

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/K2/221

- Applicant** : Mr. CHING Lung represented by Aikon Development Consultancy Limited
- Premises** : 2/F & 3/F (Portion), Medilink Square, Bell House, 525-543A Nathan Road, Yau Ma Tei, Kowloon
- Floor Area** : About 2,246m²
- Lease** : Kowloon Inland Lot (KIL) No. 10188
(a) a lease term of 150 years commencing from 1.1.1898
(b) for non-industrial purposes
- Plan** : Draft Yau Ma Tei Outline Zoning Plan (OZP) No. S/K2/23
- Zoning** : “Commercial” (“C”)
(a) a maximum plot ratio (PR) of 12
(b) a maximum building height (BH) of 110 metres above Principle Datum (mPD)
- Application** : Commercial Bathhouse and Massage Establishment

1. The Proposal

- 1.1 The applicant seeks planning permission for commercial bathhouse and massage establishment on 2/F and 3/F (portion) of a 4-storey shopping arcade, namely Medilink Square, of an existing commercial/residential (C/R) building (i.e. Bell House) at 525-543A Nathan Road, Yau Ma Tei (the Premises) (**Plan A-1**). The Premises falls within an area zoned “C” on the draft Yau Ma Tei OZP No. S/K2/23 (**Plan A-1**). 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).
- 1.2 The Premises is the subject of a previous application (No. A/K2/216) submitted by the same applicant for the same use. On 17.2.2017, the Metro Planning Committee (the Committee) approved the application with conditions on a temporary basis for a period of 5 years, instead of on a permanent basis as

sought by the applicant. Subsequently, the approved scheme was implemented with all the approval conditions complied with and the temporary permission expired on 17.2.2022. The subject fresh application has been submitted for the same 'Commercial Bathhouse and Massage Establishment' use on the Premises on a permanent basis.

- 1.3 The Premises of about 2,246m² in floor area is located within the non-domestic portion of the existing C/R building (i.e. the shopping arcade) with exclusive accesses on G/F abutting Nathan Road serving the shopping arcade which are separated from the entrances of the domestic portion of the building (**Drawings A-1 to A-3 and Plan A-2**). The commercial bathhouse and massage establishment comprises facilities like massage room, sauna room, hot and cool pool, shower, changing room, reception area, laundry room, store room and staff room (**Drawings A-1 and A-2**). There is no change in the current scheme as compared with that approved under Application No. A/K2/216. According to the applicant, the Premises has been granted with a valid Massage Establishments Licence, and its peak hours are mostly from 8pm to 1am.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 6.1.2022 (Appendix I)
 - (b) Supplementary Planning Statement (Appendix Ia)
 - (c) Further Information (FI) received on 23.2.2022, (Appendix Ib) providing supplementary information on licensing detail and operation hours etc.*

*Remarks: * accepted and exempted from publication and recounting requirements*

2. Justifications from the Applicant

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

- (a) the proposed development is in line with the planning intention of the "C" zone and is compatible with the surrounding uses, which are characterised by high concentration of different commercial business of retail and entertainment activities that can be easily found on the G/F or podium level of tenement and residential blocks in the vicinity of the Premises;
- (b) the Premises is situated within the commercial portion of the subject C/R building with individual/separate accesses and no external change will be involved. Meanwhile, the application has demonstrated compliance with relevant guidelines and conditions by obtaining valid Massage Establishment License granted by the Hong Kong Police Force (HKPF) since 11.6.2018. The Premise is well equipped with security alarm system and fire installations facilities (i.e. fireman's lift and sprinklers), and means of escape arrangement have been approved by the

Buildings Department (BD). As such, approval of the application will not be contrary to the relevant Town Planning Board Guideline (TPB PG-No. 14B);

