

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K1/257

<u>Applicant</u>	Chansy International Development Limited
<u>Premises</u>	2/F, Hart Avenue Plaza, 5-9A Hart Avenue, Tsim Sha Tsui, Kowloon
<u>Floor Area</u>	472.62 m ² (about)
<u>Lease</u>	<p>Kowloon Inland Lot (KIL) Nos. 9760RP, 9796RP, 10305RP, 10523RP, 10524RP and 10579RP</p> <p>(a) a lease term of 150 years from 25.12.1898; and</p> <p>(b) KIL No. 10579RP is restricted to non-industrial purposes excluding any use requiring planning permission while the other lots are restricted to non-industrial purposes and/or subject to the non-offensive trades clause.</p>
<u>Plan</u>	Approved Tsim Sha Tsui Outline Zoning Plan (OZP) No. S/K1/28
<u>Zoning</u>	<p>“Commercial (6)” (“C(6)”)</p> <p>[Restricted to a maximum plot ratio (PR) of 12, and a maximum building height (BH) of 130mPD, or the PR and BH of the existing building, whichever is the greater. A minimum of 1.5m wide non-building area from the lot boundary abutting areas shown as ‘Road’ on the OZP, except Chatham Road South and Nathan Road, shall be provided.]</p>
<u>Application</u>	Proposed Commercial Bathhouse and Massage Establishment

1. The Proposal

- 1.1 The applicant seeks planning permission to use 2/F of an existing 18-storey commercial building (Hart Avenue Plaza) at 5 – 9A Hart Avenue, Tsim Sha Tsui, Kowloon (the Premises) (**Plan A-1**) for a proposed commercial bathhouse and massage establishment with a total floor area of about 472.62m² (**Drawings A-2 and A-3**).
- 1.2 According to the Notes of the OZP for “C” zone, ‘commercial bathhouse/massage establishment’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board).

- 1.3 According to the applicant's submission, the Premises will mainly comprise reception, male changing area, male bath area, rest room and foot massage area, male massage rooms, female staff room, toilets, service counter and other ancillary facilities. Access to the Premises is via lifts and staircases (including a pair of separate staircases serving the lowest three floors only) in the building (**Drawings A-2 and A-3**).
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received on 15.1.2018 attaching a location plan, a floor plan and a layout plan of the Premises (**Appendix I**)
 - (b) Email received on 19.1.2018 providing a revised floor plan and a revised layout plan of the Premises (**Appendix Ia**)

2. Justifications from the Applicant

The applicant has not provided any justification in support of the planning application.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" of the Premises but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by notifying the owner of the Premises. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines for 'Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance' (TPB PG-No. 14B) (**Appendix II**) are relevant to the application. As stated in TPB PG-No. 14B, the main concern of the Board on commercial bathhouse and massage establishment is whether the application premises is suitable for these uses from the planning point of view. For example, the establishment may not be fully compatible with residential use and non-domestic uses such as children and youth centre, kindergarten, religious, educational or community institutions. Control of vice and obscenity should be left to the licensing and other relevant authorities.
- 4.2 The relevant assessment criteria are summarised as follows:
 - (a) the proposed commercial bathhouse and massage establishment will normally not be permitted within a residential neighbourhood;
 - (b) the proposed establishment should be located within a commercial building or the non-domestic portion of a composite

commercial/residential building such as the commercial podium of a composite commercial/residential building;

- (c) the proposed establishment should not be incompatible with other uses within the same building. In assessing the compatibility with other uses within the same building, consideration will normally be given only to the uses permitted in the occupation permit (OP) issued by the Building Authority;
- (d) where the proposed commercial bathhouse and massage establishment is located within the non-domestic portion of a composite commercial/residential building, access (entrance) to the application premises must be separated from that of the domestic portion of the building by way of separate stairways and/or lifts/escalators exclusively serving the non-domestic portion of the building so as to avoid causing nuisance to the occupants in the same building;
- (e) the views of local residents on the proposed commercial bathhouse and massage establishment will be taken into account;
- (f) the Fire Services Department and Buildings Department should be satisfied with the proposals to comply with the fire safety requirements for the proposed commercial bathhouse and massage establishment in respect of the provision of fire service installations and means of escape, etc.; and
- (g) all other statutory or non-statutory requirements of relevant government departments must be met.

5. Previous Application

There is no previous application in respect of the Premises.

6. Similar Applications

- 6.1 There are 27 similar applications for commercial bathhouse and/or massage establishment use within “C” zone in Tsim Sha Tsui since 2000 (**Plan A-1**). Amongst them, 26 applications (including one application (No. A/K1/192) for commercial bathhouse and massage establishment on 1/F of the subject building) were approved with conditions by the Metro Planning Committee (the Committee) or the Board on review, mainly on the grounds that the proposed developments were located within a predominantly commercial neighbourhood and were compatible with other uses within the same building and their surrounding developments; entrances to the proposed developments were provided separately from other entrances of the same building; and the proposed developments were generally in line with the relevant planning criteria as laid down in the TPB PG No.14B for ‘Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance’.

