

王東昇、鍾金榮律師事務所

ONG & CHUNG  
SOLICITORS

Principals:

LAWRENCE T. S. ONG JP  
王東昇律師

CALVIN K. CHUNG  
鍾金榮律師

LAI SAI ON, ANDUS  
黎世安律師

CHAN SIU PAN  
陳少彬律師

CHOI YUK FAN  
蔡毓藩律師

Registered Foreign Lawyer:

HUANG BOSHENG (PRC)  
黃伯勝律師 (中國)

YOUR REF :

OUR REF : LO/41169/09/BJ  
Secretary for Development  
9/F, Murray Building  
Garden Road, Hong Kong

DATE: 28<sup>th</sup> March 2011

**By Fax (2868 4530) and By Hand**

Attn: Miss Elania LUK

Dear Madam,

Re: **Memorial Park Hong Kong Limited**  
**No.93, Fo Tan Village, Shatin, New Territories**  
**Lot Nos.551A, 551RP, 640, 644A, 644B & 644RP in DD 176**

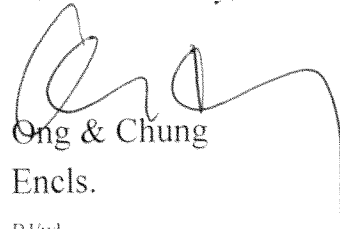
We act for Memorial Park Hong Kong Limited. We have been instructed to reply to your letter to our client dated 18<sup>th</sup> March 2011. We also enclose herewith the form attached to your said letter duly completed by our client.

We would like to re-iterate what we have said in our letters to you dated 17<sup>th</sup> November and 13<sup>th</sup> December 2010 respectively. Copies of our said letters are enclosed herewith.

Lastly, please be reminded that the correct English name of our client should be "Memorial Park Hong Kong Limited" instead of "Hau Sze Yuen". We are further instructed to request you to remove our client's name from Part B of the Information on Private Columbarium.

All the rights of our client in this matter are hereby reserved.

Yours faithfully,

  
Ong & Chung  
Encls.  
BJ/wl

472243



Head Office  
總行  
Tsuen Wan Branch  
荃灣分行

Rooms 1405-07, 14/F., Dominion Centre, 43 Queen's Road East., Hong Kong  
香港皇后大道東四十三號東美中心 14 樓 1405-1407 室  
Room 903, Nan Fung Centre, 264-298 Castle Peak Road, Tsuen Wan, New Territories  
新界荃灣青山道 264 至 298 號南豐中心 903 室

Tel(電話): 2526 1171 Fax(傳真): 2845 0686

Tel(電話): 2402 8662 Fax(傳真): 2402 8727

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YOUR REF:

OUR REF: LO/39216/08/HL

Date: 17<sup>th</sup> November 2010

Secretary for Development

9/F, Murray Building

**BY FAX (2868 4530) & HAND**

Garden Road, Hong Kong

Attn: Miss Elania LUK

Dear Madam,

Re: **Hau Sze Yuen**

**No.93, Fo Tan Village, Shatin, New Territories**

**Lot Nos.551A, 551RP, 640, 644A, 644B & 644RP in DD 176**

1. We act for Memorial Park Hong Kong Limited, the operator of Hau Sze Yuen, a private columbarium. We have been instructed to reply to your letter to our client dated 3 November 2010.
2. Please take notice that our client disagrees to the Town Planning and Land/Lease Information as detailed in Column 5 and Column 6 of the Information on Private Columbarium.
3. As regards Column 5 of the Information on Private Columbarium, our client's view is that the Town Planning Information therein, namely

“OZP: Sha Tin Outline Zoning Plan

Zoning: Village Type Development

Not in compliance with planning requirements (unless it is an existing use)”,

does not contain all the material town planning information relating to Hau Sze Yuen, and if not amended or qualified such Information will mislead or tend to mislead members of the public. This is because:

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- (a) Whilst the Government has enforcement power under the Town Planning Ordinance, Cap. 131 (“the Ordinance”) in relation to unauthorized development on land designated as a Development Permission Area (“DPA”) within a DPA plan, for land not so designated, the Government does not have any direct enforcement power under the Ordinance in relation to use not conforming to the uses stipulated in the relevant outline zoning plan (“OZP”) (see *Halsbury Laws of Hong Kong*, Vol. 25(2), 2009 Reissue, [385.329]). The Government’s enforcement power in relation to such land is mainly through the land lease and, if applicable, the Building Ordinance (see *Halsbury Laws of Hong Kong*, Vol. 25(2), 2009 Reissue, pp. 56-76).
- (b) In so far as Hau Sze Yuen is concerned, the first draft OZP which covered, inter alia, the land lots now forming Hau Sze Yuen (“the Land Lots”) was exhibited for public information under section 5 of the Ordinance on 15 April 1966. This was the draft Sha Tin OZP No. LST/47. This draft OZP was subsequently approved by the then Governor in Council on 13 June 1967. (see paragraph 2.1 of the Explanatory Statement of Approved Sha Tin OZP S/ST/23)
- (c) The Land Lots have never been designated as a DPA in a DPA plan, and they will never be so designated (see section 20(2) of the Ordinance, which provides, so far as is material, that “The [Town Planning] Board shall not designate as a development permission area any area that is or was previously included in a plan under this Ordinance ...”).
- (d) It follows, therefore, that the Government does not have any direct enforcement power under the Ordinance in relation to the Land Lots. Its enforcement power in relation to the Land Lots is mainly through the land lease and, if applicable, the Building Ordinance.
4. As regards Column 6 of the Information on Private Columbarium, our client’s view is that the Land/Lease Information therein, namely “Columbarium use is not permitted under the lease”, is not correct. In this connection, our client wishes to re-iterate the contents of a letter from us to District Lands Officer, Sha Tin dated 8 April 2010, a copy of which is enclosed herewith for your information. The gist of the said letter (not exhaustive) is that:

