinance, rendering the title of a property defective.
- (d) An indigenous villager who wishes to build a *small house* or use land for other *highest value use* must understand the provisions of relevant statutory town plans, especially those originated from the (Interim) Development Permission Area Plans.
- (e) A property investor who has interest to buy, or has already acquired land in the New Territories, must understand the provisions of relevant statutory town plans, especially those originated from the (Interim) Development Permission Area Plans.

The purpose of government regulation of land uses and their changes is often explained in terms of the idea of forward planning and development control.

Forward planning is a government activity; it refers to the specification of parameters, rules, standards, guidelines, and procedures for land uses and built-forms by the government for private individuals in relation to land, or planning and development thereon.

Development control refers to the government processes or orders which ensure that matters specified or restricted in the forward planning process are followed or observed by private individuals, as backed by enforcement action based on contract or legislation in case of violation, contravention or non-compliance.

Both can be 'Statutory' under the Town Planning Ordinance; 'Administrative' by way of departmental plans; or contractual under the Government (formerly Crown) Leases.

# 12 Enforcement of Leases, Town Planning Ordinance and Buildings Ordinance

## Lease Enforcement

A typical government lease contains clauses or provisions that expressly state that when any obligation, term or condition is not fulfilled and/or when any restriction is violated, the government can re-enter the land. These clauses or provisions are often referred to as 're-entry clauses'. Some examples of obligations, terms or conditions that trigger decisions to re-enter, as evidenced in a 'Memorandum of Re-entry' or a 'Vesting Notice', are:

- (1) the obligation for the lessee to develop land purchased from the government within a certain period of time (with the social and economic concern that scarce land resource should not be wasted or allowed to be idle);
- (2) user restrictions; and
- (3) the need to comply with the Buildings Ordinance and Town Planning Ordinance.

Re-entry of land under re-entry clauses is a matter of contract enforcement based on mutually agreed terms. Though re-entry may be triggered by violation of an ordinance specified in the lease conditions, this must not be confused with land resumption of the land or enforcement against a certain use or development of the land under various ordinances.

Re-entry is a matter of lease enforcement. It is the contractual right of the government based on its contract with the lessee. The government will decide as to whether or not such right is exercised when a breach occurs. There is no duty on the part of the government to re-enter; thus a third party cannot compel the government to re-enter or complain against the government when it chooses not to re-enter.

The Lands Department conducts land inspection from time to time and where it discovers that there is a breach of lease terms, it would as a matter of practice issue a warning letter to the occupier and the lessee of the land.

The warning letter regarding a breach of user or development restrictions typically contains the followings:

- (1) a description of the use or development that is found on the land;
- (2) a warning that the said use or development is in breach of the terms of the lease;
- (3) a request that such use or development must be immediately discontinued (with a 28-day grace period);
- (4) the consequences of ignoring the request;
- (5) the need to pay the government a fine ('forbearance fees') should the use or development in question is not discontinued in 28 days and such a fine is payable for as long as the use or development to be discontinued remains on the land, whether or not the land is eventually re-entered; and
- (6) an indication that the use or development may become permissible under the Town Planning Ordinance.

The forbearance fee is a charge that affects the title of the property, with serious implications for conveyancing.

The institution of 'forbearance fee' while the use or development to be discontinued remains on the land is a consideration for the government in refraining from immediately exercising its contractual right to re-enter land.

## **Lease Enforcement and Planning Applications**

The indication in the warning letter that the use or development may become permissible under the Town Planning Ordinance implies that lease modification or waiver for accommodating the use or development would be supported if an application is made upon obtaining the requisite planning permission. Here is a typical example: an occupier of a multi-storey building under lease conditions for a factory building is said to have been in breach of lease conditions by operating office activities on the premises. The lease enforcement notice served to the occupier and the owner of shares of the factory building often suggests that the owner obtain planning permission and apply for lease modification (the application for a 'no objection' letter) to 'regularize' the office uses.

However, whether a planning application for a use in breach of the lease conditions can be validly made to the Town Planning Board is not determined by the Lands Department, but the provisions of the applicable statutory town plan (see Chapter 7).

## **When Served with an Enforcement Notice by the District Lands Office**

The property owner should not ignore an enforcement notice served to him/her whether or not the breach alleged by the District Lands Office has been caused by him/her or the tenant.

