

Deacons

的近律師行

By hand and by fax +852 2868 4530

Your Ref DEVB(PL-P)50/31/06/1 pt3
Our Ref LC:WW:pt:138534

Partner Wallace Wong Tel +852 2825 9676
Secretary Polly Tam Tel +852 2825 9313
E-mail wallace.wong@deacons.com.hk

29 March 2011

Secretary for Development
Development Bureau
9th Floor, Murray Building
Central
Hong Kong

Attention: Ms. Elania Luk

Dear Sirs,

Re : To Wing Yuen, No.179 Pai Tau Village, Sha Tin, New Territories
(Lot No.613 in DD 185 ("the Lot"))

We refer to your letter dated 18 March 2011 addressed to To Wing Yuen.

We are instructed by our client, Cheung Ho, being the registered owner of the Lot, to return to you herewith the reply slip enclosed with your said letter duly completed and signed by our client for your perusal and further action.

We are also instructed that our client has no objection to your publishing of this letter and the following copy letters which are submitted together with the said reply slip:

1. copy letter dated 5 November 2009 from us to District Lands Officer/Sha Tin;
2. copy letter dated 3 May 2010 from us to District Lands Officer/Sha Tin;
3. copy letter dated 15 November 2010 from us to your office; and
4. copy letter dated 13 December 2010 from us to your office.

Lawyers

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* Notary Public
* China-Appointed Attesting Officer

Page 1 of 2

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Finally, we wish to reiterate the contents of our previous letters dated 15 November 2010 and 13 December 2010 to your office.

In the meantime, all our client's rights in this matter are hereby reserved.

Yours faithfully,



Deacons

Encls.
Copy to: Client

Deacons

的近律師行

DISPATCHED
at 10:20 am
on 1 DEC 2010

By hand and by fax +852 2868 4530

Our Ref LC:WW:pt:08/138534

Partner	Wallace Wong	Tel	+852 2825 9676
Secretary	Polly Tam	Tel	+852 2825 9313
E-mail	wallace.wong@deacons.com.hk		

13 December 2010

Planning Unit
Development Bureau
9th Floor, Murray Building
Central
Hong Kong

Dear Sirs,

**Re : To Wing Yuen, No.179 Pai Tau Village, Sha Tin, New Territories
(Lot No.613 in DD 185 ("the Lot"))**

We refer to your letter dated 6 December 2010 and have taken our client's instructions on the same.

Our client has strong objection that To Wing Yuen shall be included in Part B of the Information on Private Columbaria proposed to be published on the website of the Development Bureau as mentioned in your letter dated 3 November 2010. Your proposal of publishing our letter dated 15 November 2010 and the supporting information as suggested in your letter dated 6 December 2010 will not assist much in removing the wrong impression to be created and misrepresentation to be made to the general public regarding the existing operation of To Wing Yuen as mentioned in our letter dated 15 November 2010.

While the background of To Wing Yuen and our client's grounds of denial of breaches of user restrictions under the Government Grant as alleged by the District Lands Office/Shan Tin have been set out in our previous letters to District Lands Office/Shan Tin, our client wishes to reiterate and draw your particular attention to the following facts:

1. To Wing Yuen has been established for more than 110 years by our client's father for worship of our client's grandfather, 道榮禪師.

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* Notary Public
* China-Appointed Attesting Officer

2. The body of 道榮禪師 has been present and worshipped in To Wing Yuen erected on the Lot since 1926.
3. During the Japanese occupation period, many people died and since that To Wing Yuen has started to provide service of deposit of ancestors' cremated ashes to its followers.
4. The existing user restrictions in the Government Grant were inserted as a result of misrepresentation or mistake made by the officers of the District Office, Tai Po in the course of regrant of the Lot.
5. In the course of regrant of the Lot in 1966 and our client's subsequent application to the District Office, Tai Po for carrying out extension works in To Wing Yuen in 1977, officers of District Office, Tai Po had made various visits to and detailed inspection of To Wing Yuen. Further, To Wing Yuen is one of the famous temples in Sha Tin and the details and history of To Wing Yuen have been documented in various books and websites about Chinese temples in Hong Kong. Accordingly, the Government must be well aware of the operation of To Wing Yuen and that it involves placement and worship of the body of 道榮禪師 and the ancestors' shrines and cremated ashes of followers. However, the Government has never raised any objection to the operation of To Wing Yuen until District Lands Office/Shah Tin's letter dated 30 September 2008.

