

MPC Paper No. A/K5/845B & 846B
for Consideration by
the Metro Planning Committee
on 24.6.2022

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/K5/845 & 846

- Applicants** : Cheng Chun Bor and Chan Chai Ping represented by Grandmax Surveyors Limited
- Premises** : Portions of Factory No. 6, G/F, Elite Industrial Centre, 883 Cheung Sha Wan Road, Cheung Sha Wan, Kowloon
- Floor Areas** : About 49 m² (A/K5/845)
About 117 m² (A/K5/846)
- Lease** : New Kowloon Inland Lot (NKIL) No. 5944
- (a) governed by Conditions of Sale No. 11707 dated 25.11.1983
(b) restricted to general industrial and/or godown purposes excluding offensive trades
- Plan** : Draft Cheung Sha Wan Outline Zoning Plan (OZP) No. S/K5/38
[*Currently in force*]
- Approved Cheung Sha Wan OZP No. S/K5/37
[*at the time of application*]
- Zoning** : “Other Specified Uses” annotated “Business (3)” (“OU(B)3”)
- (a) maximum plot ratio (PR) of 12
(b) maximum building height (BH) of 120mPD
- [*No change in zoning and development restrictions for the Site under the two aforesaid OZPs*]
- Applications** : Shop and Services (A/K5/845)
Shop and Services (Fast Food Counter and Local Provisions Store)
(A/K5/846)

1. The Proposal

- 1.1 The applicants seek planning permissions to use the two application premises (the Premises) for ‘Shop and Services’ and ‘Shop and Services (Fast Food Counter and Local Provisions Store)’ uses respectively. The two adjoining Premises, with

respective floor areas of about 48.5m² and 116.8m², are located on G/F of an existing industrial building, namely Elite Industrial Centre, which fall within an area zoned “OU(B)3” on the draft Cheung Sha Wan OZP No. S/K5/38 (**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)’ on G/F of an industrial building requires planning permission from the Town Planning Board (the Board).

- 1.2 The Premises are subject of two previous applications No. A/K5/806 and 807 submitted by the same applicants for the same uses (**Plan A-2a**). The applications were approved with conditions by the Metro Planning Committee (the Committee) of the Board on 16.8.2019 (see paragraph 5 and **Appendix III** for details) but lapsed on 17.8.2021.
- 1.3 The layout and floor plans showing the two Premises, as submitted by the applicants, are at **Drawings A-1** and **A-2** (A/K5/845) and **Drawings A-3** and **A-4** (A/K5/846). The Premises of Application No. A/K5/845 will be subdivided into three units (**Drawing A-2**), and the Premises of Application No. A/K5/846 will be subdivided into four units, all of which can be directly accessed from Cheung Lai Street or Cheung Shun Street (**Drawing A-4**).
- 1.4 In support of the applications, the applicants have submitted the following documents for the respective applications:
 - (a) Application form with attachments and supplementary information received on 8.12.2021 (**Appendices I & II**)
 - (b) Letter dated 10.2.2022 providing information on FSIs# (**Appendices Ia & IIa**)
 - (c) Letter dated 26.4.2022 providing revised information on FSIs# (**Appendices Ib & IIb**)

[# Accepted and exempted from the publication and recounting requirements.]
- 1.5 On 28.1.2022 and 1.4.2022, the Committee agreed to defer making a decision on the applications for two months respectively as requested by the applicant to allow sufficient time for the applicants to prepare further information to address the Fire Services Department (FSD)’s comments on the FSIs. The applicants subsequently submitted further information on 26.4.2022 (**Appendices Ib** and **IIb**). The two applications are scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications as set out at **Appendices I** and **II** are similar. They are summarized as follows:

- (a) the Premises are subject of two planning applications for the same use approved by the Committee on 16.8.2019;

