

## LEGISLATIVE COUNCIL BRIEF

### STANDARD RATES FOR CHARGING LAND PREMIUM ON LEASE MODIFICATION APPLICATIONS IN NEW DEVELOPMENT AREAS

#### INTRODUCTION

At the meeting of the Executive Council on 22 March 2022, the Council **ADVISED** and the Chief Executive **ORDERD** that –

#### *For lease modification<sup>1</sup> applications in New Development Areas (“NDAs”)*

- (a) the use of standard rates for premium assessment should be offered as an option (instead of mandated);
- (b) separate standard rates should be set for each NDA and for different uses, to be promulgated around the time when lease modification applications are invited for the NDA in question, and remain unchanged for the relevant processing period of not more than three years;
- (c) the levels of standard rates should be determined by the Director of Lands with reference to market information; and

#### *For the Pilot Scheme for charging land premium at standard rates for lease modifications involving redevelopment of industrial buildings (“IBs”) (“the Pilot Scheme for IBs”)*

- (d) the duration should be extended for one year, to 31 March 2024, with rates remaining unchanged.

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<sup>1</sup> References to a lease modification in this brief include a land exchange, the key difference being a land exchange usually involves changes in land boundary and/or tenure whereas a lease modification usually involves only changes in other lease conditions.

## **JUSTIFICATIONS**

### **The experience of using standard rates under the Pilot Scheme for IBs**

2. On 15 March 2021, the Government launched the two-year Pilot Scheme for IBs to provide applicants of lease modification for redevelopment of pre-1987 IBs<sup>2</sup> with an option of having land premium charged at standard rates. As compared with the conventional mechanism where the Lands Department (“LandsD”) assesses land premium having regard to case-specific circumstances<sup>3</sup> and related market comparables, the Pilot Scheme for IBs emphasises upfront certainty in land premium through the promulgation of a set of standard rates in advance.

3. The Pilot Scheme for IBs is generally well received by the relevant stakeholders for its clarity, simplicity, and effectiveness in giving impetus to the transformation of old IBs. In view of the positive response, the 2021 Policy Address announced the extension of premium assessment by standard rates to lease modification applications for development of land in NDAs.

### **Extension of standard rates to lease modifications in NDAs**

4. Under the “Enhanced Conventional New Town Approach” (“ECNTA”), the Government will resume and clear all private land planned for developments, and carry out site formation works and provide infrastructure before allocating the land for various purposes including disposal of land for private developments. Prior to land resumption, the Government may allow lease modification applications from landowners of sites earmarked for private development, subject to their meeting of the criteria and conditions as specified by the Government<sup>4</sup>. So far, the Government has announced the adoption of ECNTA for the Kwu Tung North (“KTN”) NDA, Fanling North (“FLN”) NDA and Hung Shui Kiu/Ha Tsuen NDA.

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<sup>2</sup> Pre-1987 IBs refer to those IBs wholly or partly constructed on or before 1 March 1987, or those constructed with building plans first submitted to the Building Authority for approval on or before the same date.

<sup>3</sup> Site attributes such as location, configuration, accessibility, view, etc..

<sup>4</sup> Such as a minimum scale of development and the provision of compensation and rehousing to its occupiers comparable to the Government’s package under Government development clearance.

5. Lease modification applications under the ECNTA are required to be executed by a specified deadline, failing which the Government will proceed to initiate the procedures of land resumption in taking forward the development in order not to delay the overall works programme. As part of the lease modification conditions, the applicant may also be required to construct certain public facilities or works for supporting not only his development but the NDA at large. As such, the ECNTA makes use of private initiative to advance delivery of housing and public facilities without compromising Government's planning intention.

