

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K11/242

- Applicant** : Chi Fung Pumping Works Company Limited represented by Lawson David & Surveyors Limited
- Premises** : Unit B, G/F, Wang Fai Industrial Building, 29 Luk Hop Street,
San Po Kong, Kowloon
- Floor Area** : About 233 m²
- Lease** : (a) New Kowloon Inland Lot (NKIL) No. 4789
(b) Restricted to industrial purpose, excluding any offensive trades
- Plan** : Draft Tsz Wan Shan, Diamond Hill and San Po Kong Outline Zoning Plan (OZP) No. S/K11/30
- Zoning** : “Other Specified Uses” annotated “Business” (“OU(B)”)
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
- Application** : Proposed Shop and Services

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application premises (the Premises) for proposed ‘Shop and Services’ use. The Premises occupies Unit B at G/F (**Drawing A-1, Plans A-2**) of an existing 25-storey industrial building (IB) (Wang Fai Industrial Building) at 29 Luk Hop Street in San Po Kong. The subject IB falls within an area zoned “OU(B)” on the draft Tsz Wan Shan, Diamond Hill and San Po Kong OZP No. S/K11/30 (**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 According to the applicant and recent site inspection, the Premises is currently vacant and under renovation (**Plan A-4**). A floor plan and a layout plan showing the Premises submitted by the applicant are at **Drawings A-1 and A-2** respectively.
- 1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application form received on 29.7.2022 (Appendix I)
- (b) Supporting planning statement received on 29.7.2022 (Appendix Ia)
- (c) Further information (FI) received on 31.8.2022 and 2.9.2022 providing responses to departmental comments (RtoC) and revised layout plan of the Premises. (Appendix Ib)
[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 **Appendix I**. They can be summarised as follows:

- (a) the proposed use at the application premises located in an established business area in San Po Kong is in line with the planning intention of the “OU(B)” zone and is compatible with the surrounding land use, and supports the progressive transformation and upgrading the area;
- (b) the proposed shop use at the application premises located near residential cluster in Kai Tak would be able to satisfy the rising retail demand from the surging local population;
- (c) the application premises was previously approved for shop and services use in 2017 (Application No. A/K11/229); and
- (d) the proposed use complies with the fire safety requirements in the Town Planning Board Guidelines for Development within “OU(B)” Zone (TPB PG-No. 22D) and will not induce adverse fire safety, traffic, environment and infrastructural impacts.

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 Town Planning Board Guidelines for Development within “OU(B)” Zone (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 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) Fire Services Department 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 460m² and 230m² 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

The Premises is the subject of a previous planning application (No. A/K11/229) for proposed shop and services use. The application was approved with conditions by the Metro Planning Committee (the Committee) on 24.11.2017 and the planning permission was lapsed on 24.11.2019.

6. Similar Applications

- 6.1 There is no valid similar application on G/F of the subject building.
- 6.2 There are a total of 42 similar applications for 'Shop and Services' use on G/F of industrial or I-O buildings under the "OU(B)" zone in San Po Kong Business Area (SPKBA). 41 of them were approved with conditions and the remaining one was rejected by the Committee, mainly because the application was not acceptable from fire safety viewpoint.

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

- 7.1 The Premises:
 - (a) occupies Unit B on the G/F of Wang Fai Industrial Building, is currently vacant and under renovation (**Plan A-4**);
 - (b) has its own entrance fronting a terrace with two staircases leading to Sze Mei Street and Luk Hop Street (**Plan A-3**); and

- (c) is separated from the entrance to other floors of the buildings (**Drawings A-1 and A-2**).

7.2 The subject building:

- (a) is a 25-storey IB including 1-storey of basement built in 1981 and is equipped with sprinkler system; and
- (b) has the following uses:

Floor	Main Uses
B/F	Locked units/vacant units
G/F	The Premises , management offices, car parking spaces, loading/unloading areas, lift lobby and vacant units
1/F – 23/F	Offices (2/F, 5/F, 8/F, 10/F-13/F, 15/F-17/F, 19/F, 21/F and 22/F), warehouse (1/F, 3/F, 9/F and 20/F), workshop (4/F) and locked units/vacant units (6/F, 7/F, 14/F, 18/F & 23/F)