In the circumstances, we and our client fail to see that District Lands Office/Shah Tin's allegation of our client's breach of the user restrictions under the Government Grant of the Lot is valid at all.

Further, our client has vigorous complaint about District Lands Office/Shah Tin's different treatment of 萬佛寺 in which the body of 月溪法師 is present and worshipped although the Government Grant of which lot also contains user restrictions similar to those of the Lot. However, District Lands Office/Shah Tin has only taken action against To Wing Yuen selectively but not against 萬佛寺. Our client wishes the Government to give a satisfactory explanation why To Wing Yuen has received such different and unfair treatment in this matter.

Our client's wish to remind your bureau that should your bureau proceed to include To Wing Yuen in Part B of the Information on Private Columbaria proposed to be published on the website of the Development Bureau as mentioned in your letter dated 3 November 2010, it will definitely and seriously prejudice our client's operation of To Wing Yuen on the Lot and cause severe losses and damages to our client both in terms of finance and reputation. In that event, our client shall have no hesitation in commencing legal action against your bureau and the Government and hold your bureau and the Government fully liable for all losses, damages, costs and expenses suffered or incurred by our client as a result of your action.

Finally, we are instructed that our client is prepared to have a meeting with the officers from your bureau, the District Lands Office/Shah Tin and all other relevant Government departments in order to rectify the existing error in the Government Grant of the Lot and settle this issue so that the normal operation of To Wing Yuen as in the past 110 years can be continued. Any suggestion from your bureau in this respect is welcome by our client.

In the meantime, all our client's rights in this matter are hereby reserved.

Yours faithfully,


Deacons

Copy to: Client

Deacons

的近律師行

DISPATCHED
3-23
3 MAY 2010

By mail and by fax +852 2602 4093

Your Ref (40) in L/M (1) in LND 28/ZLT/59
Our Ref LC:WW:pt:08/138534

Partner Wallace Wong Tel +852 2825 9676
Secretary Polly Tam Tel +852 2825 9313
E-mail wallace.wong@deacons.com.hk

3 May 2010

District Lands Officer/Shatin
District Lands Office, Shatin
Lands Department
11th Floor, Sha Tin Government Offices
1 Sheung Wo Che Road
Shatin
New Territories

Attention: Miss Fanny Ng

Dear Sirs,

Re : Lot No.613 in DD 185, No.179 Pai Tau Village, Shatin, New Territories ("the Lot")

We refer to your letter dated 15 March 2010.

As already mentioned in our letter dated 5 November 2009, the inclusion of user restrictions for residential purpose and prohibition of making of grave and deposit of human remains on the Lot in the New Grant No.9874 is as a result of mistake or otherwise misrepresentation by the officers of the District Office, Tai Po.

Without prejudice to anything mentioned in our said letter, we wish to add that the phrase "human remains" mentioned in Special Condition No.27 of the New Grant should not include human ashes and such interpretation is consistent with the definition of the phrase adopted in various Ordinances.

Accordingly, we reiterate that there is no breach of the conditions of the New Grant as alleged in your said letter. On the contrary, we are instructed by our client to demand, which we hereby do, the Government to take appropriate action to rectify the errors in the New

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Grant as mentioned in our said letter as soon as possible without any further delay.

