



**Lands Administration Office
Lands Department**

Practice Note

Issue No. 3/2012

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 land owner who wishes to apply for:

- (a) a lease modification or a land exchange for development of an industrial lot for high-tier data centre use; or
- (b) a waiver for data centre¹ use in part of an industrial building situated in a zone designated for use as either “Industrial”, “Commercial” or “Other Specified Uses (Business)” (“OU(B)”) according to the statutory town plans

may wish to refer to this Practice Note before submitting an application to the Lands Department (“LandsD”). Applications for the purpose of this Practice Note may only be submitted² to LandsD during the period from 25th June 2012 to 31st March 2016 (both dates inclusive). Applications submitted outside the said period will not be considered.

¹ A data centre is a facility for housing computer systems, servers, telecommunications equipment, and associated support components in a secure and controlled environment. The support components, depending on scale, generally include electrical and mechanical facilities such as uninterruptible power supply, power distribution, standby power generation, heat rejection, computer room air-conditioning, fire suppression, environmental control and security control.

² For an application by post, the date on the postal chop shall be taken as the date of submission to LandsD. For other means of submission, the date of receipt by LandsD will be taken as the date of submission.

Lease Modification (or a Land Exchange) for Development of an Industrial Lot³ for High-tier Data Centre⁴ Use

2. An owner of an industrial lot may apply for a lease modification (or a land exchange, as the case may be) for development of the lot for high-tier data centre use (wholly or in conjunction with other uses). For the purpose of this Practice Note, any reference to a lease modification shall include a land exchange and any reference to a lease modification letter shall include Conditions of Exchange, where the context so admits or requires.

3. An application may be submitted for development of an industrial lot for high-tier data centre use up to or less than the maximum permissible development intensity permitted under the relevant statutory town plan or, where the statutory town plan does not specify the maximum permissible development intensity, the Buildings Ordinance (“BO”). The data centre part of the proposed development should not be less than 40% of the applicable maximum permissible development intensity or a plot ratio of 2.5, whichever is the higher. All applications approved under this special arrangement will be subject to such terms and conditions (including but not limited to payment of a premium and that not more than 30% of the total usable floor area of the data centre part shall be used for ancillary office) as may be imposed by LandsD.

4. The maximum development intensity for the proposed development (including that of the data centre part) as approved by LandsD will be specified as part of the terms and conditions of the lease modification letter. The land premium payable by the owner for the lease modification, to be assessed by LandsD, will be an amount equivalent to the difference between the value of the land under the current lease conditions and its value under the proposed modified lease conditions. Premium assessment for the data centre part (irrespective of whether the development is wholly or partially for use as high-tier data centre) will be on the basis of “high-tier data centre” use.

5. An administrative fee will be payable in two instalments to LandsD for processing the application. The initial instalment will be payable as and when demanded by LandsD upon submission of the application. The balance of the administrative fee will be payable on the acceptance of the binding basic terms offer. Where applicable, a fee charged for services rendered by the Legal Advisory and Conveyancing Office of LandsD for processing the application will also be payable as and when demanded by LandsD (“LACO Fee”). The administrative fee and (where applicable) LACO Fee will not be refunded in any of the circumstances rendering such fees non-refundable as set out in any letters demanding payment thereof.

³ An industrial lot refers to a lot which, under the terms of its Government lease, shall not be used for any purpose other than for industrial or godown purposes or both. Lots for special industrial uses such as those located in industrial estates, storage premises in container terminals and flatted factories built by the Hong Kong Housing Authority are excluded.

⁴ A high-tier data centre is a data centre designed to support concurrent maintenance such that the data centre services will not be interrupted during planned maintenance to the component(s) in the data centre. It is also designed for high availability of operation and services to a level as generally accepted by the industry. A high-tier data centre generally includes the following functions and features:

- Redundant telecommunications access;
- Redundant support components, including but not limited to power generator and cooling equipment;
- Redundant power and cooling distribution paths;
- Dedicated and environmentally controlled space for the computer room;
- Dedicated cooling equipment; and
- Dedicated power generator and associated fuel tank.

The redundant systems will be able to take over the functions of the primary systems to ensure uninterrupted operation. The dedicated equipment will be used solely for the operation of the data centre and will not be shared with non-data centre uses.

Waiver for Data Centre use in Part of an Industrial Building⁵

6. An owner of a part of an industrial building (such part is hereinafter referred to as the “Industrial Premises”), located in a zone designated either for “Industrial”, “Commercial” or “OU(B)” use according to the statutory town plans, may apply for a waiver at nil waiver fee for the change of use of the Industrial Premises or any part thereof as data centre, for the lifetime of the industrial building or until expiry or termination of the current Government lease of the lot, whichever is the earlier (“Data Centre Waiver”), if at the date of submission of the application the age of the industrial building is not less than 15 years (calculated from the date of the last-issued occupation permit for the industrial building).

