

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

青雲觀
(又名 青雲觀堂)
新界屯門青山

- 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。
- 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)內第六欄的土地/契約資料，但並不同意列載於第五欄的規劃資料。
- 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 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，請選取此項。

陶根池

簽署:

名稱(請以正楷填寫):

(英文) TO KAN CHI
(中文) 陶根池

職銜:

(英文)
(中文) 司理

公司/骨灰龕名稱:

(英文) TSING WAN KUN
(中文) 青雲觀

電話號碼:

2618 2010

公司蓋印:



日期:

2018年3月21日

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
JOHN BARRY
B Sc (Hons), M Phil

Your Ref : (26) in DLOTM 439/MLT/83 Pt.3

Date : 20 September 2012

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
6th Floor,
Tuen Mun Government Offices,
1 Tuen Hi Road,
Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

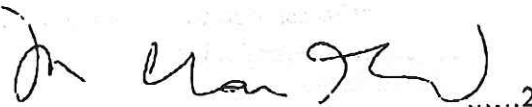
Re : Lot No.559 in DD 131

We refer to your letter dated 6 August 2012.

2. In the first place, we would repeat our position that in the absence of the government lease, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278 of 1911.

3. In response to your proposition that "human remains" would include "ashes from burning of a human body, and ashes from cremation are no less to be regarded as human remains", our client has been advised that "human remains" does not include cremated human ashes for the following reasons :-

3.1 As a matter of plain English, "remains" in the context of "human remains" means what is left behind in a passive state after a natural process of organic decomposition of the human body over time, mainly by bacterial actions, without any human or artificial intervention to accelerate the process. On the other hand, production of cremated ashes from the human body requires active human intervention by a process of combustion.



JOHN CHAN & CO.,
Solicitors, Agents for Trademarks & Patents

CONTINUED

- 2 -

3.2 Human remains will retain a significant part of human characteristics. For instance, human identity may still be traceable by laboratory examination of the DNA of the human remains. However, upon reduction of cremated human body to ashes after the process of cremation, no human characteristics may be traceable. The end product of cremation is inorganic substances, essentially indistinguishable visually or by chemical composition as to whether they are of human or animal origin. Indeed, being inorganic substances, cremated ashes may not even have any evidence of the pre-existing life form from which they are derived.

3.3 When Special Condition No.5 in GN 278 ("Special Condition No.5") was introduced in 1911, earth burials in grave or deposits of human remains in earthenware above ground were already prevalent in the New Territories, which Special Condition No.5 was no doubt designed to address. In stark contrast, there were hardly known instances of cremation of human bodies then. Cremated ashes being inorganic substances, their interment or deposit will not give rise to hygienic or sanitation problem. Hence, it is highly unlikely that they came under the purview of Special Condition No.5.

4. In the circumstances, we do believe that the warning of re-entry action given in your letter under reply is premature. In order to establish the right of re-entry, there are at least the following two hurdles for Government to surmount :-

4.1 As a matter of fact, to adduce satisfactory evidence to prove that Special Condition No.5 applies to the lot.

4.2 As a matter of law, to establish that the meaning of "human remains" in Special Condition No.5 includes cremated human ashes.

5. We are instructed by our client that it will vigorously challenge both two issues of law and fact as above stated. Should you still consider re-entry action as an ultimate measure of lease enforcement notwithstanding our foregoing submission, we would respectfully suggest that the Court be invited to rule on these two issues as part of the way forward.

6. Looking forward to hearing from you in reply.

Yours faithfully,



JBC/ksc
cc client

地政總署
屯門地政處
DISTRICT LANDS OFFICE,
TUEN MUN
LANDS DEPARTMENT

電話 Tel: 2451 3250

傳真 Fax: 2459 0795

電郵地址 Email:

本處檔號 Our Ref: (26) in DLOTM 439/MLT/83 Pt. 3

來函檔號 Your Ref:

我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

新界屯門屯喜路一號屯門政府合署六樓
6/F., TUEN MUN GOVERNMENT OFFICES
1 TUEN HI ROAD, TUEN MUN, N.T.
網址, Web Site: www.landsd.gov.hk

(來函請註明本函檔號 Please quote this reference in your reply)

By Ordinary and Registered Post

Tsing Wan Kun
also known as T'ong Tsing Wan Kun
c/o John Chan & Co.
Solicitors
8/F, OTB Building,
95-97 Castle Peak Road,
Yuen Long, New Territories.

6 August 2012

Dear Sirs,

Lot No. 559 in D.D. 131

I refer to your letters to the District Lands Office, Tuen Mun dated 25 August 2010, 24 September 2010 and 21 February 2011 respectively, which have been passed to me with instructions to reply.

Lot No. 559 in D.D. 131 (hereinafter referred to as "Lot No. 559") was sold by auction, notice of which was published in G.N. S. 76 of 1918, subject to the General Conditions in G.N. 365 of 1906 and Special Condition No. 5 in G.N. 278 of 1911.

Special Condition No. 5 in G.N. 278 of 1911 (hereinafter referred to as "Special Condition No. 5") provides that "*Without the consent of the District Officer no grave shall be made on, nor shall any human remains be interred in, or deposited on the land sold either in earthenware jars or otherwise, and a covenant to this effect shall be inserted in the Crown Lease of the Lot.*"

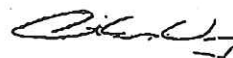
Our interpretation of "human remains" would include ashes from the burning of a human body. Ashes from cremation are no less to be regarded as human remains. Any operation involving deposit or storage of human remains will amount to a breach of Special Condition No. 5.