- (c) the Premises is served by two passenger lifts on upper level of G/F with escalators connecting directly to Nathan Road and one disabled lift which serves the commercial floors of the subject building only (**Drawing A-3**). There are four separate entrances serving the residential portion on the upper floors (**Drawing A-3**) and thus there will be no shared use of access between the commercial and residential portions of the C/R building;
- (d) the peak hours of the applied use is normally from 8pm to 1am, it will not cause significant implication to the future occupants on 1/F¹, which normally closed after office hour and can be accessible by other individual escalators from upper level of G/F. Meanwhile, internal staircase connecting 2/F and 3/F of the Premises allows better vertical movement within the Premises (**Drawings A-1 and A-2**);
- (e) the Premises is well served by various public transport services. Adverse impacts on traffic and local infrastructural network were not observed since the operation of the business. As the applied use will not discharge dust, noxious gas or effluents, and the Premises is air-conditioned with fixed windows, no air and noise impacts are anticipated;
- (f) the applicant has operated the Premises with good management in the past 5 years with approval conditions fully implemented. Massage Establishment License from HKPF was newly approved on 12.3.2020. No complaint was received from the Owners' Corporation of Bell House and other occupants of the subject building since its operation;
- (g) there is no change to the proposed use nor floor area as compared with the previously approved application. The applicant merely seeks permission to change the temporary nature of the approval to permanent in order to continue the business; and
- (h) there are similar applications, which situated in composite development, approved by the Committee on the grounds that separate access was available and the application premises was separated from the domestic portion.

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 obtaining consent of the “current land owner” of the Premises. Detailed information would be deposited at the meeting for Members’ inspection.

¹ 1/F of the subject building is currently vacant as revealed in the site inspection by the Planning Department on 21.1.2022.

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 C/R building such as the commercial podium of a composite C/R 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 (BA);
 - (d) where the proposed use is located within the non-domestic portion of a C/R 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 (FSD) and BD 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

The Premises is the subject of the previous Application No. A/K2/216 (**Appendix III**), which was approved with conditions by the Committee on 17.2.2017 on a temporary basis for a period of 5 years, instead of on a permanent basis as sought by the applicant, in order to closely monitor the operation of the proposed use within the composite C/R building. Subsequently, the applicant applied, under s.17 of the Ordinance, for a review of the Committee's decision on the temporary permission for 5 years (**Appendix III**). The review application was rejected by the Board upon review on 2.6.2017 mainly on the grounds that the proposed development would cause nuisance to the occupants of the subject C/R building, and a temporary permission is appropriate in order to closely monitor the operation of the proposed use under application. Subsequently, the approved scheme was implemented with all the approval conditions in respect of provision of fire service installations, security alarm system and separate access arrangement complied with before June 2018. The temporary permission under Application No. A/K2/216 expired on 17.2.2022.

6. Similar Applications

- 6.1 There are 12 similar applications for commercial bathhouse and/or massage establishment use within "C" zone in Yau Ma Tei since 1996 (**Plan A-1** and **Appendix IV**). Amongst them, 4 applications (Nos. A/K2/145, A/K2/151, A/K2/164 and A/K2/166) are located in the non-domestic portion of a C/R building and 7 applications (Nos. A/K2/105, A/K2/117, A/K2/120, A/K2/129, A/K2/143, A/K2/175 and A/K2/219) are located in a commercial building. All these similar applications were approved with conditions by the Committee on a permanent basis as the proposed developments were not incompatible with the existing uses within the building and the surroundings; the proposed developments complied with TPB PG-No. 14B; and the relevant Government departments had no adverse comment.
- 6.2 The remaining Application No. A/K2/155 (also located in the non-domestic portion of a C/R building) was rejected by the Committee on 25.10.2002, mainly on the grounds of non-compliance with TPB PG-No. 14B; no provision of separate access; possible nuisance to the occupants of the C/R building; and setting of undesirable precedent. Details of these applications are at **Appendix IV**.

7. The Premises and Its Surrounding Areas (Plans A-1 to A-5)

7.1 The Premises is:

- (a) located on 2/F and 3/F within the shopping arcade (i.e. Medilink Square) of the existing C/R building (i.e. Bell House) completed in 1970 (**Plan A-1**);

- (b) currently occupied by the subject commercial bathhouse and massage establishment (**Plans A-4 and A-5**); and
- (c) accessible from the G/F entrances of shopping arcade fronting Nathan Road by exclusive lift and escalators serving the shopping arcade, which are separated from the domestic portion of the building (**Drawing A-3 and Plan A-2**). There is also an internal staircase connecting 2/F and 3/F within the Premises (**Plan A-4**).