6.2 One application (No. A/K1/229) was rejected by the Board on review on 23.12.2011 mainly on the grounds that the proposed commercial bathhouse and massage establishment was incompatible with the education institutions within the same building, and the application premises and other premises of the same building would share some of the access routes. The proposed development would cause nuisance to other users of the same building. Details of these applications are at **Appendix III**.

7. **The Premises and Its Surrounding Areas (Plans A-1, A-2 and A-5, Drawings A-1 to A-3, and Photos on Plans A-3 and A-4)**

7.1 The Premises is:

- (a) located at 2/F of an existing 18-storey commercial building (Hart Avenue Plaza) completed in 1990;
- (b) currently vacant; and
- (c) accessible via the lifts and the staircases (including a pair of separate staircases serving the lowest three floors only) in the building (**Drawings A-2 and A-3**).

7.2 According to the OP issued by the Building Authority on 29.11.1990 (**Appendix IV**), the subject building was approved for non-domestic uses including shops, offices and other ancillary facilities, and the Premises at 2/F was approved for non-domestic uses including offices.

7.3 Based on the site inspection conducted on 24.1.2018, the current uses within the subject building are summarised as follows:

Floor	Current Uses
G/F	Lobby, shops and eating places
1/F	Eating place
2/F <i>(Application Premises)</i>	Vacant
3/F	Eating place
4/F to 17/F	Offices

7.4 The surrounding areas have the following characteristics (**Plan A-5**):

- (a) predominantly commercial developments at the same street block bounded by Hart Avenue, Hanoi Road and Carnarvon Road;
- (b) to the immediate south, west and north are mainly commercial developments including the Lee Chau Commercial Building, the Podium Plaza, the Century House and the Lee Wai Commercial Building; and
- (c) a mix of commercial and residential developments in the surrounding areas, including the K11 Art Mall, the Masterpiece, the Hyatt Regency Hong Kong, the Hotel Panorama and the Chelsea Hotel.

8. Planning Intention

The “C” zone is intended primarily for commercial developments, which may include uses such as office, shop, services, place of entertainment, eating place and hotel, functioning as a territorial business centre and regional or district commercial/shopping centres. The areas under this zoning are major employment nodes.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their comments are summarised as follows:

Land Administration

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

- (a) She has no objection to the application.
- (b) If the planning application is approved by the Board, the lot owner has to apply to LandsD for a lease modification for KIL No. 10579RP to modify the user restriction. However, there is no guarantee that the lease modification application will be approved. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event any such application is approved, it would be subject to such terms and conditions including, among others, the payment of premium and administrative fee as may be imposed by LandsD.

Building Matters

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

- (a) He has no in-principle objection to the application.
- (b) The applicant should be advised to appoint an Authorised Person to ensure that the proposed commercial bathhouse and massage establishment will comply with all structural, loading, and fire safety requirements under the Buildings Ordinance (BO). Attention should also be drawn to the building safety requirements in Annex A to ‘A Guide to the Application for a Massage Establishments Licence’ (Rev. 09/2016).
- (c) Adequate means of escape, means of access for fire fighting and rescues and fire resisting construction should be provided in accordance with Building (Planning) Regulations (B(P)R) 41(1), 41A & 41B, Building (Construction) Regulations 90 and

the Code of Practice for Fire Safety in Buildings 2011. In this respect, two proper exits without having to pass through the Male Bath Area and the Changing Area should be provided to the Rest Room and the Massage Area.

- (d) Natural lighting and ventilation should be provided to all rooms/areas containing soil fitments in accordance with B(P)R 36.
- (e) Provision of access and facilities for persons with a disability should be provided in accordance with B(P)R 72.
- (f) Detailed comments under the BO will be given at the massage establishment licence application stage.

Fire Safety

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

- (a) He has no in-principle objection to the proposed commercial bathhouse and massage establishment subject to fire service installations and water supplies for firefighting being provided to his satisfaction. Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or referral from licensing authority.
- (b) The applicant is advised to observe the licensing requirements as stipulated in the 'Fire Safety Requirements for Massage Establishment'.

Licensing

9.1.4 Comments of the Commissioner of Police (C of P):

- (a) He has no objection to the application.
- (b) There has been no application for Massage Establishments Licence received for the Premises.
- (c) Any person who wishes to conduct massage business shall obtain a Massage Establishments Licence under Section 6 of the Massage Establishments Ordinance (Cap. 266) from the C of P.

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

- (a) He has no in-principle objection to the application.
- (b) In accordance with the Commercial Bathhouses Regulation (Cap. 132I), a Commercial Bathhouse Licence is required for opening and maintaining a bathhouse.

