



**Lands Administration Office  
Lands Department**

**Practice Note**

Issue No. 3/2012B

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**Application for**

- (a) Lease Modification (or a Land Exchange) for Development of an Industrial Lot for High-tier Data Centre Use; or**
- (b) Waiver for Data Centre Use in Part of an Industrial Building<sup>1</sup>**

For the purpose of streamlining the processing of applications submitted under caption (b) as stated in paragraph 2 of Lands Department Lands Administration Office (“LAO”) Practice Note No. 3/2012A, this Practice Note varies and supplements LAO Practice Note Nos. 3/2012 and 3/2012A with immediate effect. Except as varied and supplemented by this Practice Note, all other information and provisions in LAO Practice Note Nos. 3/2012 and 3/2012A remain valid. The Appendix I attached to this Practice Note supersedes the Appendix I to LAO Practice Note No. 3/2012 with immediate effect. This Practice Note and LAO Practice Note Nos. 3/2012 and 3/2012A are hereafter collectively referred to as “the Practice Notes”.

2. The owner must submit the application under caption (a) or (b) above in the form of Appendix I together with all the required documents and information as specified in the Checklist of Basic Requirements. Our aim is to issue waivers under caption (b) above for applications which are acceptable to the Government on terms along the lines of the sample waiver letter at Appendix II, around two weeks from the date of receipt of valid applications provided all the required documents and information have been duly provided.

3. This Practice Note is issued for general reference purposes only. All rights to modify the whole or any part of the Practice Notes are hereby reserved.

A handwritten signature in black ink, appearing to read "Bernadette Linn".

(Ms Bernadette Linn)

Director of Lands

6 May 2016

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<sup>1</sup> This includes part of, parts of or an entire industrial building.

**Appendix I**

**Application Form**

Application for

- (a) Lease Modification (or a Land Exchange) for Development of an Industrial Lot for High-tier Data Centre Use; or
- (b) Waiver for Data Centre Use in Part of an Industrial Building

To : [*For application under caption (a) above*]

District Lands Officer/ \_\_\_\_\_  
[Contacts of the District Lands Offices are set out in Lands Department's website at [www.landsd.gov.hk/en/about/enquiries.htm](http://www.landsd.gov.hk/en/about/enquiries.htm)]

[*For application under caption (b) above*]  
Chief Estate Surveyor/Headquarters,  
20/F, North Point Government Offices,  
333 Java Road, North Point, Hong Kong.  
Lands Department

Dear Sirs,

(Address of the building or lot, Lot number)

I/We, \_\_\_\_\_ (name of the Applicants), [as the (Sole Owner / Owners)\* of (Lot \_\_\_\_\_ / Lots \_\_\_\_\_ / Premises \_\_\_\_\_ [including any undivided share(s) of the Lot / Lots])\*] hereby apply for a (please specify) in respect of the Lease/ Special Condition No. \_\_\_\_\_ of Conditions of \_\_\_\_\_ / Special Condition No. \_\_\_\_\_ of New Grant No. \_\_\_\_\_) under which the Lot No(s). \_\_\_\_\_ is/are held. Details of the proposal are provided on separate sheet(s) attached to the application.

[*(To be inserted for application under caption (b) above only)*]

I / We hereby expressly confirm and declare that :

- (i) the Premises are situated in a zone designated for ["Industrial", "Commercial" or "Other Specified Use (Business)" uses (*please specify which town plan zoning for the existing industrial building*)] according to the prevalent statutory town plan No. \_\_\_\_\_ ; and

- (ii) the occupation permit No. \_\_\_\_\_ is the latest occupation permit issued by the Building Authority for the building of which the Premises form part and the age of the said building is not less than 15 years (calculated from the date of the said occupation permit No. \_\_\_\_\_).]

In order to facilitate consideration of my / our application, I / we attach the Checklist of Basic Requirements together with the required documents and information for your consideration.