7.2 The subject building is

- (a) a 21-storey C/R building (including a 4-storey commercial podium) with main entrances fronting Nathan Road (**Drawing A-3**); and
- (b) according to the OP issued by BA on 7.4.1970 (**Appendix V**), the building was approved for the following uses on various floors:

Floor	Main Uses
B/F	Non-domestic Use (Store)
G/F	Non-domestic Use (Shops, Restaurants)
1/F	Non-domestic Use (Restaurants)
2/F to 3/F (Application premises)	Non-domestic Use (Restaurants)
4/F to 20/F	Domestic Use (Flats)

7.3 The surrounding areas have the following characteristics:

- (a) a predominantly C/R district intermixed with residential/commercial/hotel developments;
- (b) the subject building is abutting Nathan Road to the east and Waterloo Road to the south. To the immediate west is Hotel Ease Mong Kok, to the north of the subject building across Pitt Street are commercial buildings including On Lee Building, Kowloon Building, Wing Wong Commercial Building and Bik Lan House (**Plan A-2**);
- (c) developments along both sides of Nathan Road are zoned “C” on the OZP, and forms the main commercial spine within the Yau Ma Tei area; and
- (d) well served by various modes of public transport including bus, public light bus and taxi. MTR Yau Ma Tei Station is in close proximity to the Premises.

8. **Planning Intention**

The planning intention of the “C” zone is primarily for commercial developments, which may include shop, services, place of entertainment and eating place, functioning mainly as local shopping centres serving the immediate neighbourhood.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views on the application 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; and
- (b) the commercial bathhouse/massage establishment does not conflict with the lease conditions governing the Premises.

Building Matters

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

he has no objection to the application subject to the following:

- (a) all proposed building works/change of use should be in compliance with the Buildings Ordinance (BO);
- (b) the applicant should be advised to appoint an Authorized Person (AP) to assess the feasibility of the proposed alterations and additions works/change of use and ensure that the proposed alterations and additions works/change of use are implemented in compliance with BO including, inter alia, structural safety, provisions of adequate means of escape, fire resisting construction and access and facilities for persons with a disability, etc;
- (c) before any new building works are to be carried out on the application site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorised Building Works (UBW). An AP should be appointed as the co-ordinator for the proposed building works in accordance with BO;
- (d) for UBW erected on leased land, enforcement action may be taken by 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 BO;
- (e) detailed comments under BO can only be formulated at the building plans submission stage;

- (f) 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; and
- (g) adequate passages connecting the exit staircases on 2/F and 3/F should be provided for interchanging in case of emergency.

Fire Safety

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

- (a) he has no objection in principle to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction;
- (b) detailed fire services requirements will be formulated upon receipt of formal submission of general building plans or referral from licensing authority; and
- (c) 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) she has no objection to the application;
- (b) if a planning permission from the Board is considered necessary for the proposed location, the applicant is advised to first apply for the same before submitting an application to the Police Licensing Office for a Massage Establishments Licence;
- (c) any person who wishes to conduct massage business shall obtain a Massage Establishments Licence from C of P according to Section 6 of Massage Establishments Ordinance (Cap. 266). The applicant may also refer to Section 3 of Cap. 266 about the exemption; and
- (d) no complaint against the Premises was found.

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

- (a) he has no objection to the application; and
- (b) a Commercial Bathhouse License from his department is required

for the business which involves any premises maintained or intended to be maintained for the use, on payment of a fee, of persons requiring a bath.

Traffic

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

- (a) he has no in-principle objection to the application from traffic engineering perspective given the following observation:
 - (i) small and constrained site layout;
 - (ii) conveniently located to mass transport/public transport services; and
 - (iii) small scale of development; and
- (b) the applicant 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 development.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Engineer/Mainland South, Drainage Services Department;
- (c) Chief Highway Engineer/Kowloon, Highways Department;
- (d) Comments of the Director of Food and Environmental Hygiene (DFEH); and
- (e) District Officer (Yau Tsim Mong), Home Affairs Department (DO(YTM), HAD).

10. Public Comments Received During Statutory Publication Period

During the statutory public inspection period, a total of 7 public comments were received from individuals supporting the application (**Appendix VI**). The comments indicated that the commercial bathhouse and massage establishment had not caused any nuisances nor disturbances to the subject building since its opening and there was a shortage of legally operated commercial bathhouse and massage establishment in the areas.

11. Planning Considerations and Assessments

- 11.1 The applicant seeks planning permission to continue the commercial bathhouse and massage establishment previously approved for 5 years by the Committee on 17.2.2017 within the commercial portion (i.e. 2/F and 3/F (portion) of the 4-

storey shopping arcade) of the existing C/R building fronting Nathan Road. The Premises falls within an area zoned “C” on the OZP (**Plan A-1**). According to TPB PG-No. 14B for ‘Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance’, the main concern of the Board on commercial bathhouse and massage establishment is whether the Premises is suitable for these uses from the planning point of view.