6. Applying standard rates to lease modification applications in NDAs under the ECNTA is an appropriate next step after the introduction of the Pilot Scheme for IBs, for the following reasons –

- (a) **Facilitate timely conclusion of applications subject to a time bar –** Allowing lease modifications under the ECNTA has the advantage of leveraging private initiative and resources to expedite the delivery of the NDA projects. The applications are subject to execution deadlines to ensure no delay in the overall development programme of the relevant NDAs. The to-and-fro premium negotiations under the conventional mechanism may delay the completion of the lease modifications and affect their chance of conclusion by the deadline. With the use of standard rates in land premium assessment, applicants who find the rates acceptable will be able to conclude the case without premium negotiation. More lease modification applications may materialise due to shortened time for premium determination and enhanced certainty.
- (b) **Provide quick testing ground for application of standard rates to rural land –** As sites in the announced NDAs have a high degree of similarities in development context for being high-density communities supported by comprehensive infrastructures, the standard rates and related implementation details can be formulated more readily. On the contrary, standardisation of land premium for all rural land in the New Territories is much more challenging due to its vast geographical span and the significant variance in land value caused by the diverse circumstances of different land parcels before and after

lease modification<sup>5</sup>. The implementation of standard rates in NDAs could be launched quickly to allow accumulation of experience for considering whether widening of the scope to developments involving rural land in the New Territories in general is practicable.

### **Key parameters for applying standard rates to lease modifications in NDAs**

7. As with the Pilot Scheme for IBs, the application of standard rates in NDAs<sup>6</sup> would be premised on the same guiding principles of clarity, simplicity and certainty. The key parameters are as follows. Where necessary, the parameters may be suitably refined in light of implementation experience in future with a view to better achieving our policy objectives and reflecting the circumstances of individual NDAs.

#### (A) Duration

8. The Pilot Scheme for IBs is time-limited, so as to give IB owners a push factor in taking forward redevelopment expeditiously to address the potentially hazardous situation of IBs accommodating non-industrial uses and optimise the use of such land. The case of NDAs is different. As the planning and implementation of NDA projects is an on-going measure to increase land supply, the application of standard rates in NDAs will be a standing arrangement to complement the implementation of the ECNTA.

#### (B) Standard rates as an option

9. As with the Pilot Scheme for IBs, the use of standard rates for premium assessment will not be mandated but will be offered as an alternative option to the conventional premium assessment mechanism. Applicants are required to

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<sup>5</sup> Unlike IBs which are mainly concentrated in developed urban areas with similar circumstance and standard rates could be readily set for the whole of Hong Kong by a few broad regions, the circumstances of rural areas could vary significantly from one land parcel to another due to factors such as location, accessibility, development extent of the neighbourhood, and infrastructure readiness.

<sup>6</sup> It is possible that some lease modification sites within NDAs may involve existing pre-1987 IBs. For such lease modification applications in NDAs, they are not eligible for the Pilot Scheme for IBs, meaning that applicants will only be allowed to opt for the standard rates for NDAs but not those under the Pilot Scheme for IBs. This is because the standard rates for NDAs, tailor-made for the specific NDA, would be a more representative land premium option for the NDA concerned than the standard rates for IBs which are formulated for a wider region.

opt by the commencement of land premium assessment (i.e. upon the acceptance of provisional basic terms offer (“PBTO”) of the lease modification<sup>7</sup>). The choice for a particular premium assessment option upon acceptance of PBTO will be irreversible, meaning that the applicant is not allowed to change course afterwards (unless he applies and pays administrative fee afresh and that the re-application is able to be submitted before the normal application deadline). Applicants will not be allowed to have their premium assessed by the conventional approach first, and opt after comparing the assessed premiums under the conventional approach and the standard rates approach, as it will defeat the objective of speeding up the completion of lease modifications.

#### (C) Separate rates for different NDAs and validity of the rates

10. As the context including the geographical location and characteristics of different NDAs vary, LandsD will assess and set standard rates for each NDA separately. Having said that, we do not preclude the possibility that one NDA may have more than one set of rates as the circumstances may warrant, for instance, an NDA with a large geographical area and/or diverse attributes within it. Around the time when lease modification applications are invited for an NDA, LandsD will promulgate the applicable standard rates. In general, the processing period of applications in respect of an NDA, or part of an NDA, from invitation of applications to deadline of execution, is not more than three years. As such, no adjustment of rates will be made for the limited duration of processing to provide certainty and minimise dispute.

