

Unauthorized Development subject to Prosecution



Maximum Fine \$1,000,000

Owners, Tenants and Responsible Persons
may be Prosecuted



Check before Development

<https://www.pland.gov.hk>

2231 5000



Planning Enforcement

This pamphlet aims to facilitate the land owners, occupiers and responsible persons to understand planning enforcement and prosecution undertaken by the Planning Department under the Town Planning Ordinance, Cap. 131 (the Ordinance) so that they would not commit an offence inadvertently.

Why do we need enforcement?

- Unauthorized developments may cause environmental degradation and damages to the natural environment.
- To prevent further degradation of the environment in the rural New Territories, since 1991, the Authority, i.e. the Director of Planning has been empowered under the Ordinance to take enforcement action against unauthorized developments within Development Permission Areas (DPAs). Since 1.9.2023, the enforcement power of the Authority is further extended to "Regulated Areas" (RAs) as designated by the Secretary for Development.
- It is the responsibility of land owners and occupiers to ensure operation or use on their land conforms to the statutory plans prepared by the Town Planning Board.
- The Central Enforcement and Prosecution Section of the Planning Department is responsible for planning enforcement and prosecution.

What do we enforce?

We enforce against "Unauthorized Development" under the Ordinance.

Development includes:

- Operation (e.g. pond filling, land excavation and laying of fill materials / asphalt / cement, etc.); and
- Material change in the use of land (e.g. using agricultural land for storage / warehouse, parking and workshop, etc.).

Development within a DPA or RA is unauthorized unless:

- It is permitted under the relevant statutory plan;
- It is covered by a planning permission granted by the Town Planning Board;
- It falls within a DPA and it existed before the first gazettal of the statutory plans covering the Interim Development Permission Area (IDPA) (if any) or DPA, i.e. the "existing use" under the Ordinance; or
- It falls within a RA and it existed before the material date (i.e. 9.12.2022), i.e. the "pre-material-date use" under the Ordinance.



Who do we enforce?

Land Owner, Occupier and Responsible Person undertaking an unauthorized development may be subject to prosecution.

- As a land owner, you have the responsibility to ensure no unauthorized development on your land.
- Check before Development - the land owner, occupier or responsible person should ensure if the operation or use of land is permitted under the statutory plan or requires planning permission from the Town Planning Board.
- When receiving Enforcement Notice / Stop Notice / Reinstatement Notice served by the Authority, land owner, occupier or responsible person should take steps to comply with the notice by the specified deadline.



Common Unauthorized Developments

- Filling of pond or land (with materials like gravels, stones, cement and construction waste, etc. even for a permitted use) in "Agriculture" zone and conservation zones such as "Site of Special Scientific Interest", "Coastal Protection Area", "Conservation Area", and "Green Belt" zones, etc.
- Excavation of land / slope for development of platform, fencing and drainage works in "Agriculture" zone and conservation zones.
- Storage / warehouse, workshop and parking uses in agricultural land.

Our Investigation

- If the Authority has reasonable grounds to suspect that there is or was unauthorized development, staff of Central Enforcement and Prosecution Section may enter the land and any premises on the site (including gaining access to the concerned site) for investigation of suspected unauthorized developments and taking enforcement action.

Case Priorities



- High priority will be given to the following types of unauthorized developments:
 - (1) Those within or in the proximity of ecologically sensitive and important areas and conservation zones, such as "Site of Special Scientific Interest", "Coastal Protection Area", "Conservation Area" and "Green Belt" zones, etc.
 - (2) Those involving filling of land / pond within "Agriculture" zone.
 - (3) Those required for reinstatement and restoring greenery to create a deterrent effect against proliferation of unauthorized development to greenfields.
 - (4) Those causing health / safety hazards to the public, involving great public interest, or causing adverse environmental nuisances to nearby large residential clusters.
 - (5) Those arising from revoked or lapsed planning approvals.
- For other types of unauthorized developments, enforcement action would be taken subject to resources availability.

What will we do?

Enforcement Notice *Section 23(1)*

- The Authority may serve an Enforcement Notice to the land owner, occupier and responsible person when the Authority is of the opinion that an unauthorized development is / was undertaken on the land involved.
- The notice recipients should take steps to discontinue the unauthorized development by a specified date. Failure to comply with the Notice is an offence.

