



**Lands Administration Office
Lands Department**

Practice Note

Issue No. 6/2019

**Application for
Special Waiver for Conversion of an Entire Existing Industrial Building**

A lot owner who wishes to apply for a special waiver for conversion of an entire existing industrial building¹ situated in an area zoned “Industrial”, “Commercial” or “Other Specified Uses” annotated “Business” (“OU(B)”) according to the statutory town plans prepared pursuant to the Town Planning Ordinance, any regulations made thereunder and any amending legislation (collectively “TPO”) may wish to refer to this Practice Note before submitting an application to the Lands Department (“LandsD”). LandsD may only consider valid applications made for the purpose of this Practice Note which are received by LandsD on or before 31 March 2022. Applications received after the said date will not be considered for the purpose of this Practice Note. Where the proposed use applied for under the arrangements set out below requires planning permission from the Town Planning Board (“TPB”), such TPB permission must be obtained before the relevant application is submitted to LandsD and the owner must submit proof of such permission at the time of application. Further information may be obtained in respect of the relevant statutory town plans including Outline Zoning Plans from the TPB website (www.ozp.tpb.gov.hk/).

2. An owner of an existing industrial building located in a zone designated for “Industrial”, “Commercial” or “OU(B)” according to the statutory town plans prepared pursuant to the TPO may apply under this Practice Note for a special waiver at nil waiver fee for change of use of the entire existing industrial building, for its lifetime or until expiry or termination of the current lease², whichever is the earlier, provided that:

- (a) at the time of the application, the age of the existing industrial building is not less than 15 years, calculated from the date of issue of the occupation permit for the entire industrial building. If more than one occupation permits have been issued for the same building or for buildings on the same lot which are the subject of the application, the age of the existing industrial building will be calculated from the date of issue of the latest occupation permit;

¹ An industrial building refers to flatted factory building, industrial-office building and other building built for industrial use where the lot on which the building stands, under the terms of its lease, shall not be used for any purpose other than for industrial or godown purposes or both. Such industrial buildings do not include special factories such as those located in industrial estates, storage premises in container terminals and flatted factories built by the Hong Kong Housing Authority, and those buildings on lots supporting specific industries such as cargo handling uses, ship building and repairing, oil storage and refining and production of associated chemical by-product, manufacture of polystyrene plastics, manufacture and storage of chlorine, hydrogen and textile chemicals, etc.

² All references to “lease” in this Practice Note cover Government Lease or Conditions of Sale / Grant / Exchange, etc. (as the case may be) and “leases” shall be construed accordingly.

- (b) the application is submitted by the owner of the lot on which the existing industrial building is erected or, if the existing industrial building is in multiple ownership, jointly submitted by all existing owners of the lot, together with the consent from all mortgagees, chargees and purchasers who have entered into an agreement for the sale and purchase of the lot or building or any part thereof ("Mortgagees, Chargees and Purchasers"); and
- (c) the proposed uses of the existing industrial building to be covered by the special waiver shall fall within either the categories of uses always permitted in the respective zones under the statutory town plans prepared pursuant to the TPO or the categories which require planning permission from the TPB and the relevant planning permission has been obtained.

3. The application for the grant of a special waiver under this Practice Note satisfying the criteria as set out in paragraph 2 above, if approved by LandsD, shall be subject to such terms and conditions, including the payment of administrative fee, as may be imposed by LandsD, including but not limited to the following:

- (a) (i) Not less than 10% of the total accountable Gross Floor Area ("GFA") calculated under the Buildings Ordinance, any regulations made thereunder and any amending legislation (collectively "BO") of the existing industrial building, after conversion shall be designated, reserved and restricted as the designated portion ("Designated Portion") for specific uses ("Specified Uses"), which should also be consistent with the town planning requirements set out in paragraph 2(c) above, as may be determined, required or specified by the Government at its sole and absolute discretion.
- (ii) The owner shall, within six (6) calendar months from the date of completion of the conversion works, commence to use and, throughout the term of the special waiver, continue to use the Designated Portion for the Specified Uses on a scale, in a manner and in all respects to the satisfaction of the relevant policy bureaux and departments of the Government.
- (iii) If it is in the opinion of the relevant policy bureaux and departments of the Government that the Designated Portion or any part thereof has ceased to be used for the Specified Uses or the extent of the use has so diminished to the extent that the Designated Portion or any part thereof is either not being used or adequately used for the purposes for which it is designated, reserved or restricted for a period of six (6) calendar months, it will constitute a breach of the commence and continue to use requirement stated in sub-paragraph (a)(ii) above.
- (iv) Throughout the term of the special waiver, except the Long Lease referred to in sub-paragraph (a)(v) below, the owner shall not assign, mortgage, charge, demise or part with possession of or otherwise dispose of (which for the avoidance of doubt includes but not limited to the grant of any licence or right to use or occupy) the Designated Portion.
- (v) In the event of any breach, non-performance or non-observance of any of the term and conditions of paragraphs 3(a)(i), (ii), (iii) and (iv) above, without prejudice to the Government's other rights under the special waiver including but not limited to termination of the special waiver, Government may demand