#### (D) Separate rates for different uses

11. Within each NDA, separate standard rates will be set for different Before Use(s) (i.e. the permitted use(s) under existing lease) and After Use(s) (i.e. the permitted use(s) after lease modification). These rates will be used for computing the Before Value (i.e. the land value under the existing lease) and the After Value (i.e. the land value under the modified lease). The land premium payable for the lease modification will be the difference between the After Value and the Before Value, in line with the principle in conventional assessment mechanism.

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<sup>7</sup> Under established practice, LandsD would first offer the terms and conditions of the lease modification (known as “provisional basic terms”) to the applicant for the latter’s acceptance. Once accepted, LandsD will commence land premium assessment based on the terms and conditions so accepted.

12. Regarding the Before Uses, existing land in NDAs can be generally categorised into agricultural land on which building structure(s) is not allowed, and building land on which building structure(s) is allowed. With reference to such profile of existing land within NDAs, in general, separate standard rates will be set for the following uses, namely: (a) agricultural use, (b) non-residential building use, and (c) residential building use. For (a) agricultural use, the standard rate will be expressed on a per site area basis as no structure is allowed. For building uses, separate standard rates will be expressed on a per gross floor area (“GFA”) basis for (b) non-residential use and (c) residential use.

13. As for the After Uses, separate rates will be set for residential use and non-residential use, expressed on a per GFA basis. The standard rates for non-residential use will be applicable to both commercial and modern industrial uses without further differentiation as with the Pilot Scheme for IBs, for simplicity.

14. The above illustrates the general framework of separate rates for different uses. The types of Before Uses and After Uses for the setting of standard rates and the grouping of the rates for different uses for application to different NDAs may be suitably refined by LandsD, in light of any special circumstances governing the land uses of the NDAs.

15. For the avoidance of doubt, where the applicant is entrusted by the Government under the lease modification to construct Government facilities/works<sup>8</sup>, the practice of allowing premium deduction for the capital costs of constructing such facilities/works<sup>9</sup> will continue to apply, i.e. with deduction made on the premium, the latter of which is assessed at standard rates. It is within the Government’s absolute and final discretion as to what is deductible, with costs advised by the relevant departments and non-negotiable to the applicants.

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<sup>8</sup> Government facilities/works refer to those which the applicant is required to construct and hand back to the Government upon commissioning or upon demand, or to operate or manage on behalf of the Government for public use.

<sup>9</sup> Under the established practice applicable to lease modifications in general, the construction of Government facilities/works may be entrusted to the applicant with capital costs funded by the Government. The means of funding may take the form of Government expenditure charged to a suitable funding vote (e.g. social welfare facilities through the Lotteries Fund) or revenue forgone through upfront deduction from land premium (e.g. formation of public roads or construction of public transport interchange). Where the construction of a certain type of Government facilities/works is funded by deduction from land premium as a matter of practice, such deduction will continue to be allowed on premium assessed and charged at standard rates.

## (E) Levels of standard rates

16. The level of standard rates for the respective types of uses will be determined by the Director of Lands with reference to the latest market information reflecting the land value in the relevant locations and the relevant uses, including the results of land sales by the Government and land transactions of private sector, land premium for lease modification cases assessed by the conventional mechanism, and having regard to the relativity of the sale prices of the different types of completed developments.