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- (a) there is no evidence to prove that General Condition 15 contained in Gazette Notice No. 364 of 1934 (“GC15”) has been incorporated in the relevant Conditions of Sale;
- (b) on a true construction, the meaning of the words “human remains” in GC15 does not include the ashes of the body of a person who has died and which has undergone the process of cremation.
5. Our client appreciates that the Government is entitled to present its own views on the contents of Column 5 and Column 6 of the Information on Private Columbarium, but it should do so fairly. Our client considers that until and unless the Government’s views have been adjudicated by the court to be correct in law, our client is also entitled to present its own views on the said contents.
6. In the premises, we would humbly suggest that Column 5 and Column 6 of the Information on Private Columbarium in so far as they relate to Hau Sze Yuen be revised as follows (or with words of like effect), with the suggested revision underlined:

| Column 5  | Column 6   |
|---|--|
| Town Planning Information   | Land/Lease Information   |
| <p>The Government’s view is as follows:<br/>OZP: Sha Tin Outline Zoning Plan<br/>Zoning: Village Type Development<br/>Not in compliance with planning requirements (unless it is an existing use)</p> <p><u>The view of the operator of this columbarium is as follows:</u><br/><u>The Government does not have any direct enforcement power under the Town Planning Ordinance in relation to the land lots concerned. Its enforcement power in relation to the said land lots is mainly through the land lease and, if applicable, the Building Ordinance.</u></p> | <p>The Government’s view is as follows:<br/>Columbarium use is not permitted under the lease.</p> <p><u>The view of the operator of this columbarium is as follows:</u><br/><u>There is no evidence of any prohibition in the lease, or alternatively there is no prohibition in the lease, of the land lots concerned against the interment therein or depositing thereon of the ashes of the body of a person who has died and which</u></p> |

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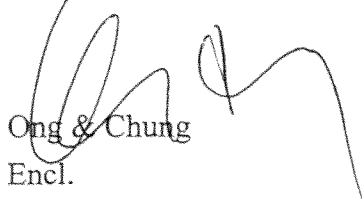
Which of the above views is correct in law is ultimately a matter for decision by the court. Pending such a decision, any person who wishes to acquire any niche or niches or space or spaces in this Columbarium should seek independent legal advice before they make a decision on the acquisition.

has undergone the process of cremation.

Which of the above views is correct in law is ultimately a matter for decision by the court. Pending such a decision, any person who wishes to acquire any niche or niches or space or spaces in this Columbarium should seek independent legal advice before they make a decision on the acquisition.

7. All the rights of our client in this matter are hereby reserved.

Yours faithfully,



Ong & Chung  
Encl.

c.c. client

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YOUR REF :

OUR REF : LO/41169/09/BJ  
Secretary for Development  
9/F, Murray Building  
Garden Road, Hong Kong

DATE: 13<sup>th</sup> December 2010

By Fax (2868 4530) and By Hand

Attn: Miss Elania LUK

Dear Madam,

Re: **Hau Sze Yuen**

**No.93, Fo Tan Village, Shatin, New Territories**

**Lot Nos.551A, 551RP, 640, 644A, 644B & 644RP in DD 176**

1. We act for Memorial Park Hong Kong Limited, the operator of Hau Sze Yuen. We have been instructed to reply to your letter to our client dated 6 December 2010 ("Your Letter").
2. We would like to re-iterate what we have said in paragraph 5 of our letter to you dated 17 November 2010 ("Our Letter"),

"5. Our client appreciates that the Government is entitled to present its own views on the contents of Column 5 and Column 6 of the Information on Private Columbarium, but it should do so fairly. Our client considers that until and unless the Government's views have been adjudicated by the court to be correct in law, our client is also entitled to present its own views on the said contents."  
[emphasis added]

3. You propose in Your Letter that you will publish Our Letter together with the supplemental information in the Development Bureau's website for public viewing when the Information on Private Columbaria is to be [sic] published. We take it, arising from your proposal, that:



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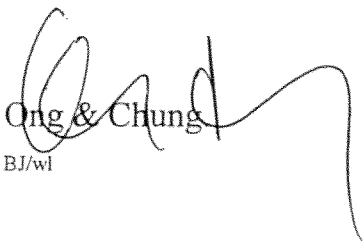
Rooms 1405-07, 14/F., Dominion Centre, 43 Queen's Road East., Hong Kong.  
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- (a) You do not accept our suggestion in paragraph 6 of Our Letter, namely that the wording of Column 5 and Column 6 of the Information on Private Columbaria in so far as they relate to Hau Sze Yuen be revised so that it contains both the Government's views and our views.
- (b) Instead, the text of Column 5 and Column 6 of the Information on Private Columbaria when published will contain only the Government's views but not our views, with no express/clear qualification or rider drawing the viewer's attention to the fact that (i) the information appearing in such Columns are only the Government's views and (ii) whether or not the Government's views are correct in law is a matter for the court.
- (c) The Information on Private Columbaria will presumably be published not just electronically in Development Bureau's website for public viewing – printed copies of it (without our views inserted) will be made available to members of the public
4. If our understanding above is correct, we will strongly object to the proposal contained in Your Letter. It will fail to achieve the aim that the information in the said Columns should be fairly presented to members of the public.
5. Last but not the least, we consider that if you cannot, for whatever reason, fairly present the information in the said Columns, then you should drop the idea of publishing the Information on Private Columbaria (in such an unfair and misleading manner) altogether.
6. All the rights of our client in this matter are hereby reserved.

Yours faithfully,

  
Ong & Chung  
BJ/wl