

Our Ref : ST/MIS/1371C/L27

20 December 2017

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

By fax and post
(No. 2845-3489)

Attn : Ms. Andrea Chow

Dear Madam,

**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 29 September 2017 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.

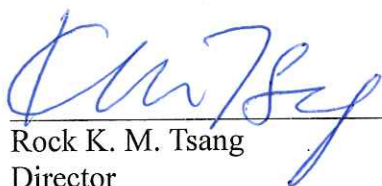
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In the premises, we would request you to classify the columbarium on the site as an existing use under Column 5 of the Information on Private Columbarium

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

致： 發展局地政組
香港添馬添美道 2 號政府總部西翼 17 樓

傳真： 2845 3489

先天道安老院
新界沙田上禾輦

- ☐ 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。
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- ☒ 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，我們將按封面官所載的規劃及土地/契約資料於第二部分內公布。如閣下未有選取任何選項，我們會於私營骨灰龕資料中列出經營者沒有在發展局於本年 12 月 14 日所發信件中夾附的表格選取任何選項。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。

- ☒ 如閣下連同此回條提交任何信件及/或額外補充資料，並同意政府將有關資料公開，於私營骨灰龕資料作出更新時上載於發展局網頁，請選取此項。請注意閣下所提交的任何信件及/或額外補充資料只為公布私營骨灰龕資料之用。有關土地契約及法定城市規劃規定事宜，請分別與地政總署及規劃署聯絡。
- ☐ 閣下於較早時曾就發展局 2010 年 11 月 3 日及/或 2011 年 3 月 18 日及/或 2011 年 6 月 15 日及/或 2011 年 9 月 20 日及/或 2011 年 12 月 16 日及/或 2012 年 3 月 19 日及/或 2012 年 6 月 20 日及/或 2012 年 9 月 14 日及/或 2012 年 12 月 13 日及/或 2013 年 3 月 15 日及/或 2013 年 6 月 13 日及/或 2013 年 9 月 16 日及/或 2013 年 12 月 16 日及/或 2014 年 3 月 17 日及/或 2014 年 5 月 27 日及/或 2014 年 9 月 15 日及/或 2014 年 12 月 16 日及/或 2015 年 3 月 17 日及/或 2015 年 6 月 18 日及/或 2015 年 9 月 18

日及/或 2015 年 12 月 17 日及/或 2016 年 3 月 21 日及/或 2016 年 6 月 16 日及/或 2016 年 9 月 15 日及/或 2016 年 12 月 9 日及/或 2017 年 3 月 17 日及/或 2017 年 6 月 16 日及/或 2017 年 9 月 18 日的信件遞交傳件及額外補充資料，並同意政府公開予市民查閱，而該等文件亦已上載於發展局網頁。如閣下要求該等文件於私營骨灰龕資料作出更新時從發展局網頁中移除，請選取此項。

簽署:

名稱(請以正楷填寫):

職銜:

公司/骨灰龕名稱:

電話號碼:

公司蓋印:

日期:



王

(英文) WONG SIN CHAI

(中文) 王善齊

(英文) CHAIRMAN, EXECUTIVE COMMITTEE

(中文) 理事會主席

(英文) SIN TIN TOA HOME FOR THE AGED

(中文) 先天道安老院

26911656



15-12-2017

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 31st 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 11th 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 15th 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 23rd October 1954 during its 10th 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 15th

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 16th day of May 2011

Frederick FONG
Counsel

一九五四年
十月廿三日
歲次甲午九
月廿七日

新詩集
第一冊

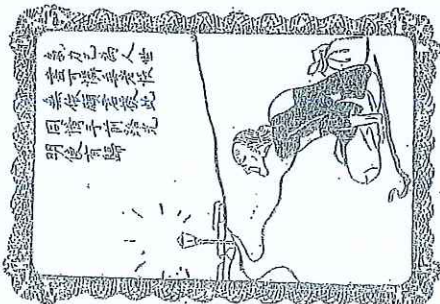
院址
香港九龍
新界沙田

沙田先天道安老院

創辦十週年特略 蔡載堃

沙洲死老道安老院之開始，乃在一九四三年，即香港被佔之三午。時政府所派來已盡，未食餘山記館，死亡枕屍滿；穢草蔓延竟不遑而入，因築成墳場以獨，焉，旋就清。日數千人，雲集而來者，不斷修行之老者，既其何以至此，則皆以至死於途，負骸骨者，亦不能自行，推之而西亦不已。身既失足遂修行，不願拾棺以去前治，故建過來此，並築廟楹宇云。