The property owner should first find out as to whether there is a real breach of the lease as a matter of law (lease interpretation). This is particularly crucial for older leases, which are less specific in the definition and description of the user or other restrictions (Lai 2000). Prompt legal advice should be sought. If there is no resource to do so, immediate compliance with the notice should be considered. Before costly litigation is contemplated, the owner should communicate with the District Lands Office about the legal advice he/she obtains. The District Lands Office would seek legal advice from the Legal Advisory and Conveyancing Office (LACO) of the Lands Department before deciding upon the case of alleged breach.

Whether or not there is a breach at law, the property owner should then find out as to whether the extent of breach, as a matter of fact, is accurate. The owner can approach the relevant District Lands Office for clarification, and this can be best achieved by a joint site visit to the premises so that the location and extent of the alleged breach can be delimited.

In any case, the aggrieved landowner should seek legal advice as regards the payment of the 'forbearance fees' if the alleged breach of use is not discontinued in 28 days.

## **Planning Enforcement**

A major amendment to the Town Planning Ordinance was made in 1991 to extend explicitly the jurisdiction of planning legislation to the entire territory of Hong Kong.<sup>1</sup> Previously, it was presumed that the reference to 'existing and potential urban areas' in the preamble of the Town Planning Ordinance had excluded the rural areas of the New Territories, i.e., areas outside designated new towns.

Under the provisions of the amended Town Planning Ordinance, Interim Development Permission Area (IDPA) could be designated and IDPA Plans were prepared by the Director of Planning before the Town Planning (Amendment) Ordinance 1991 came into operation.<sup>2</sup> Introduced in 1990 under a Town Planning Amendment Bill, the IDPA plans were first replaced

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1. Town Planning (Amendment) Ordinance 1991 (4 of 1991).

2. Section 26, Town Planning Ordinance.

by successively refined Development Permission Area (DPA) plans<sup>3</sup> and eventually by Rural Outline Zoning Plans.<sup>4</sup> In an area for which an IDPA plan was produced, a material change in the use of land or development constituted an offence, unless it was approved by the Town Planning Board or permitted as of right (under Column 1 or on the cover pages of the Notes) by the relevant statutory plan after the gazette date of the notice of the IDPA Plan.

After the operation of the Town Planning (Amendment) Ordinance 1991, the Town Planning Board could designate Development Permission Area (DPA) and draft DPA Plans. The draft DPA Plans were replaced by Rural Outline Zoning Plans eventually.<sup>5</sup> In an area for which such a DPA plan was produced, a material change in the use land or development constituted an offence, unless it was approved by the Town Planning Board or permitted as of right (under Column 1 or on the cover pages of the Notes) by the relevant statutory plan after the gazette date of the notice of the applicable IDPA Plan.

The relevant provisions, which include definition of the offence, its remedies and its statutory defences, are generally described as 'planning enforcement' provisions. According to these provisions, the Planning Department may either serve an Enforcement Notice under section 23 requiring rectification (failure to comply entails prosecution),<sup>6</sup> or proceed to prosecute directly under section 20(8). The accused may avoid prosecution or conviction if they have obtained planning permission,<sup>7</sup> or they can show that the uses in dispute are in fact 'existing uses',<sup>8</sup> i.e. uses that had existed 'immediately before' the date of the IDPA.

On conviction under either section 20(7) or section 23(6), an accused is liable to pay fines. The amount of fines has been increased successively. Conviction for an offence after a notice under section 23(6) may also attract

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3. Section 20, Town Planning Ordinance. This section dictates that DPA plans can only be produced for areas previously covered by IDPA plans prepared under section 26. This means that enforcement provisions cannot be extended to cover new towns or the old urban areas for which Outline Zoning Plans were the first statutory plans prepared.

4. See Note 9, Chapter 4, ante.

5. See Note 9, Chapter 4, ante.

6. Section 23(1), Town Planning Ordinance. This can be served on the owner, occupier or a person who is responsible for the alleged unauthorized development. The follow-up option to an 'Enforcement Notice' may be a 'Stop Notice' issued under section 23(2), or a 'Reinstatement Notice' issued under sections 23(3) and 23(4).

7. Sections 21(c); 23(1)(b); 23(9)(d), Town Planning Ordinance.

8. Section 1A of the Town Planning Ordinance defines 'existing use in relation to a development permission area'. However, rural outline zoning plans with a history of an IDPA refer back to the dates of their IDPA designation.

a daily fine. The levels of sentencing in recent years in respect of conviction under the Town Planning Ordinance are shown in Table 12.1.

