

**LO, WONG & TSUI**SOLICITORS & NOTARIES  
AGENTS FOR TRADE MARKS & PATENTS**盧王徐律師事務所**Solicitor in charge: Johnny Wong  
Clerk in charge:Tel No.: 2514 1517  
Tel No.:By: Fax and Post  
2868 4530

Our ref.: 64611/JW/vw

Your ref.: DEVB(PL-P)  
50/31/06/1 pt3Date: 28<sup>th</sup> March 2011Development Bureau,  
9/F., Murray Building,  
Garden Road,  
Hong Kong.

Dear Sirs,

Re : Yan Hau Chung Tze

We have instructions to act for Grand Step International Limited which operates the above Yan Hau Chung Tze and refer to your letter to us dated 18<sup>th</sup> March 2011.

We reiterate that you have already decided that the above private columbarium would be included in Part B with the Town Planning Land/Lease Information as set out in your said letter. It is therefore futile to have the reply slip filled in. Having said that, we are instructed by our client to return herewith the reply slip duly filled in showing our consent to your publishing of this letter and/or supplemental information submitted together with the reply slip (if any) on the Development Bureau's website for public viewing when the Information and Private Columbaria is to be updated.

In the meantime, we reiterate on behalf of our client that in "Column 5 Town Planning Information", you alleged that "the OZP is Sha Tin Outline Zoning Plan and the Zoning is Village Type Development and that our client is NOT in compliance with planning requirements (unless it is an existing use)". We are instructed by our client to reiterate its claim of "an Existing Use". Our client claims that the land ("the Land") on which the building ("the Building") is erected and at which Yan Hau Chung Tze now operates has been used as a private columbarium before the enactment of the Town Planning Ordinance, Cap.131. In the circumstances, our client denies the user of the Land is NOT in compliance with the planning requirements. Our client further reiterates that there has not been any change of use since the enactment of the said Town Planning Ordinance, Cap.131. Our client's use

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of the Building as a private columbarium is therefore perfectly legal according to the Melhado case due to Existing Use. In any event, we understand from our client that the Village Committee for Indigenous Villagers of Wo Liu Hang has engaged Toco Planning Consultants Limited to make a re-zoning application for columbarium use at Wo Liu Hang, Fo Tan.

As for Column 6 "Land/Lease Information", we reiterate on behalf of our client that whilst you claimed that "The user restrictions provisions in the relevant land lease are still under consideration and investigation by District Lands Office/Shah Tin" we must point out that the said consideration investigation has been on-going for over 4 years. There is still no evidence of breach of the lease conditions of the Land which only prohibit the making of grave on, or human remains be interred in, or deposited on the Land either in earthenware jars or otherwise.

As the operation of a columbarium involves only the deposit of urns with ashes resulted from the cremation of human bodies, it would not in itself contravene the lease conditions of the Land as cremated human ashes would not be considered as human remains. This can be seen in Section 2 of the Public Cemeteries Regulations in which the term "human remains" is defined as "the dead body or part thereof of any human being or any still-born child, but does not include ashes resulting from the cremation thereof."

In view of the above, we reserve all our client's rights. Further, please note that nothing herein or in the reply slip shall prejudice any of our client's rights in respect of which we hereby reserve.



Yours faithfully,

  
Lo, Wong & Tsui

JW/vw

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By: 傳真及郵遞

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50/31/06/1 pt3

Date:

發展局  
香港花園道美利大廈九樓

敬啟者：

有關：仁孝宗祠

本所代表客戶宏進國際發展有限公司，上述仁孝宗祠的經營者，就 貴局二零一一年三月十八日的信件作出回應。

本所重申 貴局就政府準備公佈更新私營骨灰龕之資料(第一部份及第二部份)的資料事宜，貴局在上述信函內，已定論上述私營骨灰龕的規劃及土地(契約資料)已被定性在“第二部份內”。因此，本所認為填妥回條予 貴局實無意義。話雖如此，本所亦受客戶委託，附上填妥的回條，以顯示本所同意政府將有關資料，於私營骨灰龕資料作出更新時，上載於發展局網頁，以便將資料公開。

於此，本所代表客戶重申在第五欄的規劃資料內，貴局聲稱有關地段的分區計劃大綱圖為沙田分區計劃大綱圖，規劃用途為鄉村式發展及不符合規劃用途(除非屬“現有用途”)。在此，本所代表客戶作“現有用途”的聲明。本所客戶聲明於有關地段(“該地段”)興建的建築物(“該建築物”)，即現經營仁孝宗祠的該建築物，於城市規劃條例(第131章)的立法前，該建築物已被用作存放私人骨灰。因此，本所客戶否認該地段的用途為不符合規劃用途。本所客戶重申，於城市規劃條例(第131章)立法前，該地段的用途一直並未曾改變。故此，本所客戶以該建築物為私營骨灰龕因根據 Melhado case 的“現有用途”之原則下，完全合法。無論如何，本所從客戶中得悉，禾寮坑村原居民村務委員會已委託達材都市規劃顧問有限公司，向城市規劃委員會作出申請，更改該地段的用途，以准許作骨灰龕之用。

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就第6欄的土地/契約資料，本所代表客戶重申，就貴局聲稱“沙田地政處正審議和研究相關土地契約中的用途限制條文”而言，本所必須指出，政府就有關審議和研究已超越四年，但並未發現有任何違反該地段契約的證據。該地段祇禁止使用作為墓地以安葬人體遺骸或以金塔存放人體遺骸。

由於骨灰龕祇涉及安放火化後的人類骨灰，此舉並不會違反該地段的契約條文，理由為因火化後的人類骨灰，並不被視為人體遺骸。此論點可見於公眾墳場規例第二條。該第二條條文指出，遺骸是指人類屍體或非活產嬰兒的屍體或其任何部份，但不包括該等屍體經火化後剩下的骨灰。

鑑於上述理由，本所保留客戶的一切權利。再者，在此及任何送回之回條並不損害本所客戶之權益為基礎下，本所特此保留客戶的一切權益。

此致

發展局



  
盧王徐律師事務所  
二零一一年三月二十八日