- (b) the applied uses are in line with the planning intention of the “OU(B)” zone and are compatible with the uses in the surrounding areas;
- (c) the applicants have submitted and implemented the FSIs proposal and submitted the relevant certificates;
- (d) if the applied ‘Shop and Services’ use is approved, the aggregate commercial floor area on the G/F of the subject industrial building, which is equipped with a sprinkler system, would not exceed the maximum permissible limit of 460m² under the Town Planning Board Guidelines for Development within “OU(B)” Zone (TPB PG-No. 22D). The floor area for ‘Shop and Services (Fast Food Counter and Local Provisions Store)’ use will not be counted towards the aggregate commercial floor area according to TPB PG-No. 22D.
- (e) the units will be accessible directly from Cheung Lai Street. The applied uses will not induce adverse impact and fire risk;
- (f) there is a strong demand for shop and services use in the neighbourhood; and
- (g) numerous similar applications in the surrounding area have been approved.

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

The applicants are the sole “current land owners” of the two 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 are 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) 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 the ground floor of an existing industrial/I-O building

with and without sprinkler systems should as a general principle not exceed 460m² and 230m² respectively. 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. In all cases, separate means of escape should be available for the commercial portion; and

- (d) for all new development, redevelopment, conversion and material change of use, adequate parking and loading/unloading 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 (Plan A-2a)**

- 5.1 The Premises are subject of two previous planning applications (Nos. A/K5/806 and 807) which were submitted by the same applicants of the current applications.
- 5.2 Applications No. A/K5/806 (48.5m²) for proposed 'Shop and Services' and A/K5/807 (116.8m²) for proposed 'Shop and Services (Fast Food Counter and Local Provisions)' (**Plan A-2a**) were approved with conditions by the Committee on 16.8.2019 for a period of 2 years. Both planning permissions lapsed on 17.8.2021.
- 5.3 Details of the previous applications are at **Appendix III**.

6. **Similar Applications**

- 6.1 The Committee has considered a total of 14 applications (including the two previous applications) for 'Shop and Services' and 'Wholesale Trade' uses on G/F of the subject industrial building (**Plan A-2a**). 13 applications were approved with conditions by the Committee, and one application (No. A/K5/570) was rejected by the Board upon review on 21.1.2005 on the ground that the application was not acceptable from fire safety point of view. Besides, Application No. A/K5/79 for 'Showroom with Retail Outlet' was approved with conditions by the Committee on 27.5.1988 when the site was zoned "T"¹. The details of the approved applications with uses applicable for the maximum permissible limit are shown in the table below while for the approved applications with uses not applicable for the maximum permissible limit are at **Appendix IV**.

¹ When the site was zoned "T" before it was rezoned to "OU(B)" in 2001, there were a total of eight planning applications for showroom, retail shops and offices uses at the G/F of the subject industrial building. Out of these eight applications (including Application No. A/K5/79 mentioned in paragraph 6.1 above), four were approved with conditions and four were rejected. Except application No. A/K5/79, the other three approved applications either lapsed or expired and hence they are not included in the table of paragraph 6.1.

Application No.	Unit No.	Proposed Use	Floor Area (m ²)	Date of Consideration	Decision
Uses applicable for the maximum permissible limit of 460m ² for aggregate commercial floor area on G/F of an industrial building (with sprinkler systems)					
A/K5/79	5 (Portion)	Showroom with Retail Outlet	54	27.5.1988	Approved with conditions
A/K5/654	1	Shop and Services	425.67	28.3.2008 (Lapsed)	Approved with conditions
A/K5/693	4	Shop and Services	126.33	28.5.2010	Approved with conditions
A/K5/700	1 (Portion)	Wholesale Trade (Wholesale Shop)	115.45	23.12.2010 (Revoked)	Approved with conditions
A/K5/790	8	Shop and Services	214.7	24.11.2017 (Lapsed)	Approved with conditions
A/K5/806	6 (Portion)	Shop and Services	48.5	16.8.2019 (Lapsed)	Approved with conditions
Total Approved Commercial Floor Area*:			180.33 m²		

