

Our Ref : ST/MIS/1371C/L28

20 March 2018

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

By fax and post
(No. 2845-3489)

Attn : Ms. Amy Wong

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 December 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.

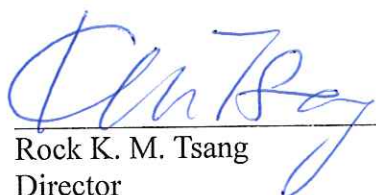
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In the premises, we would request you to classify the columbarium on the site as an existing use under Column 5 of the Information on Private Columbarium

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，我們將按封面信所載的規劃及土地/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 3 月 15 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 1 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 日及/或 2017 年 12 月 14 日的信件遞交信件及額外補充資料，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，請遷取此項。



簽署：
名稱(請以正楷填寫): (英文) WONG SIN CHAI
(中文) 王善齋
職銜: (英文) CHAIRMAN, EXECUTIVE COMMITTEE
(中文) 理事會正主席
公司/骨灰龕名稱: (英文) SIN TIN TOA HOME FOR THE AGED
(中文) 先天道安老院
電話號碼: 26911656
公司蓋印:
日期: 17-3-2018



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

先道安老院創立十五週年紀念 暨新建築宿舍女宿舍落成紀念

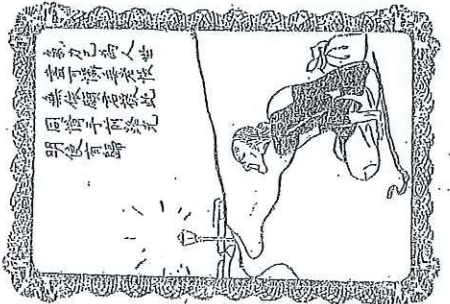
院址
香港九龍
沙田界

沙田先道安老院

創辦十週年事略

沙田先道安老院之開始，乃在一九四三年，即香港淪陷之三平。時政府將維多利亞道，未食停止配給，死亡枕藉；蘇軍空襲，死地則人，因救難家貧白粥，以死救濟。日數千人，各扶而來者，不暇修行之者，亦不能自存；此之四方而已。身既失志，行又，不願如命以求苟活。故遇來此，望能獲救云云。

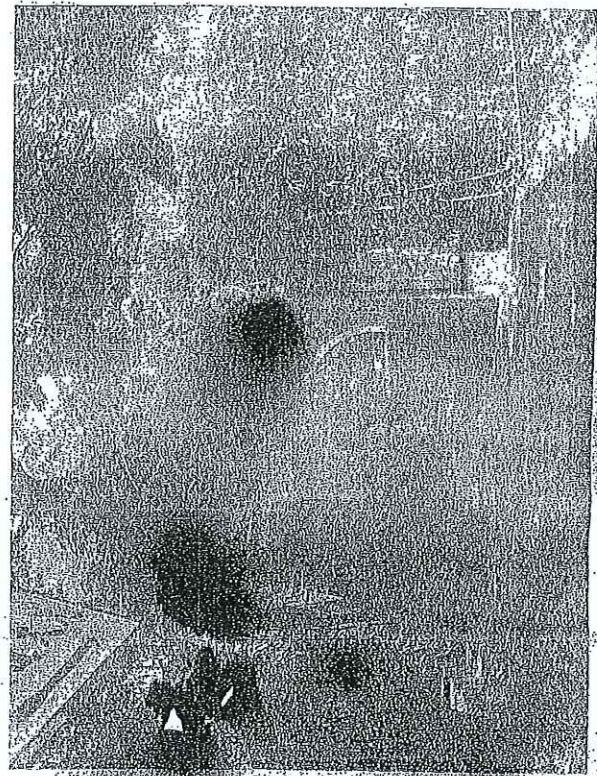
同人等因本孤慈死之心，特聯合先道安老院，以究其志。知先道安老院，係收容老耆，以究其志。當時因地方所限，收容初步，僅三十六名。院址則設於深水埗通菜街，一連五間，二三樓，共佔七層。經兩月之籌備，始於夏歷六月十五日開幕，良事收。院址時時被炸，死有餘生。當時來院者，每日數十元，至五百餘元；然留院老人，未嘗有一張之紙。蓋當時各方人士之同情，時不偏助，此種重負，竟得安然度過，亦云幸矣！歲年秋，港土置業，各業復元，院址乃遷於牛池灣先道安老院，終非久計；五級地產，惟苦無適當之地。且至一九四八年春，承道安老院女士，以捐出沙田之區，經四計，地一畝五千方尺，以爲院址。當即大加修葺，屋址地基；先將原屋老人遷入居住，一面繼續加建臥室，客堂，養病室，廚房，浴室；及加築浴室，養病室，浴室等。全部費用，達四萬餘元。本院善果，恒產，容許全堂道侶，暨社會熱心人士，同情捐助，始克落成。乃增聘道中及道外老人至七十名，并健全組織，分設辦事處，總務，文書，聯絡，調查，各部；分事辦理，設院長一人，副院長二人；以處理院務；設常務二人，常川駐院管理；什役四人，日亦預備；及服務老人之什務。籌備方面，則任道中，以就近當院中之衛生，及聘請九龍之西醫，醫生，分別爲之治理。病者送入醫院，由西醫人員爲之服治。老人身故，所有衣衾棺木，均由院方料理妥善；春秋佳日，能步者，俾其工作；登山祭掃之。老人日常生活，依規定秩序；



起居飲食，備極優待，均有一定時間。暇則任其自由，種植樹木，以增其趣味之情緒。

一九四九年夏歷四月，本院舉行遷居沙田，成立開幕典禮時，安新民政署長掛牌其主理院務之誓。

一九五三年，又奉政府贈給院後山地二萬餘尺，惟苦無以興築。因於一九五二年冬，經沙田鄉公所，在沙田鄉公所籌備會，以籌備興建二萬餘尺。除先遷居石圍，現地甚寬，仍承原址興建。乃先將院內加強組織，公選理事老耆，分任正副會長三名，正副院長三名，處理院務。見會設總務，財務，文書，機要，衛生，總務，會計，各部，及出納，院務，無不備。院務，皆由老耆任職，職。當院一人，女工數人，則院務，而。一九五三年，胡公文處在院院院，深以院內辦事，實際認事，極爲推許，因院允允捐築女宿舍兩座。嗣後爲紀念胡公文的，更捐建康康室一座。是年冬，又從英廷，院內，現均次充實。且院內上下道路修築，互相通貫，規條始告粗備。本院養老，固非一人之事，亦非一團體之事，良非一種宗教之事。誠以老耆有所養，爲人觀中並有同情之舉。人非無老耆，當其年富力強，其精神體力，消於一切工作，以爲社會服務；又每因黨派所報，遂致老耆，一會其過去，事也。豈無不一者，養于且本院，雖爲先道中人所辦，而收容老人，則無不，則不論何人，皆可申請進入收容。是以各界人士，無不表同情，樂高援助。現本院統計有男女老百餘名，收容女宿舍老人一百七十餘名。不日再將男宿舍，即當佔二百名以上。將宿舍，則必增，則又必不止此數矣！本院養老，及地方所限，而只能收容女性老人，今更有何金可，於安老之政，豈無完備。蓋本院創辦十週年之辰，因於上月召集院務會議，定於十月三日舉行，本院開辦十週年紀念慶典。屆時本院，屆時，以供奉。尚請。賜予指導，



本院在各界善長仁翁協助下，設廠經營，從嚴監理，專修...

善為而安所

本院在各界善長仁翁協助下，設廠經營，從嚴監理，專修... 而感今日創設善所，花天快報，不特老耆有所安引，即...

