

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/K11/239**

- Applicant** : Vicka Limited represented by KTA Planning Limited
- Premises** : Workshop D on G/F including the glass panel enclosing the shop front and one A/C platform on 1/F, Midas Plaza, 1 Tai Yau Street, San Po Kong, Kowloon
- Floor Area** : about 107.9m<sup>2</sup>
- Lease** : New Kowloon Inland Lot (NKIL) No. 4455  
(a) Restricted to industrial purposes, excluding any offensive trades
- Plan** : Approved Tsz Wan Shan, Diamond Hill and San Po Kong Outline Zoning Plan (OZP) No. S/K11/29
- Zoning** : “Other Specified Uses” annotated “Business” (“OU(B)”)  
(a) Maximum plot ratio (PR) of 12 and the maximum building height (BH) of 120 metres above Principal Datum (mPD), or the PR and the height of the existing building, whichever is the greater  
(b) A minimum of 3m and 1.5m wide “non-building area” (“NBA”) from the lot boundary abutting Tai Yau Street and Ng Fong Street shall be provided within this zone respectively
- Application** : Proposed Shop and Services

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for ‘Shop and Services’ use. The Premises occupies Workshop D on the ground floor with an ancillary air-conditioning platform at 1/F (**Drawing A-1**) of an existing 22-storey industrial building (IB) (Midas Plaza) at 1 Tai Yau Street in San Po Kong. The subject IB falls within an area zoned “OU(B)” on the approved Tsz Wan Shan, Diamond Hill and San Po Kong OZP No. S/K11/29 (**Plan A-1**). According to Schedule II of the Notes of the OZP for the “OU(B)” zone applicable to industrial or industrial-office (I-O) building, ‘Shop and Services (not elsewhere specified)’ use on G/F of an IB is a Column 2 use, which requires planning permission from the Town Planning Board (the Board).
- 1.2 The Premises is the subject of a previous planning application No. A/K11/201 (**Plan A-2**) for ‘Shop and Services (Property Agency)’, which was approved with conditions by the Metro Planning Committee (the Committee) of the Board on 1.4.2011. The approval condition in relation to the submission and implementation

provision of fire service measures was complied with on 18.11.2011. According to site inspection, the Premises is currently vacant.

- 1.3 A floor plan of the Premises submitted by the applicant is at **Drawing A-1**. It is noted in the submission that the Premises includes an A/C platform at 1/F<sup>1</sup>. The applicant clarifies that the A/C platform is an ancillary accommodation for storing the A/C unit only and not intended for shop and services use and it cannot be accessed internally from the subject Premises on G/F (**Appendix Ia**).
- 1.4 In support of the application, the applicant has submitted the following documents:
  - (a) Application form with supporting note received on 14.7.2021 (**Appendix I**)
  - (b) Further information received 2.9.2021 providing clarification on the intended use of the air-conditioning (A/C) platform at 1/F (**Appendix Ia**)  
*[Accepted and exempted from the publication and recounting requirements]*

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are set out in **Appendices I** and **Ia**. They can be summarised as follows:

- (a) the Premises which was approved by the Committee for property agency has been left idle for a few months due to the adverse market situation under COVID-19. In response to the adverse market situation, the applicant seeks planning permission to broaden the range of 'Shop and Services' use for the Premises;
- (b) the Premises for proposed 'Shop and Services' use, located in San Po Kong Business Area (SPKBA) is compatible with the surround context and would offer necessary services for employees working in the area;
- (c) the existing IB is equipped with sprinkler systems. The proposed uses at Workshop D together with the approved 'Shop and Services (Bank/Retail Shop/Real Estate Agency)' uses at Workshop C under planning application No. A/K11/213 would not exceed the aggregated commercial floor area limit of 460m<sup>2</sup> by Fire Services Department (FSD). Thus, the application complies with the Town Planning Board Guidelines for Development within "OU(B)" Zone (TPBPG-No. 22D); and
- (d) the Premises will be provided with a means of escape completely separated from the remaining industrial portion of Midas Plaza, where people within the Premises would be discharged directly to Tai Yau Street/Ng Fong Street. Adequate fire services installations would be provided subject to the satisfaction of the FSD.

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<sup>1</sup> The proposed 'Shop and Services' use has an area of about 107.9m<sup>2</sup> which includes Workshop D with an area of 102.772m<sup>2</sup> at G/F and an A/C platform with an area of 5.077 m<sup>2</sup> at 1/F.