Alternatively, even if there is no mistake or misrepresentation in relation to Special Condition Nos.4 and 27 of the New Grant, which we do not concede, as already mentioned in our letter dated 5 November 2009 the operation of the Monastery on the Lot (including placement of the body of 道榮禪師 and placement of ancestors' shrines and cremated ashes by followers) has never been changed since the date of the New Grant and even earlier but no objection to the operation of the Monastery has ever been raised by the Government until our client's receipt of your letter dated 30 September 2008. By the conduct and inaction of the Government in respect of the alleged breach of the said Special Conditions for more than 40 years, the Government has waived or released the restrictions under the said Special Conditions and can no longer enforce the same. Please refer to the case Attorney General of Hong Kong v Fairfax Limited [1997] 1 WLR 149 in this respect.

Finally, we are instructed that our client will defend his case vigorously to protect his interest in the Lot should any lease enforcement action be taken by the Government as mentioned in your said letter.

In the meantime, all our client's rights in this matter are hereby expressly reserved.

Yours faithfully,


Deacons

Copy to: Client

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DISPATCHED
at 3:43pm
on 5 NOV 2009

By mail and by fax +852 2602 4093

Your Ref (7) in L/M (1) in LND 28/ZLT/59
Our Ref LC:WW:pt:08/138534

Partner Wallace Wong Tel +852 2825 9676
Secretary Polly Tam Tel +852 2825 9313
E-mail wallace.wong@deacons.com.hk

5 November 2009

District Lands Officer/Shah Tin
District Lands Office, Sha Tin
Lands Department
11th Floor, Sha Tin Government Offices
1 Sheung Wo Che Road
Shatin
New Territories

Attention: Miss Fanny Ng

Dear Sirs,

Re : Lot No.613 in DD 185, No.179 Pai Tau Village, Shatin, New Territories ("the Lot")

We refer to the above matter and your letter dated 30 September 2008 addressed to our client, Cheung Hon, the registered owner of the Lot.

We have taken instructions from our client and are instructed to formally dispute your allegation of our client's breaches of the conditions of the New Grant No.9874 ("the New Grant") relating to the user restrictions of the Lot as follows:

1. In 1899, 道榮園 ("the Monastery") was first established by our client's father at Kowloon City for worship of our client's grandfather, 道榮禪師.
2. 道榮禪師 passed away in 1891 and his body was transferred to the Monastery in 1899 for worship by his successors and followers.
3. In 1926, the Monastery together with the body of 道榮禪師 were moved to the existing site of the Lot.

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^{*} Notary Public
[°] China-Appointed Attesting Officer

4. In 1932, the Monastery was registered as a temple with the Chinese Temples Committee and was one of the oldest temples in Sha Tin.
5. During the Japanese occupation period, many people died and since that the Monastery started to provide service of deposit of ancestors' cremated ashes to its followers.
6. In or around 1953, portion of the land on which the Monastery was erected was re-entered by the Government for failure to pay Government Rent and the arrears of Government Rent was subsequently paid in 1964.
7. In 1966, our client negotiated with the District Office, Tai Po for exchange of the land on which the Monastery was erected with the Lot.
8. Before issue of the New Grant of the Lot, the officers of District Office, Tai Po had visited the Monastery numerous times for conducting survey and inspection. In each occasion, our client showed the officers around the Monastery and answered questions from the officers. The places of the Monastery inspected by the officers included 大雄寶殿 (for worship of Buddha), 龍華堂 and 報恩堂 (for placement of ancestors' shrines by followers), 西方堂 (for placement of ancestors' cremated ashes by followers) and 祖師堂 (for placement of the body of 道榮禪師). During the inspections, the officers were especially interested in the story of 道榮禪師.
9. As our client could not read English, our client had totally relied on the officers of the District Office, Tai Po to tell him the contents of the New Grant of the Lot before our client executed the New Grant of the Lot in 1967. Before our client's execution of the New Grant, our client was told by the officers of the District Office, Tai Po that the permitted use of the Lot was the same as that of the lots surrendered for the exchange and our client could continue the operation of the Monastery on the Lot as in the past. Our client had never been told and were not aware that the permitted use of the Lot specified in the New Grant was for residential purpose only and there was also restriction that no grave should be made on the Lot nor should any human remains whether in earthenware jars or otherwise be interred therein or deposited thereon until our client received your said letter dated 30 September 2008.
10. Since the issue of the New Grant of the Lot, the operation of the Monastery on the Lot (including placement of the body of 道榮禪師 and placement of ancestors' shrines and cremated ashes by followers) has never been changed and no objection to the operation of the Monastery has ever been raised by the Government until our client's receipt of your said letter dated 30 September 2008. In fact, certain extension works in respect of the Monastery were once carried out in 1977 and in this connection our client had made application to the District Office, Tai Po for approval of the works and the relevant approval was given by the District Office, Tai Po without any objection to the extension of the Monastery.
11. The Monastery is one of the famous temples in Sha Tin and the details and history of the Monastery are documented in various book and websites about Sha Tin and Chinese temples in Hong Kong (see copy extract).