17. There are views that the standard rates for Before Uses should be pitched at the Zone A ex-gratia compensation rates under the Ex-gratia Zonal Compensation System, which is currently at \$1,332/sq. ft. (or around \$14,000/m<sup>2</sup>) on per site area basis for agricultural land and \$2,643/sq. ft. (or around \$28,000/m<sup>2</sup>) on per site area basis in addition to valuation for building land<sup>10</sup>. The Government, upon due consideration, considers it not appropriate to adopt the ex-gratia compensation rates as the standard rates for Before Uses, as the ex-gratia compensation rate serves a completely different purpose of compensation (and for this reason it carries an ex-gratia element beyond the value of the land to facilitate land resumption and is not an indicator of land value). Using the ex-gratia compensation rates as the Before Value deviates from the established principle in land premium assessment (that the assessment should reflect the value of land based on existing lease but not additional value such as hope value), and fuels speculation in land transactions and property market in the New Territories. As a matter of fact, there are lease modifications concluded under the conventional premium assessment mechanism on the basis of a Before Value (around \$3,400-4,000/m<sup>2</sup>) which was much lower than the Zone A ex-gratia compensation rate.

### **Illustration**

18. Using the above framework, LandsD has drawn up the standard rates for the Remaining Phase of KTN & FLN NDAs. The rates, explanatory notes and computation examples are in **Annex A**.

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<sup>10</sup> The ex-gratia compensation is an alternative compensation arrangement under Government land resumption which landowners may choose in lieu of statutory compensation assessed case-by-case according to the relevant legislations on land resumption. Zone A, applicable to land resumed for NDAs, is the highest among the four tiers under the Ex-gratia Zonal Compensation System.

## **Short extension of the Pilot Scheme for IBs**

19. As at end-January 2022, in about ten months from the launch of the Pilot Scheme for IBs, seven lease modification cases for IB redevelopment have had land premium agreed. Five cases were based on standard rates and the remaining two cases were by the conventional mechanism. By comparison, in the three years prior to the launch of the scheme, on average only about three to four lease modifications cases had premium agreed per year. For cases opting for standard rates, the time required for premium agreement is shortened significantly as no further negotiation is necessary between the time of offer and acceptance. To illustrate, land premium will generally be accepted within one month from the issuance of standard rates premium offer by LandsD, as compared to an average of seven months under the conventional mechanism for similar cases in the previous three years.

20. Nonetheless, to allow more time for IB owners to come forward with redevelopment proposals and taking into account the uncertainties brought by the pandemic, the Pilot Scheme for IBs will be extended for one year to 31 March 2024. The rates will remain unchanged, having regard the short duration of extension and the need to provide certainty for potential applicants. The short extension will allow us to observe the progress of IB revitalisation and accumulate more operational experience to facilitate a more informed review.

## **IMPLICATIONS**

21. The use of standard rates in land premium assessment has economic, financial and civil service, environmental, sustainability and family implications as set out at **Annex B**. The arrangements are in conformity with the Basic Law, including the provisions concerning human rights, and has no legal, productivity or gender implication.

## **PUBLIC CONSULTATION**

22. Since the announcement of our intention to extend standard rates in land premium assessment to lease modification applications in NDAs in the 2021 Policy Address, we have communicated with relevant stakeholders in various contexts, including the Land and Development Advisory Committee, as



well as the Real Estate Developers Association of Hong Kong and the Hong Kong Institute of Surveyors. Stakeholders welcomed the implementation of the standard rates option to facilitate private developments in NDAs.

## **PUBLICITY**

23. We will issue a press release and LandsD will upload relevant Practice Notes to announce the implementation details on the same day as this Legislative Council Brief. Briefings will also be arranged for the industry as appropriate. Around the time when lease modification applications are invited for an NDA, a separate Practice Note will be issued to announce the applicable standard rates.

## **ENQUIRIES**

24. Enquiries relating to this brief can be directed to Miss Polly Chong, Principal Assistant Secretary for Development (Planning and Lands) at 3509 8830.