### **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner” of the Premises. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Town Planning Board Guidelines**

The TPB PG-No. 22D promulgated in September 2007 is relevant in the following aspects:

- (a) the “OU(B)” zone has been introduced to allow maximum flexibility in the use of existing industrial and Industrial-Office (I-O) buildings as well as in the development of new buildings for both commercial and clean industrial uses. The planning intention of the “OU(B)” zone is primarily for general employment uses;
- (b) whilst it is the intention to provide greater flexibility in the use of the existing industrial or I-O buildings before such buildings are redeveloped, it is necessary to ensure that the fire safety and environmental concerns are properly addressed. In view of the possible presence of existing polluting and hazardous industrial uses, it is necessary to ensure compatibility of the uses within the same building until the whole building is modified/converted to accommodate the new non-polluting and less fire hazard-prone uses;
- (c) the FSD should be satisfied on the risks likely to arise or increase from the proposed commercial use under application. Owing to fire safety concern, the aggregate commercial floor areas on G/F of an existing industrial/I-O building with and without sprinkler systems should not exceed 460m<sup>2</sup> and 230m<sup>2</sup> respectively. For any application which would result in a slight exceedance of the relevant floor area limit, the applicant has to demonstrate that the fire safety concern can be satisfactorily addressed, and each case will be considered by the Board on its own merits. The above limits on commercial floor area do not apply to uses which are ancillary to or for the purposes of supporting the industrial activities and the routine activities of the workers in the industrial or I-O building. These uses include bank, fast food counter, electrical shop, local provisions store and showroom in connection with the main industrial use; and
- (d) for all new development, redevelopment, conversion and material change of use, adequate parking and loading/unloading (L/UL) spaces should be provided in accordance with the requirements of the Hong Kong Planning Standards and Guidelines, and all other statutory or non-statutory requirements of relevant Government departments must also be met.

### **5. Previous Applications**

- 5.1 The Premises is the subject of a previous planning application (No. A/K11/201) for Shop and Services (Property Agency) which was approved with conditions by the Committee on 1.4.2011 (**Plans A-2 and A-2a**). The approval condition in relation to the submission and implementation provision of fire service measures was complied with on 18.11.2011.

## 6. Similar Applications

- 6.1 The Committee has so far considered three applications on G/F of the subject IB for Proposed ‘Shop and Services’ and ‘Shop and Services (Bank/Retail Shop/Real Estate Agency)’ uses. All of them were approved by the Committee with conditions (**Plans A-2 and A-2a**). The details of the approved applications are shown in the table below.

Application No.	Work-shop	Applied/ Proposed Uses	Floor Area (m <sup>2</sup> )	Date of Decision	Decision
<b>Uses applicable for the maximum permissible limit of 460m<sup>2</sup></b>					
A/K11/195	C	Shop and Services	205.101	21.8.2009 (Lapsed on 21.8.2011)	Approved with conditions
A/K11/201	D	Shop and Services (Property Agency)	101.947	1.4.2011	Approved with conditions
A/K11/213	C	Shop and Services (Bank/Retail Shop/Real Estate Agency)	<b>203.943</b>	2.8.2013	Approved with conditions
<b>Total Approved Commercial Floor Area*: 203.943 m<sup>2</sup></b>					

\* The total floor areas have excluded the floor areas in overlapping premises and approved cases of which planning permissions have been lapsed, revoked or expired

- 6.2 According to TPB PG-No. 22D, the proposed ‘Shop and Services’ use under the application is subject to a maximum permissible limit of 460m<sup>2</sup> for aggregate commercial floor area on G/F of the subject IB with a sprinkler system. Should the current application be approved, the resultant total aggregate commercial floor area would be 311.843m<sup>2</sup> (i.e. 107.9m<sup>2</sup> + 203.943m<sup>2</sup>) which is within the maximum permissible limit.
- 6.3 There are a total of 40 similar applications for ‘Shop and Services’ use on G/F of industrial or I-O buildings under the “OU(B)” zone in SPKBA. 39 of them were approved with conditions and the remaining one was rejected by the Committee of the Board, mainly for the reason that the application was not acceptable from fire safety viewpoint.

## 7. The Premises and its Surrounding Areas (**Plans A-1, A-2, A-2a** and photos on **Plans A-3 to A-4**)

- 7.1 The Premises:

- (a) located at Workshop D on the G/F of Midas Plaza, facing Tai Yau Street/Ng Fong Street and is directly accessible from the streets (**Plans A-2 and A-2a**); and
- (b) is currently vacant (**Plan A-4**).

