

Our Ref : ST/MIS/1371C/L22  
Your Ref.: DEVB(PL-P) 50/31/06/1

21 September 2016

Development Bureau  
17/F, West Wing,  
Central Government Offices,  
2 Tim Mei Venue  
Hong Kong

**By fax and post**  
(No. 2868-4530)

Attn : Mr. Kevin Ip

Dear Sir,

**Sin Tin Toa Home for the Aged  
(Lot No. 475RP in DD 185 and  
Government Land Licence No. Z0070 ("the Site"))**

We act for Sin Tin Toa Home for the Aged, the operator of a columbarium on the Site.

We are instructed to object to the Town Planning Information as detailed in Column 5 of the Information on Private Columbarium (Part B) which was updated on 30 June 2016 regarding our client. Column 5 states that :

“ OZP : Sha Tin Outline Zoning Plan  
Zoning : Government, Institution or Community and Village Type Development  
Not in compliance with planning requirements (unless it is an existing use) ”

We are of the view that the columbarium operated by our client on the Site is an “**existing use**”. We now attach our counsel’s advice on this matter and supporting documents for your consideration.

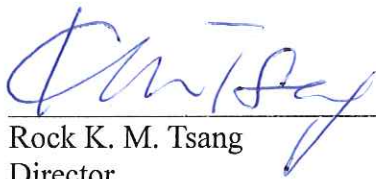
Our Ref : ST/MIS/1371C/L22  
Your Ref.: DEVB(PL-P) 50/31/06/1

In the premises, we would request you to classify the columbarium on the site as an existing use under Column 5 of the Information on Private Columbarium

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

Thank you for your kind attention on the matter.

Yours faithfully,  
For and on behalf of  
LANBASE SURVEYORS LIMITED



---

Rock K. M. Tsang  
Director  
RK/in

Encl.

c.c. Client

Re: Sin Tin Toa Home for the Aged

---

**ADVICE**

---

- Instructing solicitors act for Sin Tin Toa Home for the Aged (“the client”) and I am instructed to advise on whether the columbarium established by the client on the land Lot No. 475RP in DD185 and the land under the Government Land Licence No. Z0070 is in compliance with the planning requirements under the draft Sha Tin Outline Zoning Plan.

Background

- The client has been included in Part B of the Information on Private Columbaria which was published by the Development Bureau and updated on 31<sup>st</sup> March 2011. The reasons are (a) the columbarium operated by the client on the land Lot No. 475RP in DD185 (“the Site 1”) and the land under the Government Lease No. Z0070 (“the Site 2”) are not in compliance with planning requirements and (b) the user restrictions in the relevant land lease are still under consideration and investigation by the Sha Tin District Lands Office.
- This advice concerns solely whether the columbarium on the Site 1 and the Site 2 are in compliance with the planning requirements.
- The columbarium established on the Site 1 and the Site 2 falls within an area zoned “Government, Institution or Community” (“G/IC Zone”) and an area zoned “Village Type Development (“V Zone”)” respectively. The relevant town plan is the draft Sha Tin Outline

Zoning Plan No. S/ST/24 ("OZP 2011") which was published in the Gazette on 11<sup>th</sup> February 2011.

"Existing Use"

- It is trite that both the Plan and the Notes form part of the OZP 2011. Paragraph 3 of the Notes provides as follows:

"(3) (a) No action is required to make the existing use of any land or building conform to this Plan until there is a material change of use or the building is redeveloped.

(b) Any material change of use or any other development (except minor alteration and/or modification to the development of the land or building in respect of existing use which is always permitted) or redevelopment must be always permitted in terms of the Plan or, if permission is required, in accordance with the permission granted by the Town Planning Board.

(c) For the purposes of subparagraph (a) above, "existing use of any land or building" means-

(i) before the publication in the Gazette of the notice of the first statutory plan covering the land or building (hereafter referred as 'the first plan'),

- a use in existence before the publication of the first plan which has continued since it came into existence; or

...