**Development Bureau**  
**31 March 2022**

**Standard rates, explanatory notes and computation examples for the Remaining Phase of the KTN & FLN NDAs**

**Standard Rates**

	Before Uses			After Uses	
	Agricultural use	Non-residential building use	Residential building use	Non-residential use	Residential use
KTN NDA	\$4,000/m <sup>2</sup>	\$20,000/m <sup>2</sup>	\$45,000/m <sup>2</sup>	\$35,000/m <sup>2</sup>	\$60,000/m <sup>2</sup>
FLN NDA	\$4,000/m <sup>2</sup>	\$20,000/m <sup>2</sup>	\$45,000/m <sup>2</sup>	\$30,000/m <sup>2</sup>	\$55,000/m <sup>2</sup>

Note: All standard rates above are on a “per GFA basis”, except those for agricultural use which are on a “per site area basis”.

**Explanatory notes**

The premium chargeable at standard rates will be the difference between the land values **after** and **before** the lease modification (“**After Value**” and “**Before Value**” respectively), minus a deductible being the capital cost of constructing Government facilities/works (“**Deductible**”)<sup>1</sup>, where applicable for the case in question. The **After Value** and **Before Value** are computed by multiplying the standard rates of the uses after and before the lease modification (“**After Rate**” and “**Before Rate**”)<sup>2</sup>, by the GFAs (or site area for agricultural land) after and before (“**After GFA**” and “**Before GFA or Site Area**”)<sup>3</sup>.

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<sup>1</sup> The deductible sum will be conveyed to the applicant before the deadline of exercising his option on premium assessment approach as far as possible.

<sup>2</sup> The rate for residential use is applicable to GFA not prohibiting residential use; the rate for non-residential use is applicable to the remainder of the GFA (except where the non-residential use involved is petrol filling station, storage of dangerous goods or offensive trades use, in which case the standard rates for general non-residential use may not be applicable).

<sup>3</sup> LandsD will determine the site area/GFA for the purpose of premium assessment (taking into account any supporting information from the applicant), and convey so to the applicant before the deadline of exercising his option on premium assessment approach. If no GFA is specified under the existing lease governing the building lot to facilitate the determination of Before GFA, a general

## Computation examples

### Case A – single before use and single after use with no deductible

#### Case background

	<b>KTN NDA</b>	<b>Applicable standard rates</b>
<b>Proposed lease conditions after modification</b>	Residential use: 24 000 m <sup>2</sup> (GFA)	\$60,000/m <sup>2</sup>
<b>Existing lease conditions before modification</b>	Agricultural use: 4 000 m <sup>2</sup> (site area)	\$4,000/m <sup>2</sup>
<b>Deductible</b>	Nil	N.A.

#### Premium assessment

$$\begin{aligned}\text{Premium payable} &= \text{After Value} - \text{Before Value} - \text{Deductible} \\ &= \$60,000/\text{m}^2 \times 24\,000 \text{ m}^2 \\ &\quad - \$4,000/\text{m}^2 \times 4\,000 \text{ m}^2 - \$0 \\ &= \$1,440 \text{ million} - \$16 \text{ million} \\ &= \mathbf{\$1,424 \text{ million}}\end{aligned}$$

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assumption will be made on the permissible GFA (e.g. a plot ratio of 1.33 with reference to the most common restriction in land lease in the New Territories).

## Case B – multiple before uses and multiple after uses with no deductible

### Case background

	<b>FLN NDA</b>	<b>Applicable standard rate</b>
<b>Proposed lease conditions after modification</b>	Residential use: 24 000 m <sup>2</sup> (GFA)	\$55,000/m <sup>2</sup>
	Non-residential use: 8 000 m <sup>2</sup> (GFA)	\$30,000/m <sup>2</sup>
<b>Existing lease conditions before modification</b>	Agricultural use: 2 400 m <sup>2</sup> (site area)	\$4,000/m <sup>2</sup>
	Non-residential building use: 2 800 m <sup>2</sup> (GFA)	\$20,000/m <sup>2</sup>
	Residential building use: 800 m <sup>2</sup> (GFA)	\$45,000/m <sup>2</sup>
<b>Deductible</b>	Nil	N.A.