I / We hereby expressly warrant and declare that the above information provided in support of my / our application is correct and genuine and I / we expressly acknowledge that I am / we are aware and accept that the decision on the application will be made by the Lands Department on the basis of the information supplied by me / us and may be immediately cancelled in the event that such information is found to be false or misleading. [Even though the waiver applied for has been approved and granted, I / we accept that such waiver may be terminated, and no part of the administrative fee paid for the application shall be refunded by the Lands Department.] *(Square-bracketed statement to be inserted for application under caption (b) above only)*

I / We further expressly acknowledge that the personal data provided by me / us in this application will be used by the Lands Department in connection with the processing of my / our application. The provision of any personal data requested in the application form is voluntary. I / We understand that if I / we do not provide sufficient information, the Lands Department may not be able to process my / our application.

I / We hereby authorize the Lands Department to disclose my / our personal data in the application and the attached documents to such Government Departments and any other body, organization or person(s) as it may see fit at its absolute discretion to obtain such information which is deemed relevant to my / our application, whether on policy or any other grounds.

I / We further authorize and direct and request any Government Department or other body which may be approached by the Lands Department to supply any and all information which it may require.

\* *Delete as appropriate*

Yours faithfully,

Applicant(s)'s Signature: \_\_\_\_\_  
(H.K.I.D. Card Number(s): \_\_\_\_\_ )

Name of the Applicant(s) in Block Letters: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

Notes :

- (1) Details of the proposed development or proposed uses under application will need to be provided on separate sheet(s) attached to the application.
- (2) All owners must sign in the capacity of applicants.
- (3) This application and the separate sheet referred to in Note (1) above should be submitted in triplicate.

**Checklist of Basic Requirements**  
**for Submission of an Application for**

**(a) Lease Modification (or a Land Exchange) for Development of an Industrial Lot for High-tier Data Centre Use; or**

**(b) Waiver for Data Centre Use in Part of an Industrial Building**

A. Information / Documents that must be submitted <sup>(1)</sup> :

**General :**

- |       |   |                          |
|-------|---|--------------------------|
| (i)   | 2 copies <sup>(2)</sup> of a complete set of Government Land Grant documents (including all executed lease modification letters and extension letters, if any) affecting the property <sup>(3)</sup> .  | <input type="checkbox"/> |
| (ii)  | A copy of an up-to-date location / site plan on an appropriate scale (normally 1:1000) showing the property.  | <input type="checkbox"/> |
| (iii) | 2 copies <sup>(2)</sup> of a computer printout containing the historical and current ownership particulars of the property.   | <input type="checkbox"/> |
| (iv)  | (a) If any of the registered owners is a limited company, 2 sets of certified true copies of its Certificate of Incorporation, Certificate of Change of Name (if applicable) and Notice of Situation of Registered Office. For overseas companies, documents equivalent to the above should be produced.  | <input type="checkbox"/> |
|       | (b) If there are any chargees/mortgagees, letter(s) from chargees/mortgagees confirming that they have no objection to / agree to enter into the proposed waiver letter/lease Modification Letter/Conditions of Exchange.   | <input type="checkbox"/> |
|       | (c) In the event of the lot or premises being in multiple ownership and unless otherwise consented to by LandsD, a summary list (in duplicate) certified by the solicitor acting for the applicants containing the names of all registered owners/chargees/mortgagees/ purchasers who have entered into an Agreement for Sale and Purchase of a unit or units ("Purchasers") (if any) of the property together with details of number of undivided shares held by each owner and an undertaking by the solicitor to inform the Lands Department of any change in the names of the registered owners/chargees/mortgagees/ purchasers between the date of application up to the date of the waiver letter/lease Modification Letter/Conditions of Exchange; | <input type="checkbox"/> |
| (v)   | A copy of the Town Planning Board approval letter for the proposed uses or development, if applicable.  | <input type="checkbox"/> |
| (vi)  | If submitted by an agent, a written authorization from all the registered owners and purchasers (if applicable) of the property.  | <input type="checkbox"/> |

(vii) An energy saving plan for the planned data centre. <sup>(4)</sup>

***For Lease Modification (including a Land Exchange) only :***

(viii) Details of the application clearly identifying the property concerned, the variations being sought in respect of any terms and conditions of the existing lease conditions including the modification of any restrictions and development parameters included in the existing lease conditions (e.g. proposed user, maximum gross floor area (GFA), GFA for the high-tier data centre part, site coverage, number of storeys/building height, etc.); and indicating :-