- 7.2 The subject building:

- (a) is a 22-storey IB including a 1-storey carpark (on 1/F) built in 2007 and is equipped with sprinkler system; and

(b) has the following existing uses:

Floor	Main Uses
G/F	<b>The Premises</b> , shop and services (retail shops) <sup>[1]</sup> , vacant unit, lift lobby ( <b>Plan A-2a</b> )
1/F	Carpark
2/F – 25/F <sup>[2]</sup>	Office, warehouse and vacant units

<sup>[1]</sup> Uses at Units A and B without valid planning permission.

<sup>[2]</sup> 4/F, 13/F, 14/F and 24/F are omitted.

7.3 The surrounding areas have the following characteristics (**Plans A-1 to A-2**):

- (a) the locality is an established industrial/business area in San Po Kong which was rezoned from “Industrial” to “OU(B)” in 2002;
- (b) the G/F units of the nearby buildings are mainly used as industrial, motor services shops, fast food shops, canteens, property agencies, bank and retail shops; and
- (c) is well served by various modes of public transport. San Po Kong Public Transport Terminus and the MTR Diamond Hill Station are about 250m and 200m to the further southeast and northeast respectively (**Plan A-1**).

## 8. Planning Intention

The planning intention of “OU(B)” zone is primarily for general business uses. A mix of information technology and telecommunications industries, non-polluting industrial, office and other commercial uses are always permitted in new “business” buildings. Less fire hazard-prone office use that would not involve direct provision of customer services or goods to the general public is always permitted in existing industrial or I-O buildings.

## 9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

### Land Administration

9.1.1 Comments of the District Lands Officer/Kowloon East, Lands Department (DLO/KE, LandsD):

- (a) No objection to the application;
- (b) The Premises falls within NKIL 4455RP (the Lot) which is restricted to industrial purposes, excluding any offensive trades, and subject to a lease term having been extended to 30 June 2047;
- (c) The proposed ‘Shop and Services’ use at the Premises is found in conflict with the existing lease. Should the planning application is approved by the Board, the applicant is required to apply to LandsD for a temporary waiver/lease modification to give effect to the proposal. However, there is no guarantee that the waiver/lease modification would be approved and if the application is eventually

approved by LandsD in the capacity as the landlord at its sole discretion, it will be subject to those terms and conditions, including payment of any administrative fee and waiver fee or premium, considered appropriate by LandsD;

- (d) Upon receipt of the application of waiver/lease modification, if submitted by the owner of the Premises, he is required to prove his ownership and demonstrate the dimensions and calculation of the floor area and any others in all respect to the satisfaction of LandsD; and
- (e) Approval by the Board of the application shall not prejudice the Government's right to take enforcement action against any breach of lease identified at the Premises pursuant to his prevailing practice. All the General and Special Conditions contained in the Condition of Sale No. 6757 governing the Lot shall remain in full force and effect.

### **Fire Safety**

#### 9.1.2 Comments of the Director of Fire Services (D of FS):

- (a) No objection in-principle to the application subject to:
  - (i) fire service installations and equipment being provided to the satisfaction of his department. Detailed fire services requirements will be formulated upon receipt of formal submission of general building plans; and
  - (ii) means of escape separated from the industrial portion is available for the Premises;
- (b) The building is protected with a sprinkler system so the maximum permissible aggregated commercial floor area on G/F is 460m<sup>2</sup> in accordance with TPB PG-No. 22D. The proposed use should be counted up to the aggregated commercial floor area;
- (c) Regarding matters related to fire resisting construction of the Premises, the applicant is reminded to comply with the "Code of Practice for Fire Safety in Buildings" (FS Code) which is administered by the Building Authority (BA); and
- (d) The applicant's attention is drawn to the "Guidance Note on Compliance with Planning Condition on Provision of Fire Safety Measures for Commercial Uses in Industrial Premises" if the application is approved.