the owner, at his own expense, to execute a lease underletting the Designated Portion or any part thereof to be decided by the Government to The Financial Secretary Incorporated, a corporation sole incorporated under and by virtue of the Financial Secretary Incorporation Ordinance, any regulations made thereunder and any amending legislation, ("FSI") upon such terms and conditions (including the payment of a nominal annual rent at \$1, if demanded) as may be required or specified by the Government at its sole and absolute discretion for the residue of the waiver period ("Long Lease") and in such event, the owner shall deliver vacant possession of the Designated Portion or the relevant part thereof to Government free from all incumbrances on or before the execution of the Long Lease.

- (b) (i) The total accountable GFA permitted under the building plans of the entire existing industrial building last approved by the Building Authority before the application ("Last Approved Building Plans") shall not be exceeded after the conversion works and for the avoidance of doubt, no concession or right in respect of additional site coverage or plot ratio under the BO shall be applicable.
- (ii) No change to the external building structures, increase in building height or increase in building bulk will be permitted except for the following:
 - (I) demolition of any of the external building structures of the existing industrial building (including any change involving demolition works), which are accountable for GFA in the Last Approved Building Plans, up to a maximum of 10% of the total accountable GFA of the existing industrial building as set out in the last approved building plans; and
 - (II) the recovery of the total accountable GFA that is lost in demolition of any of the external building structures of the existing building under (I) above, by vertical extensions (i.e. building on top of the existing building) or horizontal extensions or both to the external building structures within the lot boundary (e.g. outside the building or on the podium) provided that the following conditions are met:
 - (1) the site coverage of the converted building shall not exceed the site coverage permitted under the BO; and
 - (2) the building height or site coverage or both shall not exceed the building height restriction or site coverage or both specified on the statutory town plans prepared pursuant to the TPO or any relevant planning permission for minor relaxation of the building height restriction and/or site coverage approved by the TPB;

For the avoidance of doubt, the exceptions under paragraph 3(b)(ii)(I) and (II) above do not cover internal building works (including demolition works) that do not involve any change to the external building structures ("Internal Conversion Works"). Any Internal Conversion Works within the existing building envelope will continue to be permitted provided that they do not involve any change (including vertical and/or horizontal extensions) to the external building structures, and/or increase in building height, and/or increase in building bulk and

subject always to the overriding condition that the total accountable GFA in the last approved building plans shall not be exceeded after the conversion. Paragraph 3(b)(i) of this Practice Note shall apply to all kinds of building works including demolition works, irrespective of whether such works may involve change(s) to the external building structures;

- (III) the erection or placement of machine rooms, air-conditioning units, water tanks, stairhoods and similar roof-top structures on the main roof of the existing building provided that they are exempted from the calculation of GFA under the BO and they do not occupy more than 50% of the roof area of the floor immediately below; and
- (IV) the addition of claddings or curtain walls to the outer face of the external building structures within the lot boundary that are exempted from the calculation of GFA under the BO. In the event that such claddings or curtain walls protrude beyond the lot boundary upon Government land, LandsD may at its sole discretion approve a lease modification subject to such terms and conditions as may be imposed by LandsD at its sole and absolute discretion, including but not limited to the payment of an administrative fee, and with the payment of premium being waived.

For the avoidance of doubt, the building height restriction, if any, under lease must be observed, save that where the building height is exceeded solely for reasons of the recovery of the GFA loss under (II) above and/or the erection or placement of roof-top structures as permitted in (III) above, LandsD may at its sole discretion waive the non-compliance with building height restriction under lease in the special waiver to be granted at nil waiver fee.

