

TOWN PLANNING BOARD GUIDELINES ON LAPSING OF PLANNING PERMISSION

(Important Note:

The Guidelines are intended for general reference only.

Any enquiry on this pamphlet should be directed to the Secretariat of the Town Planning Board (15th Floor, North Point Government Offices (NPGO), 333 Java Road, North Point, Hong Kong – Tel. 2231 4810 or 2231 4835) or the Planning Enquiry Counters of the Planning Department (Hotline: 2231 5000) (17th Floor, NPGO and 14th Floor, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin).

The Guidelines are subject to revision without prior notice.)

1. Introduction

- 1.1 This set of Guidelines explains generally the intention of the Town Planning Board (the Board) on lapsing of planning permission.

2. Scope and Application

- 2.1 These Guidelines apply to all planning permissions granted by the Board. The ‘lapsing’ provision, however, does not apply to any planning permission for temporary use. Realization of such temporary use will not affect the planning permission of a permanent use given for the same site.

3. Lapsing of Planning Permission

- 3.1 All planning permissions granted by the Board are for a particular use or development in respect of a specific site. For a site which is the subject of several planning permissions, the owner/developer could choose to implement any one of the planning permissions prior to the completion of the project so as to meet changing market needs.
- 3.2 Once a permitted use is realized or a permitted development is completed, all planning permissions granted in respect of the site will lapse. For any future change of use or redevelopment, the proposed use or development will need to conform to the extant statutory plan, regardless of any previous planning permission granted. For the purpose of this paragraph, a large-scale development to be completed by phases will be considered as completed only when all the phases of the development are completed.

- 3.3 A development being carried out on a site in accordance with a planning permission will not be affected by a change of the land use zoning restriction of the site.
- 3.4 A planning permission is granted in respect of the land/building/ premises and any change of owner/tenant/operator would not affect the permission granted by the Board. The permission shall remain valid until and unless it has lapsed or has been abandoned.
- 3.5 In considering whether there is an abandonment of use, the Board will take into account the facts and circumstances of each case. In general, the following criteria will be adopted:
 - (a) the physical condition of the land/building/premises – whether the land/building/premises have fallen into such a state that it cannot be put back into the former permitted use;
 - (b) the period of cessation of use – whether the period of cessation of use is unreasonably long;
 - (c) any change of use – whether there has been a change of use during the period of cessation of use and whether the change of use constitutes a change in the character of the use; and
 - (d) the intention of the owner/ tenant/operator – whether there is evidence substantiating the owner's/ tenant's/operator' s intention to continue or abandon the use.
- 3.6 In determining whether a use has been abandoned or otherwise, the onus of proof lies with the concerned owner/tenant/operator, who will be required to provide sufficient evidence to demonstrate that the use has not been abandoned taking into account the above criteria.
- 3.7 Where it can be established that a permitted use has been abandoned, any proposed resumption of the abandoned use will be regarded as a change of use, and has to comply with the extant statutory plan.