12. It is clear from the above that the Government must be well aware of the existence and operation of the Monastery (including placement of the body of 道榮禪師 and placement of ancestors' shrines and cremated ashes by followers) on the Lot both before and after issue of the New Grant. Therefore, the inclusion of user restrictions for residential purpose and prohibition of making of grave and deposit of human remains on the Lot in the New Grant is as a result of mistake or otherwise misrepresentation by the officers of the District Office, Tai Po.

In the circumstances, we are instructed by our client to, which we hereby do, formally request your office to rectify the errors in Special Conditions Nos.4 and 27 of the New Grant of the Lot so that our client's normal operation of the Monastery on the Lot as in the past 83 years can continue and shall not be prejudiced in any manner.

We should be grateful if you would let us know your proposal action for rectifying the said errors in the New Grant as soon as possible. Should you have any query or wish to discuss the matter with us, please feel free to contact our Mr. Wallace Wong at 28259676.

In the meantime, all our client's rights in this matter are hereby expressly reserved.

Yours faithfully,



Deacons

Encls.

Copy to: Client

DISC
9/25/2010
15 NOV 2010

Deacons

的近律師行

By hand and by fax +852 2868 4530

Our Ref LC:WW:pt:08/138534

Partner Wallace Wong Tel +852 2825 9676
Secretary Polly Tam Tel +852 2825 9313
E-mail wallace.wong@deacons.com.hk

15 November 2010

Planning Unit
Development Bureau
9th Floor, Murray Building
Central
Hong Kong

Dear Sirs,

Re : To Wing Yuen, No.179 Pai Tau Village, Sha Tin, New Territories
(Lot No.613 in DD 185 ("the Lot"))

We act for Cheung Hon, the registered owner of the Lot, and refer to your letter dated 3 November 2010 addressed to To Wing Yuen.

We are instructed to return to you herewith the form enclosed with your said letter duly completed and signed by the authorized representative of To Wing Yuen for your perusal and further action.

We are also instructed to clarify and point out the following:

1. The operation of To Wing Yuen on the Lot had been commenced since 1926 and was in existence immediately before the publication of the Sha Tin Outline Zoning Plan and therefore is an existing use as defined under the Town Planning Ordinance.
2. Our client is in dispute with the District Lands Office/Sha Tin in relation to the alleged breach of the user restrictions under the Government Grant in respect of the Lot. In this connection, copies of our previous letters dated 5 November 2009 and 3 May 2010 to District Lands Office/Sha Tin are enclosed herewith for your reference. Our client strongly denies that there is any breach of user restriction under the Government Grant as alleged and our client will defend his case vigorously

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for protection of his title, rights, interest, benefits and entitlements in this matter.

