**Lands Administration Office**
**Lands Department**

**Practice Note**

**Issue No. 4/2021**

# Approval or Consent under Lease

A Government lease[1] is a contract between the Government as lessor/ landlord and the other party as lessee/ tenant, which may contain, amongst other matters, provisions requiring the prior approval or consent of the lessor/ landlord in relation to various requirements or restrictions specified in the conditions of the lease. The Director of Lands ("the Director") acting in the capacity of a lessor/ landlord for the Government may grant approval or consent subject to such terms and conditions as he sees fit, including the charging of a premium, having regard to the circumstances of the case.

2. Where the approval or consent is obtained pursuant to the relevant clauses of the Government lease and does not involve relaxation of lease requirements or restrictions, no premium will be charged. A list of clauses in the lease involving such typical situations is set out in **Part (I)** of **Appendix A** for reference.

3. As to the approval or consent that has to be obtained from the Government for relaxation of certain requirements or restrictions under the relevant clauses of the Government lease, the Director may exercise his absolute discretion under the lease to grant, not to grant or grant it on such terms and conditions as he deems fit, including the charging of a premium. The general principle is that a **premium may be charged** if the approval or consent would result in an enhancement in development potential or value of the land.

## Streamlined Arrangements

4. As part of the streamlining drive, the Government has reviewed the situations where premium may or may not be charged upon granting of approval or consent for relaxation of requirements or restrictions under the relevant clauses of the Government lease. The Government has set out the situations where **premium may not be charged when granting of approval or consent under certain clauses** on the precondition that the lot owner's proposal for the matter under application is acceptable to the concerned bureau(x) and/ or department(s). A list of such situations with reference to the relevant clauses in the lease is set out in **Part (II)** of **Appendix A**. For general reference, a list of typical situations where premium may be charged is set out in **Appendix B**.

5. The Lands Department ("LandsD") will also put in place streamlined

[1] All references to "Government lease" or "lease" in this Practice Note shall include Government Lease or Conditions of Sale/ Grant/ Exchange, etc. (as the case may be) and "leases" shall be construed accordingly.

arrangements for assessing and granting certain approval or consent under the relevant clauses of the Government lease when checking the general building plans ("GBP") submitted. First, **approval or consent pursuant to the specified clauses in Part (I) of Appendix A and all clauses in Part (II) of Appendix A might generally be assessed and granted at the GBP checking stage**[2]. For these cases, separate application for approval or consent would not be required.

6. Second, for approval or consent of the specified situations in **Appendix B** which might generally be assessed and granted during the GBP checking stage, a fast-track procedure will be introduced. LandsD would aim to advise the lot owner of the premium payable **within 16 weeks** upon receipt of a valid application. Upon the lot owner's settlement of the premium and administrative fee, a consent letter alongside with the GBP approval permitting the lot to be developed in accordance with the agreed set of GBP for the lifetime of the building(s) will be issued. If the lot owner so wishes, he may apply for a lease modification in accordance with the established mechanism instead of seeking approval or consent for the proposed development for its lifetime.

7. Nothing in this practice note ("PN") shall in any way fetter, affect or prejudice the rights of the Government, the Director and their officers under the relevant Government lease or the Government's rights as lessor/ landlord, and all such rights are hereby reserved. Besides, nothing in this PN, including any words and expressions used, shall in any way be construed as any waiver of any provisions under the Government lease or affect or bind the Government in relation to interpretation or enforcement of the terms and conditions of the relevant Government lease. All rights to modify the whole or any part of this PN are hereby reserved.

8. This PN is not applicable to any building which, by reason of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121), is exempted from the provisions of the Buildings Ordinance (Cap. 123).

( Andrew LAI )
Director of Lands
31 December 2021

[2] Lands Administration Office PN Issue No. 4/2018 sets out the various stages of GBP checking under lease conditions. For general information, approval or consent issued under specific provision(s) under lease would be effective for lifetime of the building(s) for which the GBP has been approved.

**Appendix A**

# Typical situations where premium will generally NOT be charged when granting approval or consent under lease

## Part (I) – Clauses under which the granting of approval or consent does not involve relaxation of lease requirements or restrictions

* 1. Design and disposition (or design, disposition and height)

* 2. Recreational facilities

* 3. Office accommodation for watchmen and caretakers

* 4. Owners' corporation or owners' committee office

* 5. Quarters for watchmen and caretakers

6. Diversion or relocation of existing water mains, sewers, pipe works, drainage facilities, footpath, etc. required under lease according to the diverted route delineated in the lease

7. Formation of green/ yellow/ brown area and various coloured areas[1] under lease

8. Deposit of car park layout plan

9. Landscaping

10. Preservation of trees (except retrospective consent for unauthorized tree felling/ interference)

11. Natural terrain

12. Various impact assessments, e.g. Noise Impact Assessment

13. Offensive trades[2]

14. Provision of sales office and show flats

15. Restriction on alienation before compliance (Presale Consent under Lands Department Consent Scheme)

16. Deeds of mutual covenant incorporating Management Agreement (if any)

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[1] In this Practice Note, "coloured areas" means those areas outside lot boundary (usually government land designated by colour on the lease plan) required to be maintained by the lot owner or to be handed back to the Government as specified in the lease conditions. For extension of time under the subject clause, please refer to Item 8 of Appendix B.

[2] Offensive trades clause as referred to in the Lands Administration Office Practice Note Issue No. 3/2021.