Failing to comply with a notice served under section 23 may entail loss of goods due to seizure, detention or disposal by the Planning Department. The *Consultative Paper on the Town Planning Bill* (June 1996) proposes a number of further amendments, notably the penalty of imprisonment, personal liability for company directors and Cho/Tong managers,<sup>9</sup> and the admissibility of photographic evidence.

The planning enforcement law creates a statutory strict liability criminal offence for unauthorized changes in use 'being found'<sup>10</sup> after the date of IDPA on the current owner, occupier or user's land.<sup>11</sup> No *mens rea* or actual conduct<sup>12</sup> of the accused is necessary to establish the offence and there is no provision for jury trial. The mischief<sup>13</sup> that the law is said to target is the uncontrolled proliferation of open storage uses on land governed by agricultural leases.

\* Note that there is no statutory enforcement against non-compliance with planning conditions.

## Planning Enforcement and Planning Applications, Reviews and Appeals

The Town Planning Ordinance clearly provides, as reflected also in planning enforcement notices, that a person who has carried out unauthorized development may obtain planning permission from the Town Planning Board for that unauthorized development. This person has a statutory right to make a planning appeal to the Appeal Board against the decision of the Town Planning Board under the Town Planning Ordinance, in case his/her application fails after a review by the Town Planning Board. Such right for his/her application to be treated fairly by the Appeal Board should not be prejudiced by the fact that he/she is subject to an enforcement action or

9. Cho or Tong is the body corporate for a 'clan'.

10. This is definitely the situation for offences committed under the old section 23(6) in which the offence was 'where there is or was unauthorised development'. The wordings 'no person shall undertake or continue development' are retained in section 20(7) and section 21(1) seems to suggest requirements of certain acts to form the *actus reus* of the offence. However, in the majority of the cases, it seems that only the situation of land as seen in aerial photos or ground photos matters.

11. This is expressed clearly for section 23 offences. The usual practice for sections 20(7)(1) and 21(1) is against the user.

12. See note 9, ante.

13. See *Consultation Paper on Town Planning Bill* (Hong Kong: Hong Kong Government, 1996), pp. 1–15.



**Table 12.1** Planning Enforcement Statistics: 1991–2001

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
New Unauthorized Developments Detected					379	769	847	765	560	507	981
Enforcement Notices	2	105	504	157	374	1061	1664	1345	865	450	649
Stop Notices	0	7	15	0	0	0	0	7	0	0	0
Reinstatement Notices	0	0	4	5	38	87	72	15	3	0	0
Compliance Notices	0	0	40	151	179	643	1405	1158	1389	627	449
Convictions under s. 23(6), Number of Persons Convicted					100	153	24	118	39	8	12
Convictions under s. 21(2), s. 20(7 & 8), Number of Persons Convicted					55	89	17	12	6	18	21
Convictions under s. 23(6), Number of Cases					N/A	56	11	44	14	2	3
Convictions under s. 21(2), s. 20(7 & 8), Number of Cases					N/A	77	14	9	6	15	20
Average fine for convictions under s. 23(6)					\$45,578	\$39,230	\$21,125	\$26,392	\$22,410	\$9,555	\$4,625
Average fine for convictions under s. 21(2), s. 20(7 & 8)					\$34,945	\$47,410	\$61,180	\$31,417	\$61,717	\$19,306	\$9,571

Source: Planning Department (Compiled by Liu, 2003)

even under prosecution. This is so even though there are a few planning appeal cases that suggest, erroneously, that planning appeals arising from planning enforcement actions, must be dismissed. (Such suggestion is erroneous because it in effect attempts to deprive the person served with an enforcement notice of his/her statutory right under the ordinance to rectify his/her unauthorized use. See Lai [1999, 2003].)

### **When Served with an Enforcement Notice under the Town Planning Ordinance**

Upon receipt of a planning enforcement notice, one should take note of the following:

- (1) Do not ignore the notice, or one runs the risk of being arrested and eventually convicted of a criminal offence; one's title to land may also be rendered defeasible.
- (2) Seek legal advice immediately.
- (3) Take 'reasonable steps' and comply with the notice where the allegation is correct. (Note: now, making a section 16 application is NOT considered a reasonable step)
- (4) However, there is no need for self-incrimination by confessing or making a 'plea in mitigation' before staff of the Planning Department, as the department is not a court of law and is in fact the party that takes prosecution actions. See sections 23(9) for details.
- (5) Contest the notice at court only where there are strong legal grounds, good evidence and financial resources.