(a) whether the proposed development intensity is less than the maximum permissible intensity, and if yes, the proposed amount of GFA and the percentage in terms of the maximum permissible development intensity; and

Yes

(please provide detail)

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No

(ix) Documents showing that the property concerned will be developed into a high-tier data centre satisfying the descriptions as set out at footnote 4 of the LAO Practice Note No. 3/2012, including but not limited to the conceptual design of the data centre. (please provide details on separate sheet)

***For Waiver only :***

(x) 2 copies of a complete set of the building plans <sup>(5)</sup> last approved by the Building Authority for the part of the existing building under application and a schedule showing the total accountable GFA and total internal floor area <sup>(5)</sup> of part of the existing building under application.

(xi) 2 copies of all occupation permits <sup>(5)</sup> issued by the Building Authority for the existing building under application.

(xii) Details of the proposed operation of data centre in part of the existing building under the application with reference to footnote 1 of the LAO Practice Note No. 3/2012, including but not limited to the conceptual design of the data centre. (please provide details on separate sheet)

(xiii) 2 copies of any building works proposal <sup>(6)</sup> for the part of the existing building under application, which should include certification :-

- of any change in GFA, site coverage, number of storeys and building height to the existing building; and
- that no other non-compliance with the lease conditions.

(xiv) If applicable, a certified copy of the Deed of Mutual Covenant (“DMC”) of the building and a written confirmation by the solicitor acting for the applicants as to whether there are any inconsistencies between the provisions of the DMC and the proposed data centre use. If so, a proposal as to how they are going to deal with the inconsistencies should also be submitted.

(xv) Does the applicant for waiver also wish to modify other lease restrictions (other than the user restriction) in association with the proposed data centre uses?



Yes

No

(Please provide detail on separate sheet if necessary)

(xvi) 4 copies of floor plan(s) <sup>(6)</sup> showing the property on an appropriate scale (but not larger than A3 size). Each of the floor plan(s) shall clearly indicate the extent of the property in coloured pink and specify the internal floor area of the property.

**B. Information / Documents that will facilitate the processing of the application <sup>(7)</sup> :**

(xvii) A copy of an extract of the relevant Outline Zoning Plan (together with the explanatory notes, as appropriate) showing the property.

(xviii) For an application which involves portion(s) of a lot, or sub-divisions of any lots, to assist the verification of site areas and site boundaries, all relevant assignment plans or Deed Poll plans should be provided together with any relevant information relating to the delineation of the boundaries of these sub-divisions.

(xix) 2 sets of sketch plans illustrating the proposed development of a high-tier data centre or the change in use of data centre, if available.

(xx) 2 copies of any submissions approved by other relevant authorities relating to the development proposal or other relevant study assessment reports, if applicable (e.g. Approved Master Layout Plans under the Town Planning Ordinance, Environmental / Traffic / Drainage Impact Assessment Reports etc.)

Notes :

- (1) Please put a tick in the relevant box if applicable unless otherwise specified; and delete as appropriate.
- (2) One set of documents should be certified by the Land Registry or by the solicitor acting for the applicant, while the other set may be a photocopy of the certified documents. Certification of the documents should be done not more than one month before submission of the application.
- (3) Property includes all premises or lots involved in a lease modification, land exchange or waiver application.
- (4) Applicant should make reference to the “Green Data Centre Practices” published by the Office of Government Chief Information Officer ([http://www.ogcio.gov.hk/en/business/tech\\_promotion/green\\_computing/doc/Green\\_Data\\_Centre\\_Practices.pdf](http://www.ogcio.gov.hk/en/business/tech_promotion/green_computing/doc/Green_Data_Centre_Practices.pdf)).
- (5) The plans and documents should be certified by the Authorized Person acting for the applicant.
- (6) The proposal and floor plan(s) should be prepared and submitted by the Authorized Person or other competent professionals acting for the applicant.
- (7) Any other information may be supplied in triplicate on separate sheet(s) attached to the application.