17. Master layout plan ("MLP") - approval of MLPs (including their subsequent amendment(s) [3] ) which are submitted for approval after the execution of the Government lease for a proposed development for complying with the lease conditions[4].

* *The approval or consent pursuant to the relevant clauses might generally be assessed and granted at the GBP checking stage.*

[3] Except in general any amendment to the approved MLP as stated in Item 5 of Appendix B and any amendment to the approved MLP which serves as a control on the permissible uses and development parameters of the lot.

[4] For avoidance of doubt, approval of MLPs or their amendments under this Item 17 shall not involve variation of requirements or restrictions under lease conditions.

**Part (II) – Clauses under which the granting of approval or consent involves relaxation of the lease requirements or restrictions**^

1. Vehicular access - Variation or widening of vehicular access points ("VAP") along the same street of a lot provided that the ground level of the lot is not permitted to be used for commercial purposes[5].

2. Noise barriers - Erection of noise barriers within the lot to project beyond lot boundary over Government land under the "Noise Barrier" Clause incorporated alongside a "Noise Impact Assessment" Clause in Conditions of Sale for residential development.

3. Building separation [6] - Variation of projected façade length from the prescribed requirements in Conditions of Sale provided that the Buildings Department ("BD") is satisfied with such development proposal.

4. Parking spaces for disabled persons - Variation of the number and dimension requirements of such spaces as the Building Authority may require and approve would generally not be premium-chargeable[7].

5. Non-building area ("NBA"), Drainage reserve area ("DRA"), Waterworks reserve area ("WRA") or Building setback area[8] - Erection of the following structures within NBA, DRA, WRA or building setback area provided that the erection is considered technically acceptable by the proponent government department(s) under the relevant clause.

   *Features provided at grade*

   (i) Planter/ planter curb
   (ii) Open driveway/ ramp/ road curb/ emergency vehicular access
   (iii) Open pavement/ footpath/ walkway/ steps/ stairs
   (iv) Open swimming pool/ pool deck/ jacuzzi
   (v) Water feature
   (vi) Smoke vent/ smoke vent opening/ floor type smoke outlet/ air intake to basement
   (vii) Surface channel/ drainage outlets/ draw pits

   *Features provided for common use*

   (viii) Fence wall/ boundary wall[9] (including utility cabinets required to be provided at the lot boundary)
   (ix) Usual appurtenances (including water meter cabinet, electricity cabinet, gas cabinet, etc.)

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[5] For avoidance of doubt, variation of VAP does not include addition of VAP.

[6] Joint Practice Note No. 6 issued in September 2019 ("JPN 6") shall be referred to for compliance with the building separation requirement under the Sustainable Building Design Guidelines.

[7] Inclusion of the "Parking spaces for disabled persons" clause in old leases could be dealt with by technical modification.

[8] JPN 6 shall be referred to for compliance with the building setback requirement under the Sustainable Building Design Guidelines.

[9] Including the erection of noise barriers as required under lease or to implement the approved noise impact assessment under lease.

(x) Garden fence wall/ planter wall
(xi) Entrance gates/ metal gates/ drop bars/ crash gates
(xii) Covered walkway at ground floor or podium level/ trellis
(xiii) Outdoor A/C plant
(xiv) Canopy which covers common areas

*Safety Installations*

(xv) Fire service installations (e.g. street fire hydrant, sprinkler inlet, F.S. inlet, etc.)
(xvi) Parapet wall of ramping driveways for safety purpose

*Other Features*

(xvii) Vertical green features
(xviii) Minor structures holding utilities such as pipes and drains
(xix) Doors outside NBA/ building setback area but swinging over NBA/ building set back area
(xx) Temporary or supporting structures during construction

^ *The approval or consent pursuant to all clauses under this Part might generally be assessed and granted at the GBP checking stage.*

**Appendix B**

# Typical situations where premium will be charged when granting approval or consent under lease

# 1. Relaxation of restriction provisions for the setback area as delineated on the existing lease plan in accordance with the Building Setback Clause[1] where the Director is the authority to grant consent under such Clause[2].

# 2. Exclusion of aboveground ancillary parking spaces accepted by BD on technical grounds from gross floor area calculation.

# 3. Varying the number and dimension required under the parking provision or loading / unloading provision.

# 4. Varying the VAP as stipulated under lease other than the scenario as stated in Item 1 in Part (II) of Appendix A.

5. Amendment to the approved MLP or control drawings to which the lease has made specific reference for the purpose of tying the proposed development to such MLP or control drawings.
6. Permission for cutting away on government land under the Set Back Clause on exceptionally geotechnical reasons.
7. Diversion of existing pipework / drainage system or installation in or varying the alignment / layout / dimension of NBA, DRA and WRA[2].
8. Extension of time in respect of formation of coloured areas as delineated on lease plan if the expiry date specified is different from that of the building covenant stipulated in the Building Covenant Clause.

# *The granting of approval or consent pursuant to the relevant clauses might generally be assessed and granted at the GBP checking stage. LandsD would aim to advise the lot owner of the premium payable within 16 weeks upon receipt of a valid application.*

[1] JPN 6 shall be referred to for compliance with the building setback requirement under the Sustainable Building Design Guidelines.

[2] For the avoidance of doubt, approval or consent for erection of those structures within NBA, DRA, WRA or building setback area referred to in Item 5 under Part (II) of Appendix A is not subject to premium payment.