### **Enforcement against Unauthorized Building Works**

Section 24 of the Buildings Ordinance provides that where any building works have been or are being carried out in contravention of any provision of the ordinance, 'the Building Authority may by order require the demolition of the same'. This order is the 'section 24 Order'. A typical example of such contravention is the addition of structures without prior permission. A 'section 24 Order' would be registered against the title of land, rendering it defective.

The Building Authority has the discretion not to issue any such order. Yet, it does not mean that retrospective approval for the unauthorized work can be given. The Buildings Ordinance does not allow retrospective approval, even where such approval would have been granted if a building plan was actually submitted for the structure under a 'section 24 Order'.

# 15 Problem Sets

The scenarios described in this chapter are based on real-life practice. They serve to stimulate interesting discussion. In the following discussion, the reader is reminded that the 'notes' for various zones are those adopted for the latest Outline Zoning Plans.

1. Mr A has lost his case in a section 16 application and is considering a review or appeal. He would like to know if there are supporting legal grounds and the procedure for applying for a review and appeal. Advise him.
2. Planning control was substantially changed in the amendment of the Town Planning Ordinance in 1991. After the amendment, a big difference exists between rural and urban land. What is the difference? What gives rise to such discrepancy? Are various provisions in the Town Planning Ordinance the reason for the discrepancy?
3. There are different notices that can be issued in planning enforcement cases under the Town Planning Ordinance. What are these notices and their respective purposes?
4. A is a novice developer who intends to start a development in the New Territories. He has looked at the relevant Outline Zoning Plan of the area of development but does not understand it. He finds two columns in the notes to the plan. He would like to know what he has to do if:
  - (a) his intended use falls within column 1 but not column 2;
  - (b) his intended use falls within column 2 but not column 1; and
  - (c) his intended use does not appear in any of the columns.In any case he wants to go ahead with the development. Advise him.
5. A has just found out that his intended use for a piece of land he owns does not fall within any of the columns in the notes to the Outline Zoning Plan. He intends to go ahead with his planning application. If the application fails, he will file for a planning appeal. He would like to know how the Town Planning Board and the Town Planning Appeal Board operate respectively, and if there are any differences. Advise him.

6. In terms of purpose and constitution of members, what are the differences between:
  - (a) the Town Planning Board and the Town Planning Appeal Board; and
  - (b) the Town Planning Board and the Court of First Instance?
7. Mr A owns an industrial building, which he bought last year. The building was built some fifteen years ago. Mr A has recently discovered that the land on which the building is situated is zoned for residential use in the Outline Zoning Plan. He knows that all development must comply with the Outline Zoning Plan and is worried that the government may take action against him. Advise him as to whether the Planning Department could take action in this case, and under what circumstances the department could do so.
8. The Buildings Department is often described as the department that enforces planning control of urban land in Hong Kong. However, in the Town Planning Ordinance, the Planning Authority (i.e. the Director of Planning) is the only body that enforces planning control. Discuss why the Buildings Department is described as such.
9. What are the respective tribunals in each of the following cases:
  - (a) section 16 application under the Town Planning Ordinance;
  - (b) section 16A application under the Town Planning Ordinance;
  - (c) section 17 application under the Town Planning Ordinance;
  - (d) planning enforcement action by the Planning Department under the Town Planning Ordinance;
  - (e) enforcement of lease covenants by the government
10. In a set of typical government lease conditions, there are general and special conditions. What are their differences? What are the typical conditions for each of these categories?
11. In a government lease, there often exists forfeiture clause. Discuss:
  - (a) the nature of a forfeiture clause;
  - (b) the purpose of such clause;
  - (c) the procedure to take an action pursuant to a breach of the forfeiture clause.Give an example of a typical forfeiture clause.
12. Discuss the differences between lease conditions and the Town Planning Ordinance in their respective roles in planning control in terms of:
  - (a) the sources of law;
  - (b) the enforcing agents;
  - (c) the actions that may be taken; and
  - (d) the consequences on the defendant if the action is successful.

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