** The total floor areas have excluded the floor areas in overlapping premises and approved cases of which planning permissions have been lapsed / revoked.*

- 6.2 According to TPB PG-No. 22D, the applied 'Shop and Services' use under Application No. A/K5/845 is subject to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F of the subject industrial building with a sprinkler system while the 'Shop and Services (Fast Food Counter and Local Provisions Store)' under Application No. A/K5/846 will not be subject to the maximum permissible limit. If the two applications are approved, the aggregate commercial floor areas approved (by the Committee) on G/F of the subject industrial buildings will be 228.83m², which is within the maximum permissible limit.
- 6.3 Since 2001, the Committee has considered 160 planning applications for various 'Shop and Services' uses on the G/F of the industrial building and I-O buildings within the "OU(B)" zone in the Cheung Sha Wan Industrial/Business Area (CSWIBA). The Committee approved 150 of these applications while rejecting 10 applications. Failure to address fire safety concerns was the reason for rejection amongst most of the rejected cases.

7. **The Premises and Its Surrounding Areas** (Plans A-1 to A-2a and Photos on Plans A-3 to A-4)

7.1 The two Premises:

- (a) occupy Factory No. 6 on G/F of Elite Industrial Centre and have direct frontage to Cheung Shun Street and Cheung Lai Street; and

- (b) subdivided into eight units and are currently occupied by a money exchange and seven fast food shops without valid planning permissions.

7.2 The subject industrial building has the following characteristics:

- (a) is a 14-storey industrial building (including one level of basement for car parking spaces) completed in 1986 and equipped with a sprinkler system; and
- (b) is currently used for the following purposes:

Floor	Main Uses
G/F	The two Premises , fast food shops [^] and canteens ⁺
1/F to 12/F	Industrial-related offices/trading firms and workshops

[^] No record of planning approval granted for some of these fast food shops.

⁺ According to Schedule II of the Notes of the OZP for the “OU(B)” zone applicable to industrial or I-O building, canteen is always permitted.

7.3 The surrounding areas have the following characteristics:

- (a) located in the established CSWIBA (which was rezoned from “I” to “OU(B)” in 2001), mainly with industrial and I-O buildings and some ‘Shop and Service’ uses found on G/F; and
- (b) easily accessible by various modes of public transport with Mass Transit Railway Lai Chi Kok Station located at about 40m to the north of the subject industrial building (**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 applications are summarised as follows:

Land Administration

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

- (a) the two premises fall within NKIL 5944 (“the Lot”) which are governed by the Conditions of Sale No. UB11707 dated 25.11.1983 (“the lease conditions”). The Lot is restricted to industrial or godown purposes or both excluding offensive trades. The proposed ‘Shop and Services’ use and proposed ‘Shop and Services (Fast Food and Local Provision Store)’ use at the premises are not permitted under the lease conditions; and
- (b) should the applications be approved, the lot owner has to apply to LandsD for a waiver or no-objection letter to permit the proposed ‘shop and services’ use and proposed ‘shop and services (fast food and local provision store)’ use. However, there is no guarantee that the applications will be approved. Such applications, if received by LandsD, will be considered by LandsD acting in capacity as the landlord at its sole discretion. If such applications are approved, they would be subject to such terms and conditions including, among others, the payment of premium/waiver fee and administrative fee as may be imposed by LandsD.