**Appendix II**

[Sample Waiver Letter for Data Centre Use in Part of an Existing Industrial Building]

**BY RECORDED DELIVERY**

[name & address of the owner of the Premises]

Dear Sirs,

[address of the Premises] (the "Premises")  
[number of undivided share of the Premises] Share[s] of and in  
[Lot number] (the "Lot")

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I have to inform you that in consideration of your payment to the Government of the Hong Kong Special Administrative Region (the "Government") of an administrative fee amounting to \$[ ] (the receipt whereof being hereby acknowledged), the Government has approved and I hereby grant on behalf of the Chief Executive a temporary waiver (the "Waiver") of the restriction contained in [the Lease as set out in the Schedule hereto/Special Condition No[s]. [ ] of the Conditions of [ ] [as varied or modified by a Modification Letter dated the [ ] day of [ ] and registered in the Land Registry by Memorial No. [ ]] (the "[Lease/Conditions]") under which the Lot is held, so as to permit the use of the Premises shown for identification purposes only coloured [pink] on the plan annexed hereto (PLAN No. [ ]) for the purpose of a data centre. For the purpose of the Waiver, the expression "data centre" shall mean a facility for housing computer systems, servers, telecommunications equipment and associated support components in a secure and controlled environment (the "Permitted Purpose"). The support components, depending on scale, comprise electrical and mechanical facilities including but not limited to uninterruptible power supply, power distribution, standby power generation, heat rejection, computer room air-conditioning, fire suppression, environmental control and security control. The Waiver is granted subject to the following terms and conditions:

- (1) You warrant, represent and declare that :-
  - (a) the Premises are situated in a zone designated for use as "Industrial"/"Commercial"/"Other Uses (Business)" according to the statutory town plan; and
  - (b) as at the date of the submission of the application for the Waiver, the age of the building, of which the Premises form part, is not less than 15 years calculated from the date of the latest occupation permit issued by the Building Authority for the said building.

In the event that any of the information contained in sub-clauses (a) and (b) of this Condition is found to be false or misleading, the Government may pursuant to Condition No. (8)(a) hereof forthwith terminate the Waiver by giving to you a written notice to such effect

<sup>1</sup> Insert the Condition numbers of any other Conditions which provide for early termination

<sup>2</sup> Insert the end date of the Waiver, being the expiration date of the Lease/Conditions.

- (2) Subject to Condition Nos. (1), (4)(b), (8), (10), and (13)<sup>1</sup> hereof, the Waiver shall be for a term commencing from the date of this letter and expiring upon the demolition of the existing building erected on the Lot now known as [ ] ; (ii) on [ ]<sup>2</sup> or (iii) upon the early termination of the [Lease/Conditions] before the expiry of its term whether in accordance with the [Lease/Conditions] or otherwise, whichever shall be the earlier (the "Waiver Period").
- (3) (a) During the Waiver Period, you shall not use the Premises or any part thereof or allow or suffer the same to be used for any purpose other than for the Permitted Purpose.
- (b) The determination of the Director of Lands (the "Director") as to whether the Premises or any part thereof have been used for the Permitted Purpose shall be final and binding on you.
- (4) (a) Any building works required to be carried out in, to or on the Premises or any part thereof to enable it to be used for the Permitted Purpose shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation.
- (b) You shall procure that all building works required to enable the Premises to be used for the Permitted Purpose shall be completed within three years from the date of this letter. You shall provide documentary proof, to the satisfaction of the Director, of the completion of such building works not later than two calendar months from the expiration of the aforesaid three-year period. Such proof shall be duly certified by an authorized person (as defined in the Buildings Ordinance, any regulations made thereunder and any amending legislation). In the event that such building works have not been completed within the aforesaid three-year period, the Government may forthwith terminate the Waiver by giving to you a written notice to such effect.
- (5) (a) You shall indemnify and keep indemnified the Government, its officers and servants, from and against all actions, costs, claims and demands arising directly or indirectly out of or in connection with the Waiver or the use of the Premises or any part thereof for the Permitted