### **Building Matters**

#### 9.1.3 Comments of the Chief Building Surveyor/Kowloon, Buildings Department (CBS/K, BD):

- (a) No objection in-principle to the application;
- (b) All building works/change in use are subject to compliance with the Buildings Ordinance (BO);
- (c) The applicant is advised to appoint an Authorised Person to submit

building plans for the proposed change in use and/or alterations and additions works to demonstrate compliance with the BO, in particular:

- (i) adequate means of escape should be provided to the Premises in accordance with Building (Planning) Regulation (B(P)R) 41(1) and the FS Code;
  - (ii) the Premises should be separated from the remaining portion of the building by fire barriers of adequate fire resistance rating pursuant to Building (Construction) Regulation 90 and FS Code;
  - (iii) access and facilities for persons with a disability including accessible toilet should be provided to the Premises in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008; and
  - (iv) adequate sanitary fitments should be provided to the Premises in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations;
- (d) Detailed comments under the BO can only be provided at the building plan submission stage;
  - (e) For unauthorized building works (UBW) erected on leased land/private buildings (if any), enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any UBW on the application site under the BO; and
  - (f) The applicant's attention should be drawn to Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers APP-47 that the BA has no powers to give retrospective approval or consent for any UBW.

9.2 The following Government departments have no objection to/no comments on the application:

- (a) Chief Highway Engineer/Kowloon, Highways Department;
- (b) Chief Engineer/Mainland South, Drainage Services Department;
- (c) Chief Engineer/Construction, Water Supplies Department;
- (d) Director of Food and Environmental Hygiene;
- (e) Commissioner of Police;
- (f) Commissioner for Transport (C for T); and
- (g) District Officer (Wong Tai Sin), Home Affairs Department.

## **10. Public Comments Received During Statutory Publication Period**

On 23.7.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 13.8.2021, no public comment was received.

## **11. Planning Considerations and Assessments**

- 11.1 The application seeks planning permission to use the Premises at G/F of an existing IB within the “OU(B)” zone for proposed ‘Shop and Services’ use. The Premises is currently vacant. The planning intention of “OU(B)” zone is primarily for general business uses. It allows greater flexibility in the use of the existing industrial or I-O buildings provided that the use would not induce adverse fire safety and environmental impacts. The proposed ‘Shop and Services’ use under the application is considered generally in line with the planning intention.
- 11.2 The SPKBA is being transformed into commercial/business use with similar applications for ‘Shop and Services’ use approved on G/F units of other industrial and I-O buildings in the vicinity of the Premises. The proposed use is considered compatible with the changing land use character of the area. Moreover, the proposed use is considered not incompatible with other uses of the same IB which mainly comprises shop and services on the G/F and industrial-related offices and warehouses on the upper floors.
- 11.3 The proposed use in general complies with TPB PG-No. 22D in that it would not induce adverse fire safety and environmental impacts on the developments within the subject IB and the adjacent areas. Relevant Government departments consulted including D of FS, CBS/K, BD, C for T, CE/C of WSD and CE/MS of DSD have no comment/no objection to the application.
- 11.4 As confirmed by D of FS, the subject building is protected with a sprinkler system, which is subject to a maximum permissible limit of 460m<sup>2</sup> for aggregated commercial floor area on G/F in accordance with TPB PG-No. 22D. If the ‘Shop and Services’ use is approved, the aggregated commercial floor area approved by the Committee on the G/F of the subject IB will be about 311.843m<sup>2</sup>, which is within the maximum permissible limit of 460m<sup>2</sup>. An approval condition requiring the submission and implementation of the proposal for fire safety measures is suggested in paragraph 12.2(a) below.
- 11.5 Three applications for ‘Shop and Services’ use on the G/F of the subject IB were approved with conditions by the Committee (Table of paragraph 6.1 and **Plans A-2** and **A-2a** refer). There is no change in planning circumstances and the approval of the application is consistent with the previous decisions of the Committee on similar applications.
- 11.6 No public comment on the application was received.

## **12. Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 10.9.2023, and after the said date, the permission shall cease to have effect unless, before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are suggested for Members’ reference:



*Approval conditions*

- (a) the submission and implementation of a proposal on the fire safety measures before operation of the proposed use to the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition is not complied with before the operation of the proposed use, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

*Advisory clauses*

The recommended advisory clauses are attached at **Appendix II**.

12.3 There is no strong reason to recommend rejection of the application.

### **13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or to refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when validity of the permission should expire.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

### **14. Attachments**

<b>Appendix I</b>	Application form received on 14.7.2021
<b>Appendix Ia</b>	FI received on 2.9.2021
<b>Appendix II</b>	Recommended advisory clauses
<b>Drawing A-1</b>	Floor Plan
<b>Plan A-1</b>	Location plan
<b>Plan A-2</b>	Site plan
<b>Plan A-2a</b>	Existing uses on the G/F of Midas Plaza
<b>Plans A-3 to A-4</b>	Site photos

**PLANNING DEPARTMENT  
SEPTEMBER 2021**