7. Approval for the grant of the Data Centre Waiver is subject to such terms, covenants and conditions as may be imposed by LandsD, including but not limited to the following:

- (a) any building works permitted under the Data Centre Waiver shall in all respects comply with the prevailing provisions of the BO;
- (b) such building works must be completed within three years from the date of the Data Centre Waiver letter. The owner shall provide documentary proof of completion of the building works (if any) (e.g. Building Authority’s acknowledgement of the Form BA 14 submitted), which should be certified by an Authorized Person (as defined in the BO);
- (c) the grant of the Data Centre Waiver shall not prejudice any of the rights and remedies under the Deed of Mutual Covenant of the industrial building (if applicable);
- (d) the owner 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 use of the Industrial Premises or any part thereof for the purpose of data centre; and
- (e) during the validity period of the Data Centre Waiver, no part of the Industrial Premises may be used for any uses other than data centre.

8. The Data Centre Waiver will primarily waive the Government’s right to enforce the user restriction in the Government lease for the Industrial Premises. If the owner of the whole industrial lot where the Industrial Premises are situated, after obtaining a Data Centre Waiver of the Industrial Premises, wishes to modify any other terms contained in the Government lease, a separate lease modification⁶ application will have to be submitted and will be processed by LandsD separately.

9. The owner shall pay an administrative fee as and when demanded by LandsD upon submission of the application. The administrative fee will not be refunded if the owner either withdraws the application, rejects LandsD’s offer in respect of the application, is unable

⁵ An industrial building refers to a building lawfully erected and which is standing on a lot at the date of submission of an application under this Practice Note which, under the terms of its Government lease, shall not be used for any purpose other than for industrial or godown purposes or both. Special factories such as those located in industrial estates, storage premises in container terminals and flatted factories built by the Hong Kong Housing Authority are excluded.

⁶ 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.

to duly execute the documentation for the application for any reason to the satisfaction of LandsD or in any of the circumstances rendering such administrative fee non-refundable as set out in any letters demanding payment thereof.

10. The owner is reminded of the need to approach other relevant authorities and departments, such as the Fire Services Department and the Building Authority, regarding any other approvals 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 permitted under the Data Centre Waiver would involve any alteration, structural or otherwise, to the industrial building.

11. If the owner wishes to revert, after execution of the Data Centre Waiver, to any of the original uses permitted under the Government lease, he should submit an application to LandsD to cancel the Data Centre Waiver.

12. The Data Centre Waiver will have effect only for the lifetime of the building in existence at the date of issue of the Data Centre Waiver or until the Government lease of the lot expires or is terminated, whichever is the earlier. Notwithstanding the Data Centre Waiver, a premium at full market value (i.e. assessment will be made without the benefit of the Data Centre Waiver) will be payable if any modification of any Government lease condition is applied for and approved. During the validity period of the Data Centre Waiver, if the owner wishes to change any of the Data Centre Waiver conditions, including any change of the area to be covered under the Data Centre Waiver, he should submit an application to LandsD, which may, at its sole and absolute discretion, approve or reject and any approval granted may be made upon such terms and conditions (including the payment of any premium or charge) as it may impose.

Other Points to Note

13. The application should be submitted to the LandsD Headquarters at 19/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong, for the attention of the Redevelopment and Conversion of Industrial Buildings Team (“RCIB”). The owner may wish to refer to Appendix I for a sample application and Appendix II for a note on the use of the personal data required to be provided in the application.

14. The owner is advised to engage competent professionals to assist them in submitting the applications.

15. If a lease modification application (“Original Application”) for development of an industrial lot is in the course of being processed (i.e. the Original Application has been submitted prior to 25th June 2012), the owner may, within the period specified in paragraph 1 hereof, submit an application (“New Application”) for either (I) development of the lot for high-tier data centre use referred to in paragraph 2 hereof or (II) a Data Centre Waiver for part of an industrial building under paragraph 6 hereof (if applicable) with a request that LandsD will defer processing the Original Application pending the outcome of the New Application. Should the New Application be rejected or not pursued for any reason, LandsD will resume processing the Original Application unless such application is withdrawn by the owner. If the New Application is approved and the relevant documentation is formally executed,

- (a) where the New Application is submitted under item (I) above, the Original Application will be treated as withdrawn by the owner; or

- (b) where the New Application is submitted under item (II) above, LandsD will continue processing the Original Application upon receipt of a written request from the owner.

