

TOWN PLANNING BOARD GUIDELINES FOR INTERPRETATION OF EXISTING USE IN THE URBAN AND NEW TOWN AREAS

(Important Note:

The Guidelines are intended for general reference only.

Any enquiry on this pamphlet should be directed to the Planning Information and Technical Administration Unit of the Planning Department, 17th Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong - Tel. No. 2231 5000.

The Guidelines are subject to revision without prior notice.)

1. Introduction

- 1.1 On 22.6.2001, the Town Planning Board (the Board) amended the Covering Notes of the Master Schedule of Notes to Statutory Plan for the urban and new town areas mainly to clarify its intention with respect to "existing use" in the urban context.
- 1.2 These Guidelines explain generally the Board's intention with respect to "existing use" in the urban and new town areas. The Guidelines also set out the Board's approach to interpret "existing use" in some particular situations.

2. Planning Intention on "Existing Use"

- 2.1 The new paragraph (3)(a) of the Covering Notes provides that no action is required to make the existing use of any land or building conform to a statutory plan until there is a material change of use or the building is redeveloped; and the new paragraph (3)(c) provides that "existing use of any land or building" means -
 - i. before the publication in the Gazette of the notice of the first statutory plan covering the land or building (hereafter referred as 'the first plan'),
 - a use in existence before the publication of the first plan which has continued since it came into existence; or
 - a use or a change of use approved under the Buildings Ordinance which relates to an existing building¹ ; and
 - ii. after the publication of the first plan,
 - a use permitted under a plan which was effected during the effective period of that plan and has continued since it was effected; or
 - a use or a change of use approved under the Buildings Ordinance which relates to an existing building and permitted under a plan prevailing at the time when the use or change of use was approved.
- 2.2 The planning intention of these provisions is to allow a land owner, whose land or building may be affected by the imposition of a new land use zoning restriction, to continue the use of his land or building until there is a change of use or the building is redeveloped.
- 2.3 Generally speaking, the use of any land or building which was in existence at the time when a new statutory plan or a new land use zoning restriction affecting the land or building came into effect will be regarded as the "existing use" of the land or building. The "existing use" of the land or building will be allowed to continue whether or not the use conforms to the new statutory plan or the new land use zoning restriction. However, if the use was effected (i.e. came into existence) when a

statutory plan was in force, it must be a use permitted under that statutory plan before the existing use right can be claimed.

- 2.4 Furthermore, the Board recognized that Hong Kong is a fast changing place and it is not uncommon for the use of a premises to change from one use to another within the same broad use, for example, from retail shop to fast food shop, both within the range of 'Shop and Services' use. Therefore, the Board will allow a land owner to continue the use of his building not only for the actual use (e.g. shop use) in existence at the time when the new land use zoning restriction is imposed but also for the use(s) designated on the building plans or the Occupation Permit (OP) of the building approved/issued under the Buildings Ordinance (BO); or any subsequent change of use approved under section 25 of the BO, provided that such use should be a use permitted under the prevailing statutory plan, if any, when the building use was approved under the BO. It should be noted that such existing use right is only applicable to a use or a change of use approved under the BO which relates to an existing building. Uses shown on approved building plans for a proposed building are not regarded as existing uses.
- 2.5 The right to an existing use of land or building, i.e. "existing use right", will be forfeited upon a change of use of the land, or a change of use of the building outside the scope approved under the BO, or when the building is redeveloped. Any change of use and any other development or redevelopment of the land or building should conform to the extant statutory plan. Nonetheless, the Board will allow the carrying out of minor alteration works including maintenance works to the building, provided that such works do not constitute a change of use or give rise to any planning implication. For example, the renovation of the external facade or alteration of the internal layout of a building without any change of use will be permitted and no planning permission is required.

3. Interpretation of "Existing Use"

- 3.1 The following are some examples to illustrate the Board's approach to interpret "existing use" in some particular situations:

Use in existence/approved prior to the publication of the first statutory plan

- 3.1.1 Some uses of land or building were in existence before the publication of any statutory plan covering the concerned area. These uses may not conform to the statutory plan published for the area. To recognize the "existing use right" of a land owner, the Board will allow such non-conforming uses to continue until there is a change of use or a building is redeveloped. For example, a long-established school in a pure residential neighbourhood which is zoned "Residential (Group C)" ("R(C)") will be tolerated until the school building is put to some other uses or the building is redeveloped.
- 3.1.2 In addition, the Board will also allow a land owner to continue the use of his building as designated on the approved building plans/OP, or as approved under section 25 of the BO, until there is a change of such approved building use or the building is redeveloped. For example, a building approved under the BO for non-domestic use prior to the publication of the first statutory plan will be allowed to be used for such purpose even if the building falls within a "R(C)" zone on a statutory plan subsequently published.

Use in existence/approved during the effective period of a statutory plan

- 3.1.3 To keep abreast with the community's aspirations or requirements, the planning intention of a site may change as time goes by and that may necessitate amendments to the land use zoning restrictions, which are governed by established public objection procedures under the Town Planning Ordinance. A use permitted under a previous version of a statutory plan (including the first plan or any subsequent amendment plan) may

become a use not permitted in a subsequent version of the statutory plan. In such circumstances, the Board will allow a land owner to continue the use of the land or building which was permitted under the previous statutory plan and effected/realised during the effective period of that plan, provided that the use is continued after it was effected (that is to say, there is no change of use since the use was effected).

3.1.4 Likewise, the Board will allow a land owner to use his building for a use approved under the BO, including a use approved under section 25 of the BO, as long as it conforms to the zoning restrictions on a statutory plan which applied at the time that the use was approved. In determining the "existing use right" of a land owner, the Board will take into account both the approved building use and the permitted uses under that plan. For example, if the approved building use of a premises previously zoned "Residential (Group A)" ("R(A)") is non-domestic and the premises was subsequently rezoned to "R(C)" for pure domestic use, the Board will allow the land owner to use the premises only for those non-domestic uses which were permitted under the previous "R(A)" zone such as bank, shop and restaurant². Non-domestic uses such as commercial bathhouse and massage establishment which fall outside the scope of uses permitted under the previous "R(A)" zone will not be allowed in the premises.

3.2 The above examples only illustrate the Board's approach to interpret "existing use" in some particular situations whereby such uses may be allowed to continue despite a change in the land use zoning restrictions. Other cases which are not illustrated by examples will be considered by the Board on their own facts.

3.3 It is not for the Planning Department or the Board to provide evidence to prove whether a use is an "existing use". Any person who intends to claim an "existing use right" will need to provide sufficient evidence to support his claim.

4. Scope and Application

4.1 These Guidelines apply to those statutory plans which have incorporated the new paragraph (3) in the Covering Notes of the plans.

4.2 Any use which may be allowed in terms of the provisions of a plan must also conform to any other relevant legislation and to the conditions of the Government lease concerned.

¹ "Existing building" means a building, including a structure, which is physically existing and is in compliance with any relevant legislation, the conditions of the Government lease concerned, and any other Government requirements, as may be applicable.

² In determining the permitted uses of a particular zone, reference should be made to the Notes for the zone of the respective statutory plan.