## Purpose.

- (b) The Government shall have no liability in respect of any damage or loss whatsoever caused to you or (as the case may be) any or all of the owners of the Lot or any part thereof or any person arising out of the grant, termination or withdrawal of the Waiver or otherwise (or any combination thereof) and no claim for such damage or loss shall be made against the Government or the Director.
- (6) You shall at your own expense and before the commencement of any building works, provide such information and materials as required by the Commissioner for Transport to demonstrate that the road access, parking, and loading and unloading facilities are adequate to cater for the use of the Premises for the Permitted Purpose and that such shall not impose adverse traffic impact to the road network surrounding the Lot.
- (7) You shall comply in all respects with all Ordinances, bye-laws, rules, regulations or other enactment which are or may at any time be in force in the Hong Kong Special Administrative Region (“Hong Kong”) relating to the use of the Premises or any part thereof for the Permitted Purpose.
- (8)
  - (a) Notwithstanding anything herein contained, in the event (i) of any breach, non-performance or non-observance of any of the terms and conditions herein contained or (ii) that at any time, you use or permit or suffer any part of the Premises to be used for any illegal or immoral purposes or any purposes in breach of any Ordinances, bye-laws, rules, regulations or other enactment in force in Hong Kong, the Government may forthwith terminate the Waiver by giving to you a written notice to such effect;
  - (b) For the purpose of sub-clause (a) of this Condition, the determination of the Director as to whether there is any breach, non-performance or non-observance of the terms and conditions herein contained or whether the Premises are or have been used for any illegal or immoral purposes or any purposes in breach of any Ordinances, bye-laws, rules, regulations or other enactment in force in Hong Kong shall be final and binding on you.
- (9) You shall at your own expense duly obtain all necessary licences, permits, consents, approvals and permissions required from the Government for the use of the Premises for the Permitted Purpose prior to the operation of the Permitted Purpose on the Premises or any part thereof and you shall maintain the same in force and in all respects comply with the terms and conditions thereof.

- (10) If you subsequently wish to revert to the original user of the Lot as set out in the [Lease/Conditions], then upon your application to terminate the Waiver, the Government may terminate the Waiver upon such terms and conditions as it may require.
- (11) Upon the expiration of the Waiver Period or upon the termination of the Waiver, the Premises shall cease to be used for the Permitted Purpose and shall thereafter be subject to all the [provisions, covenants, stipulations, exceptions, reservations, powers and conditions contained in the Lease/General and Special Conditions in the Conditions] including the provisions in respect of the user of the Lot referred to in the [Lease/Conditions]. No part of the administrative fee paid for the Waiver shall be refunded nor shall any compensation whatsoever be paid to you or any owner of the Lot or part thereof or any other person by the Government.
- (12) Nothing contained in this letter shall be construed as a release or any abandonment of the Government's rights to require or insist on compliance with [the terms and covenants of the Lease set out in the Schedule hereto/Special Condition(s) [ ] of the Conditions] in respect of any subsequent redevelopment of the Lot or any part thereof or any application for modification or variation of the [Lease/Conditions]. The Government will be entitled to charge a premium upon any subsequent redevelopment of the Lot or any part thereof should such redevelopment exceed the development conditions permitted under the [Lease/Conditions] or upon any application for a modification or variation of the terms and conditions of the Lease/Conditions (whether for such redevelopment or otherwise) and, in either case, no account shall be taken of the Waiver and its terms. You hereby expressly agree that any premium assessment in any subsequent modification or variation of the [Lease/Conditions], whether relating to any redevelopment of the Lot or any part thereof or otherwise, shall be based on and made with reference to the user and the terms and covenants set out in the [Lease/Conditions], without taking into account any waiver, permission or terms set out in this letter.
- (13) If the Premises or any part thereof is or is to be resumed by the Government, whether pursuant to an Ordinance or under the terms and conditions of the [Lease/Conditions], the Government may, at any time upon or after the first publication of the notice of resumption or such notice or order of like effect under the relevant Ordinance or (as the case may be) the giving of the notice of resumption under the [Lease/Conditions], terminate the Waiver by giving to you not less than one calendar month's written notice to such effect, such notice to expire at any time and the provisions of Condition No. (13) hereof shall apply to such termination.
- (14) Nothing contained in this letter shall be construed as having any

intention to prevent or effect of preventing any other person from exercising any rights he may have in respect of the user covenant contained in the [Lease/Conditions], or in permitting, inducing or procuring the breach or preventing or hindering the performance of any of your legal or other obligations, statutory, contractual or otherwise, owed to the Government (save the waiver and permission hereby given in respect of the Permitted Purpose) or to any other person.