Fire Safety

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

- (a) no in-principle objection to the applications subject to (i) FSIs and equipment being provided to the satisfaction of D of FS. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans; (ii) means of escape are completely separated from the industrial portions of the building;
- (b) the applicants have submitted a FSI proposal, which was accepted by D of FS, and the FSI proposal has also been implemented to the satisfaction of D of FS;
- (c) the building is provided with a sprinkler system so that the maximum permissible aggregate commercial floor area on G/F is 460m² in accordance with TPB PG-No. 22D. The applied use under Application No. A/K5/845 should be counted up to the aggregate commercial floor area. Regarding matters related to fire resisting construction of the Premises, the applicants are reminded to comply with the “Code of Practice for Fire Safety in Buildings” which is administered by the Building Authority (BA); and
- (d) the applicants’ attention should be drawn to the “Guidance Note on Compliance with Planning Condition on Provision of Fire Safety Measures for Commercial Uses in Industrial Premises’ if the applications are approved.

Building Matters

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

- (a) no in-principle objection to the applications;
- (b) all building works, alterations and additions works or change of use are subject to compliance with the Buildings Ordinance (BO). The applicants are advised to appoint an Authorized Person to ensure that any building works, alterations and additions works or change of use are in compliance with BO, including (but not limited to) the following:
 - (i) adequate means of escape should be provided to the subject premises in accordance with the Building (Planning) Regulation (B(P)R) 41(1) and the Code of Practice for Fire Safety in Buildings 2011 (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 the Building (Construction) Regulation 35 and the FS Code;
 - (iii) adequate provision of sanitary fitments should be provided to the subject premises in accordance with the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations; and
 - (iv) adequate provision of barrier free access to the subject premises should be provided in accordance with B(P)R 72 and Design Manual: Barrier Free Access 2008;
- (c) for unauthorized building works (UBW) erected on private land/buildings, 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 BO;
- (d) attention of the applicants should be drawn to Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers PNAP APP-47 that BA has no powers to give retrospective approval or consent for any UBW; and
- (e) detailed comments under BO will be given at the building plan submission stage.

Traffic

9.1.4 Comments of the Commissioner for Transport (C for T):

- (a) no in-principle objection to the applications at nil provisions of car parking and loading/unloading spaces given the small and constrained site layout; its convenient location to mass transport/public transport services; and small scale of developments; and
- (b) the applicants should be reminded that C for T has the rights to impose, alter or cancel any car parking, loading/unloading facilities and/or any no-stopping restrictions, on all local roads to cope with changing traffic conditions and needs. The frontage road space would not be reserved for any exclusive uses of the subject developments.

Other Aspect

9.1.5 Comments from the Director of Food and Environmental Hygiene (DFEH):

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the operation shall not cause any environmental nuisance to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicants should arrange disposal properly at their own expenses;

A/K5/846

- (a) proper licence / permit shall be obtained from Food and Environmental Hygiene Department (FEHD) if there is any food business regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public:
 - (i) Under the Food Business Regulation, Cap. 132X, a Food Factory Licence must be obtained from FEHD for food business which involves the preparation of food for sale for human consumption off the premises before commencement of such business; and
 - (ii) the application for Food Factory Licence, if acceptable by FEHD, will be referred to relevant government departments, such as LandsD and PlanD for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant for compliance and the licence will be issued upon compliance of all the requirements.

9.2 The following Government departments have no objection to or no comment on the applications:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (c) Chief Highway Engineer/Kowloon, Highways Department (CHE/K, HyD);
- (d) Commissioner of Police (C of P); and
- (e) District Officer (Sham Shui Po), Home Affairs Department (DO(SSP), HAD).

10. Public Comments Received During Statutory Publication Period

- 10.1 During the statutory public inspection period, eight public comments were received on Application No. A/K5/845 including one comment from an individual without stating any particular views and seven comments from individuals objecting to/ having reservation on the application. The major grounds include adverse impacts on road safety and hygiene, rise in rent levels, and already sufficient supply of retail services in the vicinity (**Appendix V**).
- 10.2 Nine public comments were received on Application No. A/K5/846 including two comments from the Chairman of Sham Shui Po West Area Committee and an individual without stating any particular views, and the other seven comments from individuals objecting to/ having reservation on the application. The major grounds include adverse impacts on road safety and hygiene and already sufficient supply of fast food shops in the vicinity (**Appendix VI**).