The owner should note that:

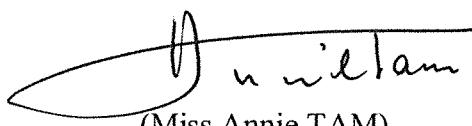
- (i) the administrative fee and LACO Fee paid for the Original Application will not be refunded in any case;
- (ii) an administrative fee and LACO Fee for the New Application will be payable as and when demanded by LandsD following submission of the New Application; and
- (iii) the administrative fee and LACO Fee for the New Application will not be refunded if the owner either withdraws the New Application, rejects LandsD's offer in respect of the New Application, is unable to duly execute the documentation for the New Application for any reason to the satisfaction of LandsD or in any of the circumstances rendering such fees non-refundable as set out in any letters demanding payment thereof.

16. Notwithstanding that there is an existing waiver in respect of any units of the Industrial Premises ("Existing Waiver"), an application for a Data Centre Waiver for or including those units may be submitted under paragraph 6 hereof and the applicable administrative fee shall be paid as and when demanded by LandsD. The Existing Waiver will be terminated by agreement simultaneously upon the execution of the Data Centre Waiver, and notwithstanding any conditions in the Existing Waiver to the contrary, no waiver fees paid for the Existing Waiver will be refunded and no notice of termination will be given or required. There will be no refund of any administrative fees paid under the Existing Waiver.

17. An application for a lease modification as referred to in paragraph 2 hereof and a Data Centre Waiver as referred to in paragraph 6 hereof may not be submitted concurrently.

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. The amount of any administrative fee and LACO Fee mentioned herein will be determined by LandsD from time to time. 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 owner 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.



Annie Tam
(Miss Annie TAM)
Director of Lands
18 June 2012

Sample of an Application

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 : Chief Estate Surveyor/Headquarters,
Redevelopment and Conversion
of Industrial Buildings Team,
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 _____)*] hereby apply for a (please specify [*and note paragraph 1 of Practice Note Issue No. 3/2012*]) 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.

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

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.

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 ⁽¹⁾ :

General :

- (i) 2 copies ⁽²⁾ of a complete set of Government Land Grant documents (including all executed lease modification letters and extension letters, if any) affecting the property ⁽³⁾.
- (ii) A copy of an up-to-date location / site plan on an appropriate scale (normally 1:1000) showing the property.
- (iii) 2 copies ⁽²⁾ of a computer printout containing the historical and current ownership particulars of the property.
- (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.
- (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.
- (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 RCIB ⁽⁴⁾ of 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;
- (v) A copy of the Town Planning Board approval letter for the proposed uses or development, if applicable.
- (vi) If submitted by an agent, a written authorization from all the registered owners and purchasers (if applicable) of the property.

For Lease Modification (including a Land Exchange) only :

- (vii) 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

No

(please provide detail)

- (viii) 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 practice note, including but not limited to the conceptual design of the data centre.
(please provide details on separate sheet)

- (ix) A list of green measures to be adopted for the planned high-tier data centre and elaboration of each of such measures (e.g. the adoption of design and/or performance criteria under prevailing building environmental assessment methods).

For Waiver only :

- (x) 2 copies of a complete set of the building plans⁽⁵⁾ 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⁽⁵⁾ of part of the existing building under application.
- (xi) 2 copies of all occupation permits⁽⁵⁾ 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 practice note, 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⁽⁶⁾ 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)

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

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

(xvii) 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.

(xviii) 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.

(xix) 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) RCIB refers to the Redevelopment and Conversion of Industrial Buildings Team of the Lands Department at 19/F, North Point Government Offices, 333 Java Road, North Point.
- (5) The plans and documents should be certified by the Authorized Person acting for the applicant.
- (6) The proposal 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.

Note on use of Personal Information Required in the Application

Purpose of Collection	<p>The personal data provided by means of this form will be used by the Lands Department for the purpose of considering and processing the application.</p> <p>The provision of personal data by means of this form is voluntary. If you do not provide sufficient information, the Lands Department may not be able to process your application.</p>
Class of Transferees	The personal data you provided by means of this form may be disclosed to other Government bureaux / departments for the purpose mentioned above.
Access to Personal Data	The applicants have a right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. Such right of access includes the right to obtain a copy of the personal data provided on this form.
Enquiries	<p>Enquiries concerning the personal data collected, including the request for access and corrections, should be addressed to:</p> <p style="text-align: center;">The Office Personal Data Controlling Officer of the Lands Department</p>