(ii) after the publication of the first plan,

- a use permitted under a plan which was effected during the effective period of that plan and has continued since it was effected....."

- It is also trite that the Guidelines are material documents and should not be disregarded. In *Henderson Real Estate Agency Ltd. v Lo Chai Wan* (1996) 7 HKPLR 1, Lord Lloyd said:

“The plan and the Notes attached to the plan are obviously material documents to which the Appeal Board were bound to have regard; indeed they are the most material documents in the case. But what about the Explanatory Statement, and the subsequent guidelines? The Explanatory Statement is expressly stated not to be part of the plan. But it does not follow that it was not a material consideration for the Appeal Board to take into account, even though, as Mr Read QC, for the appellants, pointed out, the Ordinance does not contain a provision, corresponding to s 72 of the Town and Country Planning Act 1990, or clause 38(2) of the new Town Planning Bill, requiring the Town Planning Board and the Appeal Board to have regard to material considerations.

By the same token, the 1992 and 1993 guidelines are also material considerations to be taken into account. The Appeal Board was not bound to follow the Explanatory Statement or the guidelines. But they could not be disregarded.”

- In the Town Planning Board Guidelines for Interpretation of Existing Use in the Urban and New Town Areas issued by the Town Planning Board in May 2004 (TPB PG-NO.24C), paragraphs 2.3 and 3.3 are relevant. They read as follows;

“2.3 Generally speaking, the use of any land or building which was in existence at the time when a new statutory plan or a new land use zoning restriction affecting the land or building came into effect will be regarded as the “existing use” of the land or building. The “existing use” of the land or building will be allowed to continue whether or not the use conforms to the new statutory plan or the new land use zoning restriction. However, if the use was effected (i.e. came into existence) when a statutory plan was in force, it must be a use permitted under that statutory plan before the existing use right can be claimed...

3.3 It is not for the Planning Department or the Board to provide evidence to prove whether a use is an “existing use”. Any person who intends to claim an “existing use right” will need to provide sufficient evidence to support his claim.”

- Similarly, the definition of the phrase “existing use” is found under section 1A of the Town Planning Ordinance (Cap. 131) where it is defined as “a use of a building or land that was in existence

immediately before the publication in the Gazette of notice of the draft plan of the development permission area” in relation to a development permission area.

- The exemption of “existing use” accords with the important principle that “our citizens and businessmen should be confident that, save in the most exceptional circumstances, their lives and businesses should not be affected by any laws or regulations retrospectively” (*Kam To Sauna*, Town Planning Appeal No. 1 of 1998).
- The columbarium established on the Site 1 and the Site 2 is not one of the always permitted uses as set out in Column 1 of the Schedule of Uses to the Notes of the OZP 2011 in G/IC Zone and V Zone respectively.
- The sole issue is whether the said columbarium falls within the exception of “existing use” in accordance with paragraph 3 of the Notes.
- The significant date in determining whether the said columbarium is the “existing use” is 15<sup>th</sup> April 1966 when the draft Sha Tin Outline Zoning Plan (then numbered as No.:LST/47) was first published in the Gazette.
- It is essential to set out the history of the client.
- In 1943, the client was established. Since its establishment, the client has been operating a home for the aged, poor and the disabled. The client has been providing a one stop caring service from the

provision of foods and accommodation to after death services.

- Since 1949, the client has been operating a home for the aged on a piece of land which is now the Site 2 and was granted by the Government such licence since 1977.
- In 1950, the client obtained the Site 1 under the Government Lease New Grant No. 7859. Since 1950, the client has been providing the after death services to its inmates on both the Site 1 and the Site 2.
- The after death services were first in the form of traditional soil burials (see a copy of the extract of an article published by the client on 23<sup>rd</sup> October 1954 during its 10<sup>th</sup> anniversary annexed hereto as Annex I).
- Since 1960, the after death services were in the form of columbarium services where the bodies of dead inmates were burned and their ashes were stored in urns (see a copy of the photos annexed hereto as Annex II where the year of death of some of the inmates were stated to be in the years of 1961 and 1962). The year of death appearing on the urns represents the time when the bodies of dead inmates were burned and their ashes were stored in urns. Otherwise, it is against common sense that the bodies were placed elsewhere and buried some time before burning them and placing their ashes in urns.
- The article annexed as Annex I supports the fact that the client provided the after death services on both the Site 1 and the Site 2 as early as 1950. Most importantly, the photos annexed as Annex II are strong evidence to prove that the client provided the columbarium services at least as early as 1961, before the significant date of 15<sup>th</sup>