同年人等因本孤寡克究之心，特聯會立大迴舍堂等，當時先大迴安老院，俾收養婦孺貧民之人，以竟其志。常時兩月方所限，各初步，祇三十六名。後旋則經劉炳水步涉遊街，始於一連五班三樓共佔七間，則容，便生得扶來，死有節給。當時於金價格較平單費數十元獲至百餘元，然照例老人，本當有一條之路，頭，是皆從各方人士之同情心，時予協助，此舉固仍屬模稜性質，當募人等，以備充預備之經費，計，並擬歸地建廟，惟告退過堂之疑難。直至一九四八年春，承退侶曹女士慷慨急為收回之舊石屋，遷地一萬二千方尺，以資院址。當即大籌修葺，果是地基，先時原有老人入居定住，二由親鄰加延師至客室，長隔至廚房、浴室及加築聖聖腹設亦當客室。全館費用，遂四萬餘元。本院董事恆慮，各母各室迴房，應益熱心人士，同情捐助，始克落成。乃增收道中及返外老人至七十名，并能令其組織，分辦巡視，總辦文書，隨格，編造各部，分責辦理，視院一人，副院二人，以處理院務；教習家二人，帶川院管理；什役四人，負責清潔；及服務人員等十餘名。粵籍方面，則在道店中，分別近當地之中醫士，及聘大埔與九龍之西醫士，分別診治之。兩者送入病室至十位；若反工人之服政。老人身故，所有衣式棺木，均由院方代理埋葬。而救濟之日，全院老人，能進步者，除工作人員，登山發財之。老人日常生活，係規定秩序，

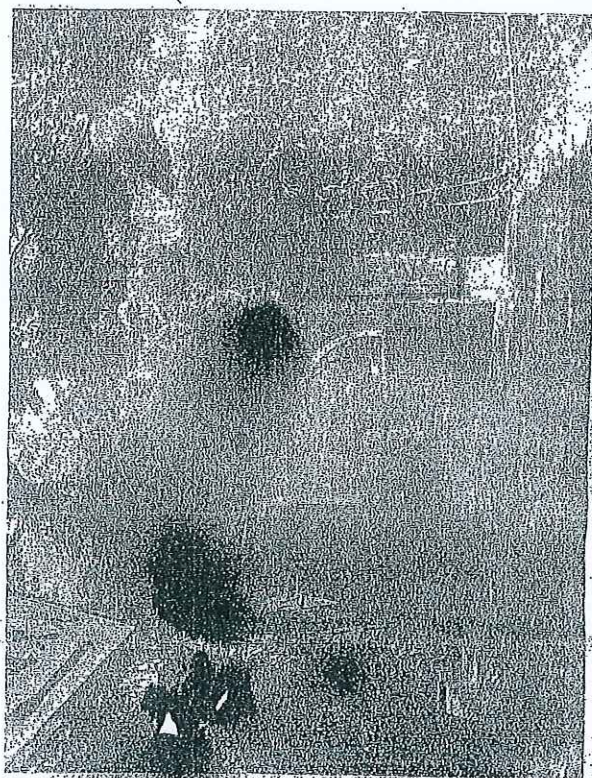


則是飲食，編經禮懺將至懸鐘，均有一定時間。唯則任許自由，帶杖樹樹，頌吟之聲，以增其肅穆之情緒。

一九四九年夏歷四月，本院舉行庭後沙田，成立開基典禮時，委新界民安會會長張錦光先生親臨之至。

一九五五年，又蒙政府所贈院後山地二畝餘，作爲義塚之用。因於一九五七年，將沙田四畝分作，在沙田脚修築義塚舍廿七日，奉准立案。前由先葉石室主規畫地基等，仍未完足未能遷葬。乃先將內葬加長三寸，公議四畝等事。迄今止副會長是二名，與正副院長三名，處理事務。

一、公議義塚，除務，文書，膳食，衛生，巡邏等，會計，各職，及出納，除會費，無務，幹事，各職，及葬禮，各務，任職，一、書記二人，女工數人，則募款修舖舍。一九五三年，胡云文使院規脫家，深以院內辦事更難認真，平爲推計，因懷友兄情誼，女舍舍所居。嗣後爲紀念胡云文之計，更遷遷舍舍一區。是年冬，又將貴遷遷女主稱遷男舍舍一區。見均次官室；且將院內上下道路修浚，互相通貫，規模較前稍闊。本院奉委之事，固非己之事，亦非一個國之爭，反非一室家之事。誠以吾人所寄，爲人國中華有同情之昇。一切事務，以爲社會服務；又奉命受委所報，遂致無辜。本院一舍吾過中，受此並視而可謂一爲善事，且本院雖爲吾過中人所辦，而將舍老人，則會無不，則不辦中人，皆可中諸選入安會。是以各名人士，無不來同會，樂爲援助。現本院統計有男女士舍七和，收各女姓老人一百二十餘名，不日再將男姓老人收會，即增至二百名以上。將救各舍諸財，救各舍信金日增！則又止不止此矣！本院奉委諸力及地方所限，而只能救各女姓老人，今更有信金可救救各男姓，亦安於之，遂遷完備。茲定本院收銀十兩之屋，因於二月，召集院會議，定於十月二日舉行，本院開辦十週年紀念慶典。用將本院歷年經過概覽平復，以表恭慶。尚祈 賜予指導，爲禱！



今將舊人編定，用舊書入舊年，新書新年。凡
發印銀，宜列撰（者）舊書，及新（書）舊書。

林 子 雲 題

本館在各界善長仁翁協助下，敢啟廳堂，從嚴懲罰，爲踏
檻。而感今日國音院乎，花木探賤，不待言言有所榮有，即遊
覽客莊止，足供慰思，微念方善士之力，爲之無忘！