Stop Notice *Section 23(2)*

- The Authority may serve a Stop Notice, if the Authority considers that continuing the unauthorized development could constitute a health or safety hazard; adversely affect the environment; or make it impracticable or uneconomic to reinstate the land within a reasonable period.
- The notice recipients should discontinue the unauthorized development and take steps to prevent anything related to those relevant matters from causing adverse effects. Failure to comply with the Notice is an offence.

Reinstatement Notice *Section 23(3)*

- The Authority may serve a Reinstatement Notice, after an Enforcement Notice or Stop Notice, if the Authority considers the land condition has to be restored. The notice recipients should take steps to reinstate the land by a specified date.
- The Authority may require reinstating the land to the condition immediately before (i) the first gazettal of the DPA plan or the IDPA plan (if any), or (ii) the material date of the RA (i.e. 9.12.2022); or (iii) to other conditions that the Authority considers satisfactory and more favourable to the notice recipients.
- The steps required usually include removal of the fill materials and grassing the land, so as to restore the site condition and greenery. Failure to comply with the Notice is an offence.

Review of Reinstatement Notice

- A person who is aggrieved by the Authority's decision on a Reinstatement Notice may apply to the Secretary for Development for a review within 30 days after service of the Notice. The decision under review will be suspended until the review is completed.

Other Enforcement Actions

- If an Enforcement Notice, a Stop Notice or a Reinstatement Notice is not complied with by the date specified, the Authority may enter the land under section 23(7) of the Ordinance and take any necessary steps to ensure the unauthorized development is discontinued, to prevent the adverse effects, or to reinstate the land. These steps may involve taking possession of, removal, detention and disposal of any movable property on the land.
- The expenses incurred in entering the land and taking necessary steps may be recovered as civil debt from the person served with the notice.

Notice to Require Provision of Information *Section 22(7)*

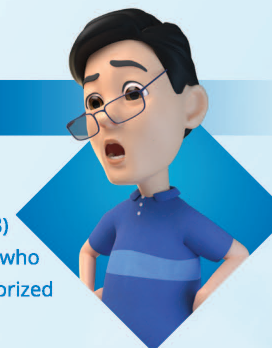
- The Authority can serve a Notice to a person requiring for provision of information within a specified date if the Authority has reasonable grounds to believe that the person has the information related to enforcement of unauthorized development. Failure to comply with the Notice is an offence.

Compliance Notice *Section 23(4A), (8A)*

- The Authority will serve a Compliance Notice if the Authority is satisfied that the requirements of the Enforcement Notice, Stop Notice or Reinstatement Notice have been complied with.

Registration and Discharge of the Notices

- The Enforcement Notice, Stop Notice and Reinstatement Notice served by the Authority will be registered in the Land Registry.
- When the Authority is satisfied that the notices have been complied with, a Compliance Notice will be served and registered in the Land Registry to discharge the previous Enforcement Notice, Stop Notice and Reinstatement Notice.



Prosecution

- The Authority can instigate direct prosecution under sections 20(7) & 20(8) and sections 21 & 21F against a person who is undertaking or continuing an unauthorized development.
- The Authority can instigate prosecution against the person who fails to comply with the Enforcement Notice, Stop Notice, Reinstatement Notice under section 23(6), and the Notice to obtain information under section 22(8) of the Ordinance.



Penalty - Maximum Fine \$1,000,000

- Failure to comply with the Enforcement Notice, Stop Notice and Reinstatement Notice is an offence under section 23(6) of the Ordinance. The fine for a first conviction is up to \$500,000 plus a daily fine of \$50,000 after the expiry of the notice. In the case of a second or subsequent conviction, the fine is up to \$1,000,000 plus a daily fine of \$100,000.
- Any person who fails to provide the information as required under the Notice to Require Provision of Information, provides false information or knowingly omits any particular material commits an offence under section 22(8) of the Ordinance and is liable to a fine up to \$100,000.

Check before Development Planning Department Hotline : 2231 5000

Email: enquire@pland.gov.hk

Planning Enquiry Counters:

17/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong

14/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories

Contact Central Enforcement and Prosecution Section on unauthorized development at individual site,

Hotline: 2158 6070

Email: ceppd@pland.gov.hk

Address:

13/F, Sha Tin Government Offices,
1 Sheung Wo Che Road, Sha Tin,
New Territories.