Planning Intention and Land Use Compatibility

- 11.2 The Premises is located within the commercial portion of the existing C/R building. The use of the Premises for commercial bathhouse and massage establishment does not contravene the planning intention of the “C” zone, which is intended primarily for commercial developments.
- 11.3 As shown on the OP (**Appendix V**), G/F to 3/F (i.e. the shopping arcade) are for non-domestic uses, including shops and restaurants, while 4/F to 20/F are for flat use. The applied use is considered not incompatible with other existing uses (i.e. retail shops on G/F and 1/F currently vacant) within the shopping arcade, which is separate from the flats above. Besides, the subject building is situated in a neighbourhood intermixed with residential, commercial and hotel developments, and located along Nathan Road, which is the main commercial spine of Yau Ma Tei area (**Plan A-2**). As such, the applied use is considered not incompatible with the surrounding areas in land use perspective. In view of the above, the application is considered to be in compliance with the planning criteria of TPB PG-No. 14B provided in paragraphs 4(a) to (c) above in respect of land use compatibility.

Access Arrangement

- 11.4 The Premises is accessible from the G/F entrances of shopping arcade fronting Nathan Road by exclusive lift and escalators serving the shopping arcade separated from the domestic portion of the building (**Drawing A-3**). There is also an internal staircase connecting 2/F and 3/F within the Premises (**Plan A-4**). As such, nuisance to the residential portion on the upper floors of the building and other occupants in the shopping arcade is anticipated to be minimal. In this regard, the proposed development is considered generally in line with the planning criterion of TPB PG No. 14B provided in paragraph 4(d) above.

Departmental and Public Views

- 11.5 Both D of FS and CBS/K, BD have no objection to the application. An approval condition in respect of the fire service installations under paragraph 12.2 below is recommended at the request of D of FS. The commercial bathhouse and massage establishment under application is subject to relevant licensing requirements from DFEH and C of P, both of whom have no comment on/objection to the application. DFEH and C of P also advise that no complaint against the subject commercial bathhouse and massage establishment was received. Other Government departments consulted including DLO/KW, LandsD, C for T and DO(YTM), HAD have no objection to or no adverse comment on the application. During the statutory public inspection period, no

adverse public comment was received (**Appendix VI**). In view of the above, the applied use to continue the current operation could meet the planning criteria as laid down in TPB PG-No. 14B under paragraphs 4(e) to (g) above.

Similar Applications

- 11.6 Approval of the current application is consistent with the previous decisions of the Committee on the similar applications as stated in paragraph 6.1 above.

Approval of the Application on Permanent Basis

- 11.7 The previous application (No. A/K2/216) was approved with conditions on a temporary basis for a period of 5 years, instead of on a permanent basis as sought by the applicant, in order to closely monitor the operation of the proposed use within the C/R building. All the approval conditions in respect of provision of fire service installations, security alarm system and separate access arrangement were complied with. As advised by DFEH and C of P, no complaint against the commercial bathhouse and massage establishment at the Premises was received. During the statutory publication period of the subject application, no objection or adverse comment was received as well. In this regard, should the Committee decide to approve the application, approval of the application on a permanent basis is considered not unreasonable, and that it is also in line with the previous decisions of similar applications within C/R building in the Yau Ma Tei area, which were all granted with permanent permissions (**Appendix IV**).

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 above, and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, no time clause for commencement for the development is suggested as the commercial bathhouse and massage establishment under application is already in operation. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Condition

- (a) the submission and implementation of fire service installations and water supplies for firefighting within six months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.9.2022; and
- (b) if the above planning condition (a) is not complied with by the specified date, 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 VII**.

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 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.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for the rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 6.1.2022
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further Information received on 23.2.2022
Appendix II	Town Planning Board Guidelines No. 14B
Appendix III	Previous Application
Appendix IV	Similar Applications
Appendix V	Occupation Permit
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawings A-1 to A-2	Floor Plans
Drawing A-3	Access Arrangement Plan
Drawing A-4	Security Alarm System Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3 to A-5	Site Photos

**PLANNING DEPARTMENT
MARCH 2022**