- (c) The conversion works required to enable the existing industrial building to be used for the uses set out under the special waiver shall in all respects comply with the prevailing provisions of the BO and must be completed within three years from the date of the special waiver letter. The owner shall provide documentary proof of completion of the conversion works (e.g. Form BA 14 or completion of works contract documents), which should be certified by an Authorized Person (as defined in the BO) or other competent professionals as may be accepted by LandsD at its sole and absolute discretion.
- (d) During the validity period of the special waiver, the owner of the lot or of a unit in the existing industrial building (except the Designated Portion which is subject to the alienation restriction set out in paragraph 3(a)(iv) above) shall not sell, assign or otherwise dispose of the lot or such unit or to enter into any agreement so to do without the prior written consent of the Director. The owner (except the Designated Portion which is subject to the alienation restriction set out in paragraph 3(a)(iv) above) should follow the procedures stated in LandsD Lands Administration Office Practice Note No. 2/2016 which is also applicable to the special waiver under this Practice Note.
- (e) During the validity period of the special waiver, no part of the building may be used for any purposes other than those specified in the special waiver.

4. In making an application, the owner may submit information about the Designated Portion (including the GFA, location, layout, fittings and furnishes, and any other floor conversion proposals) in accordance with paragraph 3(a)(i) above, and the proposed Specified Uses of the Designated Portion in the application³. If the owners do not submit the above information, the Government will consider them as having no preference in relation to the Designated Portion and the Specified Uses. The Government will assess and determine the Designated Portion and Specified Uses. In determining the Designated Portion and the Specified Uses, the decision of the Government shall be final. For the avoidance of doubt, all costs about the wholesale conversion works of the Designated Portion should be borne by the owners. While rental concession for tenants of the Designated Portion is welcomed, the terms and conditions (including the rent payable) of the tenancy remain to be a matter to be agreed between the owners and tenants.

5. Upon submission of the application, the owner shall indicate in the Checklist attached in Appendix I whether the conversion proposal involves changes mentioned in Items (I), (II), (III), (IV) in paragraph 3(b)(ii) above, or any combination thereof. If such conversion proposal would be in breach of the lease conditions (other than the user restriction to which the special waiver relates, or the height restriction to the extent as permitted under Items (II) and (III) in paragraph 3(b)(ii) above), a separate lease modification⁴ is required. LandsD will complete processing the application for lease modification, if approved and granted, before proceeding to execute the special waiver.

6. For the avoidance of doubt, upon expiry, termination or cancellation of the special waiver, the lot shall be subject to the original uses and height restrictions, if applicable, under lease. Owners may apply for a lease modification for any subsisting uses or erected structures in breach of the lease after the expiry, termination or cancellation of the special waiver.

7. The special waiver, if approved by LandsD, shall be executed in the form of a special waiver letter by the lot owner (if the building is in single ownership) or jointly by all existing lot owners (if the building is in multiple ownership) as well as by the Mortgagees, Chargees and Purchasers. The special waiver, if approved, will only be a temporary waiver of the user restriction and the corresponding restrictions for Items (II) to (IV) in paragraph 3(b)(ii) above under lease. If a lot owner wishes to modify any other terms and conditions contained in the lease, a separate lease modification application should be made which would be processed by LandsD separately.

8. An owner shall pay an administrative fee⁵ as and when demanded by LandsD upon submission of an application under this Practice Note. Except in the circumstances described in paragraph 15 below, the administrative fee for the application for the special waiver is non-refundable, including but not limited to the scenario where the owner withdraws

³ Owners are suggested to consider those uses in relation to the arts and cultural sectors, creative industries, innovation and technology industries, social service or community healthcare facilities, sports and recreational uses, or other uses which would bring about wider community benefits. For illustration, owners are encouraged to confine their proposed Specified Uses to specific group(s) of target beneficiaries, e.g. small-scale studios for arts and cultural practitioners, workshops for young entrepreneurs in the creative industries, incubation space for innovation and technology start-ups, elderly service centres, etc.

⁴ The lease modification may take such form and contain such conditions as LandsD may consider appropriate for the case, including, among others, payment of a premium as appropriate.

⁵ The amount of administrative fee will be determined by LandsD from time to time.

the application, or rejects LandsD's offer in respect of the application or is unable to execute the special waiver letter for any reason.