April 1966.

Conclusion

- My view is that there is sufficient evidence to prove that the columbarium services provided by the client on both the Land Licence No.: Z0070 and the land Lot No. 475RP in DD185 fall within the “existing use” in accordance with the Notes of the OZP 2011. Accordingly, such columbarium services are in conformity with the planning requirements under the OZP 2011.

Dated the 16<sup>th</sup> day of May 2011

Frederick FONG  
Counsel



# 先安道老院創立十週年紀念落成宿舍女男建新暨

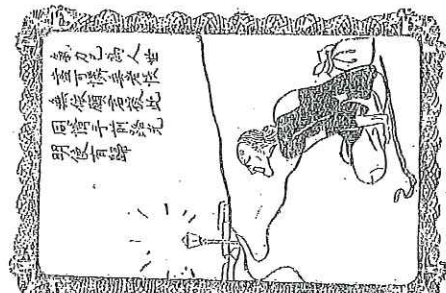
一九五四年  
十月廿三日  
歲次甲午九  
月廿七日

院址  
香港九龍  
沙田新界

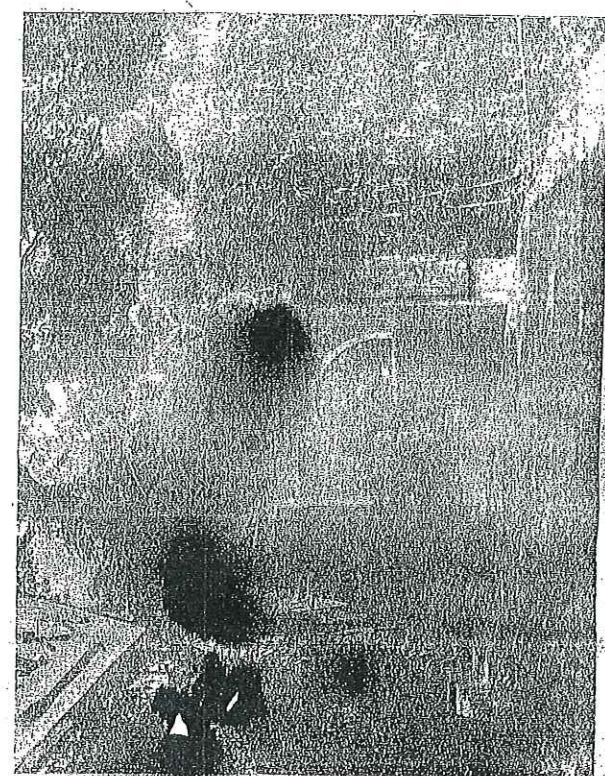
### 沙田先安道老院

#### 創辦十週年誌慶

沙田先安道老院之開始，乃在一九四三年，即香港淪陷敵之三載。時政府派員已盡，米食停止配給，死亡枕藉；誠恐惡運迭至，死入逾向人，因舉新美質巨額，以保其存。日幾千人，各執而來者，不勝修行之苦，亦不能自給，散之四方。身既無處修持，又不願坐以待斃，故遠道而來，坐候歸期云云。同人等因本孤島無死之心，特聯會先安道老院，俾收安插，俾修真正之人，以享其生。當時因地方所限，收容初步，祇三十六名。院址則設於深水埗通菜街，一連五間二樓，共佔七層。經用月之籌備，始於夏歷六月十五日開幕，免費收容，俾生得採食，更有節餘。當時伙食價極廉，每餐數十元，幾至百餘元，然留院老人，未嘗有一錢之珠。蓋得各方人士之同情，時予協助，此處華僑，亦皆安插，亦云幸矣！迨年秋，培土置先，仍舊傳居性質，董事人等，以擬定院址，於此又計，五間地連界，惟告無通之地區。且至一九四八年春，承道區將女士擬捐生活以回之舊石屋一區，連地一萬五千方尺，以為院址。當即大舉修葺，展拓地基，先將原有老人遷入居住，一面繼續增加床位至，客室，客廳，廚房，浴室；及加築石壁，架設外電等。全部費用，達四萬餘元。