(15) Any notice to be served by the Government or its officers under the terms and conditions of the Waiver shall be sufficiently served on you if left addressed to you on the Premises or forwarded to you by post or left at your last known address or at your registered office (as the case may be) and such notice, if sent by post, shall be deemed to be delivered in due course of post at the address to which it is sent.

(16) Except as hereby temporarily waived all the [provisions, covenants, stipulations, exceptions, reservations, powers and conditions/General and Special Conditions] contained in the [Lease/Conditions] shall remain in full force and effect. The Waiver is not intended to be and shall not be construed as a modification of the terms and conditions contained in the [Lease/Conditions].

3 { } Delete if there is no DMC

{{(17) Nothing contained in this letter shall prejudice any of the rights and remedies of your co-owners under the Deed of Mutual Covenant dated the [ ] day of [ ] and registered in the Land Registry by Memorial No. [ ].}³

4 { } Delete if there is no charge/mortgage

{{(18) Nothing contained in this letter shall prejudice any of the rights and remedies of your [chargee/mortgagee], [*name of the chargee/mortgagee*] (the “[Chargee/Mortgagee]”), under the [*title of the charge/mortgage document*] dated the [ ] day of [ ] and registered in the Land Registry by Memorial No. [ ].}⁴

(19) The Waiver shall supersede any existing waiver or waiver letter in respect of or relating to the use of the Premises or any part thereof, which shall cease to have any effect from the date of this letter.

(20) Notwithstanding any other provisions of the Waiver including any provision which purports to confer a benefit on a person who is not a party to the Waiver, the Waiver is not intended to and does not give any person who is not a party to the Waiver any right to enforce any provisions of the Waiver under the Contracts (Rights of Third Parties) Ordinance, and a person who is not a party to the Waiver shall not have any right under the Contracts (Rights of Third Parties) Ordinance to enforce any provisions of the Waiver.

2. If the foregoing terms and conditions are acceptable to you, please signify your acceptance thereof by executing under seal the docket on both copies of the Waiver. Your execution must be duly witnessed. {I note that the Premises are [charged/mortgaged] to the [Chargee/Mortgagee]. It is essential that the written consent of the [Chargee/Mortgagee] be obtained, at your own expense, to the foregoing terms and conditions by having the consent endorsed in the manner indicated below, on both copies of the Waiver.}<sup>5</sup> After execution {and the consent of the [Chargee/Mortgagee] has been duly endorsed,}<sup>5</sup> please return both copies of the Waiver to me, whereupon the Waiver will be registered by Memorial at the Land Registry. After registration the original of the Waiver will be returned to you for retention with the documents of title in your possession and the duplicate will be retained for my records.

5 { }Delete if there is no charge/mortgage

Yours faithfully, .

(  
Chief Estate Surveyor/  
)

[I/We] hereby agree to and accept the foregoing terms and conditions.

Witness : \_\_\_\_\_  
(Signature and name in  
block letters)

\_\_\_\_\_  
(Signed, Sealed and Delivered by  
[*name of the owner*])

Address :

OR  
Seal of [*name of the owner*] and  
signatures and names in block  
letters of its attesting officers and  
description of their offices.)

6 { } Delete if  
there is no  
charge/mortgage

{[I/We], [*name of the Chargee/Mortgagee*]  
being the registered [Chargee/Mortgagee] of the Premises hereby consent to the  
issue of the Waiver on the above terms and conditions to [*name of the owner*] and  
formally acknowledge that [I/we] have no objection to the acceptance of such  
terms and conditions by [*name of the owner*].

\_\_\_\_\_  
Signed by [*name of the signatory*]  
for and on behalf of [*name of the  
Chargee/Mortgagee*]}<sup>6</sup>

[N.B. You are required to note that pursuant to the provisions of the Land Registration Ordinance and the Regulations made thereunder the personal data contained in this Waiver Letter will appear in the land register(s)/record(s) of the Land Registry to facilitate the orderly conduct of land transaction and to provide the most up-to-date information to searchers.]

**SCHEDULE**

*[insert the covenants in the older form Government Leases to be waived, where identification by general description, clause or condition numbers is not feasible]*