9. Owners are reminded of the need to approach other relevant authorities and departments, such as TPB, Fire Services Department and the Building Authority to ensure compliance with all applicable requirements and to obtain all necessary approvals, permits, permissions or licences that may be required under any Ordinances, by-laws or regulations that are in force from time to time, whether or not the proposed uses that may be required or permitted under the special waiver would involve any alteration, structural or otherwise, to the existing building. The issue of the special waiver should not be construed as any guarantee by LandsD on the feasibility of the proposed uses of the subject building nor accepting any liability on the expenses the owners may or had incurred.

10. If an owner of a lot wishes to revert, after execution of the special waiver, to any of the original uses permitted under the lease but which were not specified in the special waiver, he should submit an application to cancel the special waiver to LandsD. Where the lot is in multiple ownership, an application for cancellation of the special waiver will need to be submitted jointly by all the existing owners of the lot to LandsD, together with the consent of the Mortgagees, Chargees and Purchasers.

11. For the avoidance of doubt, the special waiver, if approved and executed, will have effect only for the lifetime of the building in existence at the date of issue of the special waiver or until the lease term of the lot expires or is terminated, whichever is the earlier. During the validity of, or upon expiry, termination or cancellation of, the special waiver, a premium at full market value (i.e. assessment will be made without the benefit of the special waiver) will be payable if any modification of any lease condition is applied for or required or approved. During the validity of the special waiver, if a lot owner wishes to change any of the special waiver conditions, including any change of the uses permitted under the special waiver, he should submit an application to LandsD, which may, at its sole and absolute discretion, decide to approve or reject such application and, if approval is to be granted it shall be made upon such terms and conditions (including the payment of any premium or charge) as LandsD may consider appropriate. Where the lot is in multiple ownership, the application should be submitted jointly by all existing lot owners together with the consent of the Mortgagees, Chargees and Purchasers.

Other Points to Note

12. The application should be submitted to the LandsD at Units 07-11, 27/F, CDW Building, 382-392 Castle Peak Road, Tsuen Wan, for the attention of the Industrial Buildings Revitalisation Unit ("IBRU"). An applicant may wish to refer to Appendix I for a sample of the format of such an application and Appendix II for information on the use of the information provided in the application.

13. Owners are advised to engage competent professionals to assist them in making the applications.

14. In cases where an industrial building or an industrial lot is in multiple ownership, the owners shall appoint a firm of solicitors to arrange execution by all interested parties of the lease modification letter or special waiver letter (as the case may be), and to confirm the up-to-date ownership status for the lot.

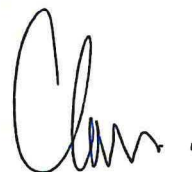
15. It is a pre-requisite that the existing industrial building under application for a special waiver must be located in a zone specified in paragraph 1 above (collectively “Designated Zones”), according to the statutory town plans prepared pursuant to the TPO. For the avoidance of doubt, an application for a special waiver will be rejected if the zone within which the existing industrial building is located in the statutory town plans is changed to one other than any of the Designated Zones before the execution of the special waiver by the owner and the Government. In such event, the administrative fee paid will, at the discretion of LandsD, be refunded.

16. Notwithstanding that there is an existing waiver in respect of any parts of the existing industrial building (“Existing Waiver”), an application for a special waiver under paragraph 2 may be submitted under this Practice Note and the applicable administrative fee shall be paid as and when demanded by LandsD. The Existing Waiver shall be deemed to have been cancelled or terminated simultaneously upon execution of the legal document effecting the special waiver, and notwithstanding any conditions governing the Existing Waiver to the contrary, no waiver fees and administrative fees paid for the Existing Waiver will be refunded and no notice of termination will be given or required.

17. For the avoidance of doubt, concurrent application for a lease modification as referred in LandsD Lands Administration Office Practice Note No. 2/2019 and a special waiver as referred in this Practice Note will not be accepted.

18. Every application submitted to LandsD pursuant to this Practice Note will be considered on its own merits by LandsD at its absolute discretion acting in its capacity as a landlord. This Practice Note shall not constitute any representation on the part of the Government or give rise to any expectation on the part of the applicant that any application submitted to the LandsD will be processed or approved.

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



(Thomas Chan)
Director of Lands
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