3. It is highly unsatisfactory that your proposed Information on Private Columbaria shall only include Part A and Part B as mentioned in your said letter. Your proposed inclusion of To Wing Yuen in Part B of the Information on Private Columbaria presented in the manner as set out in your said letter will certainly create a wrong impression to and also amount to a misrepresentation to and mislead the general public that the existing operation of To Wing Yuen on the Lot is not in compliance with the Town Planning Ordinance and also in breach of the user restriction under the Government Grant. In fact, that is not the reality.

In the circumstances, we are instructed to stress that our client hereby reserve its full rights to claim against you and the Government for any losses, damages, costs and expenses to be suffered or incurred by our client as a result of your proposed publication of the Information on Private Columbia.

Finally, we wish to reiterate that nothing contained in the enclosed form and herein shall constitute any admission of any non-compliance with the Town Planning Ordinance or any breach of the user restrictions under the Government Grant of the Lot by our client and all our client's rights in this matter are hereby expressly reserved.

Yours faithfully,


Deacons

Encl.

Copy to: Client

To: Planning Unit, Development Bureau
9/F, Murray Building, Central, Hong Kong
Fax: 2868 4530

To Wing Yuen
Pai Tau Village, Sha Tin, New Territories

- I, on behalf of the captioned private columbarium, agree to the Town Planning and Land/Lease Information as detailed in Column 5 and Column 6 of the Information on Private Columbaria (Part B).
- I, on behalf of the captioned private columbarium, agree to the Town Planning Information as detailed in Column 5, but disagree to the Land/Lease Information as detailed in Column 6 of the Information on Private Columbaria (Part B).
- I, on behalf of the captioned private columbarium, agree to the Land/Lease Information as detailed in Column 6, but disagree to the Town Planning Information as detailed in Column 5 of the Information on Private Columbaria (Part B).
- I, on behalf of the subject private columbarium, disagree to the Town Planning and Land/Lease Information as detailed in Column 5 and Column 6 of the Information on Private Columbaria (Part B).

Note: Please tick only one box. If you tick more than one box, we will proceed to publish the information relating to the captioned private columbarium as set out in the covering letter. The Government reserves the right to take actions against private columbaria included in Part B. The publication of the Information does not mean that the Government has waived any breach of statutory requirements and/or lease requirements.

Signature:

Chung Chin Pang

Name in block letters:

(English)

CHUNG CHIN PANG

(Chinese)

張 昭 鵬

Post:

(English)

DIRECTOR

(Chinese)

董事

Name of Business/Columbarium:

(English)

To Wing Yuen Management Limited

(Chinese)

道榮園管理有限公司

Telephone number:

26912039

Business Chop:



Date:

13 NOV 2010

致： 發展局規劃組
香港中環美利大廈九樓
傳真： 2868 4530

有關道榮園
新界沙田排頭村

- 本人謹代表上述私營骨灰龕同意列載於私營骨灰龕資料(第二部分)內第五欄及第六欄的規劃及土地/契約資料。
- 本人謹代表上述私營骨灰龕同意列載於私營骨灰龕資料(第二部分)內第五欄的規劃資料，但並不同意列載於第六欄的土地/契約資料。
- 本人謹代表上述私營骨灰龕同意列載於私營骨灰龕資料(第二部分)內第六欄的土地/契約資料，但並不同意列載於第五欄的規劃資料。
- 本人謹代表上述私營骨灰龕並不同意列載於私營骨灰龕資料(第二部分)內第五欄及第六欄的規劃及土地/契約資料。

註： 請只選取其中一項。如閣下選取多於一項，我們將按封面信所載的規劃及土地/契約資料於第二部分內公布。
政府對第二部分內的私營骨灰龕保留追究權利。政府公布資料並非代表已豁免任何法定規定及/或契約條款的違反。

簽署：

名稱(請以正楷填寫)：

Chung Chin Pang

(英文) CHEUNG CHIM PANG

(中文) 張照鵬

職銜：

(英文) DIRECTOR

(中文) 道榮園管理有限公司 董事

公司/骨灰龕名稱：

(英文) To Wing Yuen Management Limited

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