本院查無恒產，亦得各善道，暨社會熱心人士，同情捐助，始克落成。乃增建進中及進外老人三十七名，并健全其組織，分設院務，總務，文書，聯絡，調查各部，分有經理，院務，文書，聯絡，調查，處理院務；院務家二人，常川駐院管理；什役四人，負責清潔，及服務老人等事務。醫藥方面，則任道員中，接診進地之中醫主，及聘大埔九龍之西醫主，分別為之治理。所有老人，均由院方料理安插，春秋佳日，全體老人，能到步者，皆工作人員，登山採菊之。老人日常生活，依規定秩序，起居飲食，均經總辦佛學總辦，均有一定時間。暇則任許自由，或化觀劇，或唱曲，以增其愉快之情緒。



一九四九年夏歷四月，本院舉行遷居沙田，成立開幕典禮時，蒙新界長官長掛旗，親臨蒞臨之。一九五三年，又蒙政府補助院後山地二萬餘方，惟苦無款興築。因於一九五一年冬，舉沙田鄉公所，在沙田購地修築院舍七百餘間，計分二區。除在沙田石圍現空地甚多，仍未定妥所建。乃先將院內新加強組織，公選理監事若干名，正副會長三名，文書，總務，會計，聯絡，及出納，及醫藥，各無不備。總辦，院務，及醫藥，皆兼職任職，職當一人，女工數人，則舉院務總辦而已。一九五三年，胡公文虎在院院院，深以院內辦事實認認真，極為推許，因擬允充捐築女宿舍一區。嗣後為紀念胡公文虎，及捐築女宿舍一區。是年冬，又將院內上下下進地，互相通氣，規畫宿舍建築。本院奉老，固非一人之事，亦非團體之事，更非一種宗教之事。誠以老有所養，為人類中故有同情之舉。人雖無老，當其手力強，其精神體力，消磨於一幼工作，以為社會服務；及每因家累所迫，遂致妻老無依。故一念其過去，莫忍坐視而有一老無依者，且本院與為先安道中人所辦，而收容老人，則無無不盡之分；倘能為年老無依，及非有殘廢殘疾者，則不論何人，皆可申請送入安插。是以各界人士無不表同情，樂為捐助。現本院統計有男女老幼七旬，收容女老一百七十餘名，不日再增男老人收容，即當至二百名以上。將來各界捐助日來，宿舍日增，則又必不止此數乎！本院當盡努力，及地方所限，而只能收容女性老人，今更有何金可兼其貧苦性，於安老之義，豈能完備。茲值本院創辦十週年之辰，因於上月召集院務會議，定於十月廿三日舉行本院開辦十週年紀念慶典。所請本院歷年親臨祝慶，以供採覽。尚請 賜予指導，賜賜賜！



本院在各界善長仁翁協助下，設法經營，從嚴整頓，年終獲獎，而成今日之學院，花木繁茂，不特老有所安身，即遊園散步，足供樂意，縱各方善士之力，易免臻此！

## 善為而安所

本院在各界善長仁翁協助下，設法經營，從嚴整頓，年終獲獎，而成今日之學院，花木繁茂，不特老有所安身，即遊園散步，足供樂意，縱各方善士之力，易免臻此！