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

- (a) the G/F units of the nearby buildings are mainly used as workshops and warehouses;
- (b) to the further northwest of the subject building is a hotel development, namely, Pentahotel Kowloon, while to the southwest and southeast across the roads are Kai Tak East Playground, Kai Tak East Sports Center and Kai Tak East Park (**Plan A-2**); and
- (c) the Premises is well served by various modes of public transport. The MTR Diamond Hill Station is about 300m to the further north (**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) The Premises falls within NKIL No. 4789 (“the Lot”) which is restricted to industrial purpose, excluding any offensive trades;
- (b) The proposed “Shop and Services” uses at the Premises is found in

conflict with the existing lease. Should the planning application be approved by the Board, the owner is required to apply to Lands Department for a temporary waiver or lease modification to give effect to the proposal. However, there is no guarantee that the temporary waiver or lease modification would be approved and if the application is eventually approved by Lands Department in the capacity as the landlord at its discretion, it will be subject to those terms and conditions, including payment of any administrative fee and waiver fee or premium, as considered appropriate by Lands Department;

- (c) Upon receipt of the application of waiver/lease modification, if submitted by the owner of the Premises, he is required to demonstrate the dimensions and calculation of the floor area etc. in all respects to the satisfaction of Lands Department; and
- (d) Approval by the Board of the subject application shall not prejudice the Government's right to take enforcement action pursuant to his prevailing practice against any breach of lease identified at the Premises pursuant to his prevailing practice. All the provisions, covenants, stipulations, exceptions, reservations, powers and conditions contained in the lease 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 completely separated from the industrial portion is available for the Premises;
- (b) The building is protected with a sprinklers system so that maximum permissible aggregated commercial floor area on G/F is **460m²** in accordance with TPB PG-No. 22D. The proposed use under the application 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 to the application;
- (b) All building works/change in use should be in compliance with the Buildings Ordinance (BO);
- (c) The applicant should be advised to engage an Authorized Person to ensure that any building works/change of use are implemented in compliance with the BO, including (but not limited to) the following:
 - (i) Adequate means of escape should be provided in accordance with Building (Planning) Regulation (B(P)R) 41(1) and the Code of Practice for Fire Safety in Buildings 2011 (FS Code);
 - (ii) Fire barrier with adequate fire resisting construction between the Premises and the remaining portion of the subject building should be provided in accordance with Building (Construction) Regulation 35 and the FS Code;
 - (iii) Access and facilities for persons with a disability should be provided in accordance with Building (Planning) Regulation 72 and Design Manual: Barrier Free Access 2008;
 - (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;
 - (v) If the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the application site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
 - (vi) For unauthorised building works (UBW) erected on private land/buildings, enforcement action may be taken by the BD 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 existing building works or UBW on the application site under the BO; and
 - (vii) The applicant's attention is drawn to Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers App-47 that the Building Authority has no powers to give retrospective approval or consent for any UBW;
- (d) Detailed comments under BO can only be formulated at the building plans submission stage.

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

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

10. Public Comments Received During Statutory Publication Period

On 5.8.2022, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 26.8.2021, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The application is to seek planning permission for proposed ‘Shop and Services’ use at the Premises, which is currently vacant and under renovation. The planning intention of the “OU(B)” zone is 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 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 compatible with the changing land use character of the area.
- 11.3 The proposed use at the Premises 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 of BD, C for T, CE/C of WSD and CE/MS of DSD have no comment/no objection to the application.
- 11.4 As advised by D of FS, the subject building is protected with a sprinkler system, which is subject to a maximum permissible limit of 460m² for aggregated commercial floor area on G/F and the proposed use should count towards the aggregate commercial floor area. There is no valid similar application in respect of G/F of the subject building. Should the Committee approve the application, the aggregated commercial floor area on G/F of the Building will be 233m² which is within the maximum permissible limit of 460m² as set out in TPB PG-No. 22D. Direct accesses are provided for the Premises with street frontage at Luk Hop Street and Sze Mei Street. In this regard, D of FS has no objection to the application subject to an approval condition on the submission and implementation of the proposal for fire safety measures as detailed in paragraph 12.2.(a) below.
- 11.5 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 23.9.2024 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 use to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) if the above planning condition (a) is not complied with before the operation of the 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

Appendix I	Application form received on 29.7.2022
Appendix Ia	Supporting planning statement received on 29.7.2022
Appendix Ib	FI received on 31.8.2022 and 2.9.2022
Appendix II	Recommended advisory clauses
Drawing A-1	Floor Plan
Drawing A-2	Layout Plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3 to A-4	Site photos