### Premium assessment

$$\begin{aligned}\text{Premium payable} &= \text{After Value} - \text{Before Value} - \text{Deductible} \\ &= (\$55,000/\text{m}^2 \times 24\,000 \text{ m}^2 \\ &\quad + \$30,000/\text{m}^2 \times 8\,000 \text{ m}^2) \\ &\quad - (\$4,000/\text{m}^2 \times 2\,400 \text{ m}^2 + \$20,000/\text{m}^2 \times 2\,800 \text{ m}^2 \\ &\quad + \$45,000/\text{m}^2 \times 800 \text{ m}^2) - \$0 \\ &= \$1,560 \text{ million} - \$101.6 \text{ million} \\ &= \mathbf{\$1,458.4 \text{ million}}\end{aligned}$$

## Case C – multiple before uses and single after use with deductible

### Case background

	<b>FLN NDA</b>	<b>Applicable standard rate</b>
<b>Proposed lease conditions after modification</b>	Non-residential use: 27 500 m <sup>2</sup> (GFA)	\$30,000/m <sup>2</sup>
<b>Existing lease conditions before modification</b>	Agricultural use: 500 m <sup>2</sup> (site area)	\$4,000/m <sup>2</sup>
	Non-residential building use: 2 500 m <sup>2</sup> (GFA)	\$20,000/m <sup>2</sup>
	Residential building use: 3 000 m <sup>2</sup> (GFA)	\$45,000/m <sup>2</sup>
<b>Deductible</b>	\$35 million (capital cost for constructing a Public Transport Interchange)	N.A.

### Premium assessment

$$\begin{aligned}
 \text{Premium payable} &= \text{After Value} - \text{Before Value} - \text{Deductible} \\
 &= (\$30,000/\text{m}^2 \times 27\,500 \text{ m}^2) \\
 &\quad - (\$4,000/\text{m}^2 \times 500 \text{ m}^2 + \$20,000/\text{m}^2 \times 2\,500 \text{ m}^2 \\
 &\quad + \$45,000/\text{m}^2 \times 3\,000 \text{ m}^2) - \$35,000,000 \\
 &= \$825 \text{ million} - \$187 \text{ million} - \$35 \text{ million} \\
 &= \mathbf{\$603 \text{ million}}
 \end{aligned}$$

## **Implications of the arrangements of applying standard rates in land premium assessment**

### **Economic Implications**

The application of standard rates will provide a higher degree of certainty on land premium payable for lease modification applications in NDAs implemented through the ECNTA and those involving redevelopment of IBs, though the attractiveness of standard rates to individual landowners will hinge on the relativity between the land premium assessed by standard rates and landowners' own estimation of the amount assessed by conventional mechanism. The approach may facilitate conclusion of more lease modification applications in a timely manner. This will in turn expedite the provision of residential units and non-residential floor space supply for meeting the socio-economic needs of Hong Kong.

### **Financial and Civil Service Implications**

2. Depending on the circumstances of each case, individual lease modification applications opting for land premium assessment at standard rates may end up paying less land premium (or more) as compared to that under conventional land premium assessment approach, which implies the forgone of land premium revenue. However, the standard rates option may lead to conclusion of more lease modification applications, and conclusion of cases within a shorter timeframe (all other factors being equal). The overall financial implications of applying standard rates to lease modifications in NDAs and those involving redevelopment of IBs cannot be ascertained.

3. The Lands Department will absorb any extra workload that may arise.

## **Environmental and Sustainability Implications**

4. The application of standard rates has no environmental implications. Any environmental implications of the developments under the approved lease modifications with premium charged at standard rates will continue to be dealt with in accordance with the relevant environmental legislation, standards and guidelines. As far as sustainability implications are concerned, the application of standard rates will expedite the land supply and help facilitate better use of valuable land resources, as it is conducive to the timely conclusion of lease modification applications.

## **Family Implications**

5. The application of standard rates would expedite land supply including that for residential use, with a view to better addressing the keen demand for housing land in Hong Kong, hence conducive to promoting family harmony in society in general.