9.1.6 Comments of the Chief Officer(Licensing Authority), Home Affairs Department (CO(LA), HAD):

- (a) In the absence of the details of the mode of operation of the proposed commercial bathhouse and massage establishment, he has no comment on the application.
- (b) In the event that the mode of operation of the proposed commercial bathhouse and massage establishment falls within the definition of 'club' under the Clubs (Safety of Premises) Ordinance (Cap. 376), licensing requirements will be formulated by his office upon receipt of an application under the Clubs (Safety of Premises) Ordinance.

Others

9.1.7 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no comment on the application.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organising and supervising any activity near the underground cable under the mentioned application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the concerned site. The applicant should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the 'Code of Practice on Working near Electricity Supply Lines' established under the above regulation when carrying out works in the vicinity of the electricity supply lines.

9.2 The following government departments have no objection to/no comment on the application:

- (a) Commissioner for Transport;
- (b) Director of Environmental Protection;
- (c) Director of Leisure and Cultural Services;
- (d) Chief Engineer/Construction, Water Supplies Department;
- (e) Chief Highway Engineer/Kowloon, Highways Department;
- (f) Chief Engineer/Mainland South, Drainage Services Department; and
- (g) District Officer (Yau Tsim Mong).

10. Public Comments Received During Statutory Publication Period

- 10.1 On 23.1.2018, the application was published for public inspection. During the first three weeks of the public inspection period, which ended on 13.2.2018, one public comment objecting the application was received (**Appendix V**).
- 10.2 The main grounds of objection are that the district is already overrun with commercial bathhouse and massage establishments; the proposed development will cause nuisances to other tenants; and there are no proper measures and guidelines to regulate the proposed development.

11. Planning Considerations and Assessments

- 11.1 The application is for using the Premises at 2/F of an existing commercial building for commercial bathhouse and massage establishment use. The proposed development does not contravene the planning intention of the “C” zone which is intended for commercial development. The subject building (Hart Avenue Plaza) is located within the commercial area of Tsim Sha Tsui which is zoned “C” on the OZP (**Plan A-1**). The proposed commercial bathhouse and massage establishment is therefore considered not incompatible with the surrounding developments.
- 11.2 The Premises is located within an existing commercial building (Hart Avenue Plaza) approved for shops and offices for non-domestic use (OP issued by the Building Authority at **Appendix IV**). As such, the proposed commercial bathhouse and massage establishment is considered not incompatible with the existing non-domestic uses within the same building. Notwithstanding that the lifts and some staircases connecting to the Premises also serve other floors of the same building, nuisance to the occupants in the same building is expected to be minimal as the Premises is located at the lower floor of the subject building. There is also a pair of separate staircases serving the lower floors (including the Premises) only within the same building. In addition, the proposed development will also be subject to relevant licensing requirements of C of P and DFEH. The proposed commercial bathhouse and massage establishment could meet the planning criteria as laid down in TPB PG No.14B for ‘Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance’ under paragraph 4 above.
- 11.3 Similar applications (**Appendix III**) for ‘Commercial Bathhouse/Massage Establishment’ in Tsim Sha Tsui (including one application for commercial bathhouse and massage establishment on 1/F of the subject building) have been approved mainly on the grounds that the proposed developments were located within a predominantly commercial neighbourhood and were compatible with other uses within the same building and their surrounding developments; entrances to the proposed developments were provided separately from other entrances of the same building; and the proposed developments were generally in line with the relevant planning criteria as laid down in the TPB PG No.14B for ‘Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance’. Approval of the current application is in line with the previous decisions of the Committee.

- 11.4 Government departments consulted including DLO/KW, LandsD, D of FS and CBS/K, BD have no in-principle objection to the application. An approval condition is recommended under paragraph 12.2 below requiring the applicant to provide fire service installations and water supplies for fire fighting to the satisfaction of D of FS.
- 11.5 Regarding the concerns raised by the commenter, the planning assessments in paragraphs 11.1 to 11.4 above, and the departmental comments in paragraph 9 above are relevant.

12. **Planning Department's Views**

- 12.1 Based on the assessment in paragraph 11 above and having taken into account the public comment mentioned in paragraph 10, 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 2.3.2022, 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 condition of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission and implementation of fire service installations and water supplies for firefighting before the 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 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 VI**.

- 12.3 There is no strong planning 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 refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition and advisory clauses, if any, to be attached to the permission, and the date when the 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 15.1.2018 attaching a location plan, a floor plan and a layout plan of the Premises
Appendix Ia	Email received on 19.1.2018 providing a revised floor plan and a revised layout plan of the Premises
Appendix II	Town Planning Board Guidelines No. 14B
Appendix III	Similar applications within “C” Zone in Tsim Sha Tsui since 2000
Appendix IV	Occupation permit of the subject building
Appendix V	Public comment received during the statutory publication period
Appendix VI	Advisory clauses
Drawing A-1	Location plan of the Premises
Drawing A-2	Floor plan of the Premises
Drawing A-3	Layout plan of the Premises
Plan A-1	Location plan
Plan A-2	Site plan
Plans A-3 and A-4	Site photos
Plan A-5	Existing land uses in the surrounding areas

**PLANNING DEPARTMENT
MARCH 2018**