11. Planning Considerations and Assessments

- 11.1 Applications No. A/K5/845 and A/K5/846 are to seek planning permissions to use the two Premises for ‘Shop and Services’ and ‘Shop and Services (Fast Food Counter and Local Provisions Store)’ uses respectively. The planning intention of the “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 result in adverse fire safety or environmental impacts. The applied uses at the Premises are considered generally in line with the planning intention of the “OU(B)” zone.
- 11.2 CSWIBA is being transformed into commercial/business area with many similar applications for ‘Shop and Services’ use approved on G/F of other industrial and I-O buildings in the vicinity of the Premises. The applied uses are considered compatible with the changing land use character of the area. Moreover, the applied uses are considered not incompatible with other uses of the same industrial building which mainly comprises canteens and fast food shops on the G/F and industrial-related offices/trading firms, workshops and storage uses on the upper floors.

- 11.3 The applied uses comply with TPB PG-No. 22D in that they would not induce adverse fire safety, traffic and infrastructural impacts on the developments within the subject building and the adjacent areas. Relevant Government departments including D of FS, C for T, CBS/K of BD, CE/C of WSD and CE/MS of DSD have no comment on/no objection to the two applications.
- 11.4 As confirmed by D of FS, the subject industrial building is protected by a sprinkler system and subject to a maximum permissible limit of 460m² for aggregate commercial floor area on G/F in accordance with TPB PG-No. 22D. If the applications are approved, the aggregate commercial floor area approved by the Committee on the G/F of the subject industrial building will be 228.83m², which is within the maximum permissible limit. The applicants have submitted and implemented FSI proposals, which have been accepted by D of FS. As such, no separate approval condition for the fire safety measures is required.
- 11.5 A total of 14 applications for ‘Shop and Services’ use on the G/F of the subject industrial building were approved with condition(s) by the Committee (Table of paragraph 6.1 above and **Plan A-2a**). There is no change in planning circumstances and the approval of the applications is consistent with the previous decisions of the Committee on similar applications.
- 11.6 Regarding the public comments received, the departmental comments in paragraph 9 and planning assessments above are relevant.

12. **Planning Department’s Views**

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department has no objection to both applications.
- 12.2 Should the Committee decide to approve the applications, no time clause on commencement is proposed as the ‘Shop and Services’ and ‘Shop and Services (Fast Food Counter and Local Provisions Store)’ uses are already in operation. The advisory clauses at **Appendix VII** are also suggested for Members’ reference.
- 12.3 There is no strong planning reason to recommend rejection of both applications.

13. **Decision Sought**

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant permissions.
- 13.2 Should the Committee decide to approve any of the two applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission(s).

- 13.3 Alternatively, should the Committee decide to reject any of the two applications, Members are invited to advise what reason(s) for rejection(s) should be given to the applicants.

14. Attachments

Appendix I	Application form and supplementary information received on 8.12.2021 (A/K5/845)
Appendix Ia	Letter dated 10.2.2022 providing information on FSIs (A/K5/845)
Appendix Ib	Letter dated 26.4.2022 providing revised information on FSIs (A/K5/845)
Appendix II	Application form and supplementary information received on 8.12.2021 (A/K5/846)
Appendix IIa	Letter dated 10.2.2022 providing information on FSIs (A/K5/846)
Appendix IIb	Letter dated 26.4.2022 providing revised information on FSIs (A/K5/846)
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Public comments received (A/K5/845)
Appendix VI	Public comments received (A/K5/846)
Appendix VII	Advisory Clauses
Drawings A-1 and A-2	Floor and Layout Plans submitted by the Applicants (A/K5/845)
Drawings A-3 and A-4	Floor and Layout Plans submitted by the Applicants (A/K5/846)
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-2a	Location plan of applications on G/F of Elite Industrial Centre
Plans A-3 to A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2022**