For the reasons stated aforesaid, it is the Government's position that your client's operation of niches/columbarium on Lot No. 559, if any, is prohibited and amounts to a breach of the lease.

I hereby give your client a warning that if Lot No. 559 is found to be used as columbarium in breach of Special Condition No. 5, lease enforcement action, including but not limited to re-entry action, will be taken against your client without further notice.

All rights of the Government under the lease conditions governing Lot No. 559 are hereby reserved.

Yours faithfully,



(Y. K. WONG)

for District Lands Officer, Tuen Mun

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

472456

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
 8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
 Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long I

Principal CHAN KAM CHING, 陳鑑清
 JOHN BARRY
 B Sc (Hons), M Phil

COPY

Your Ref : (42) in DLOTM 439/MLT/83 Pt.2

Date : 21 FEB 2011

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
 6th Floor,
 Tuen Mun Government Offices,
 1 Tuen Hi Road,
 Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

Tsing Wan Kun also known as
 T'ong Tsing Wan Kun (青雲觀又名青雲觀堂)

Lot No.559 in DD 131

We refer to your letter in Chinese dated 12/1/2011 addressed to 青雲觀又名青雲觀堂 (Tsing Wan Kun also known as T'ong Tsing Wan Kun).

Your letter was still sent to the address 新界屯門利發徑 6 號 H 座 2 樓, notwithstanding that our firm have already been in correspondence with you on the same subject matter since 25/8/2010. We would request you to send all your future correspondence to our firm, as the legal representative of Tsing Wan Kun (also known as T'ong Tsing Wan Kun) and their 2 registered managers, from now on.

It is noted that nearly all what you purported in your letter was already set out in your letter dated 23/7/2010, and was, in our view, already well responded to in our 2 letters to you dated 25/8/2010 and 24/9/2010.

John Barry/2

N CHAN & CO
s, Agents for Trademarks & Patents

CONTINUED

- 2 -

The only bit novel perhaps is the first sentence of paragraph 2 of your letter, which reads : “本處正審議和研究相關土地契約中的用途限制條文。” But then, as we have already pointed out in our letter of 24/9/2010, the government lease governing the above lot has long been missing. As we do not anticipate that a copy of the Government lease would somehow become available now, we can only assume that what you actually meant was that your office was examining the Special Condition No.5 published in GN No.278 of 1911.

We would emphasize that in the absence of the lease document, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278.

We would also reiterate our view that the term “human remains” does not include “cremated ashes”.

Yours faithfully,



JBC/ksc
cc client

電話 Tel: 2451 3250

圖文傳真 Fax: 2459 0795

電郵地址 Email

本處檔案 Our Ref: (42) in DLOTM 439/MLT/83 Pt. 2

(來函/回信時請引用此編號 Please quote this reference in your reply)

來函檔案 Your Ref:



地政總署
屯門地政處
DISTRICT LANDS OFFICE,
TUEN MUN
LANDS DEPARTMENT

我們矢志努力工作，為市民提供最佳的土地管理服務
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OFF: TUEN MUN GOVERNMENT OFFICES
1 TUEN HI ROAD, TUEN MUN, N.T.
網址: Web Site www.lands.gov.hk

普通及掛號御遞

新界屯門
利發徑 6 號 H 座 2 樓
青雲閣
又名 青雲觀堂

敬啟者：

丈量約份第 131 約地段第 559 號

本處曾於二〇一〇年七月二十三日發信給你，指出本處有理由相信，有關丈量約份第 131 約地段第 559 號(下稱「該地段」)用作骨灰龕用途的準備工作正在進行中。現附上有關信件的副本及其中文譯本，以供參閱(見附件一及二)。

本處正審議和研究相關土地契約中的用途限制條文。此外，本處重申，憑藉一九一一年第 278 號政府公告刊登、規管該地段的特別條件第 5 條，將該地段用作骨灰龕用途是不獲准許的。上述特別條件訂明，“如未得理民府允許不得在該地建築墳墓亦不得埋葬及放置人類遺骸或貯放金塔，……。”如發現該地段出現違反土地契約條文的情況，政府會根據《政府土地權(重收及轉歸補救)條例》(第 126 章)對你即時採取執行契約條款行動，包括但不限於重收行動。

政府根據有關的批地文件或其他文件而具有的所有權利獲予明示保留。

屯門地政專員

(黃逸強 黃逸強 代行)

連附件

二〇一一年一月十二日

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

470863

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
 8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
 Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
 JOHN BARRY
 B Sc (Hons), M Phil

COPY

Your Ref : (44) in DLOTM 439/MLT/83

Date : 24 September 2010

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
 6th Floor,
 Tuen Mun Government Offices,
 1 Tuen Hi Road,
 Tuen Mun, NT

By Fax and By Post

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

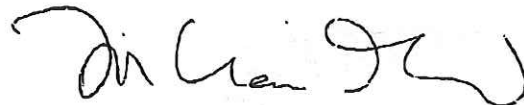
Re : Lot No.559 in DD 131

Further to our earlier letter dated 25 August 2010 to you, we wish to draw your particular attention to and emphasize the fact that the government lease governing the above lot has long been missing. This is clear from the Remarks in the Land Register of the above lot. The relevant part of the Remarks is reproduced below for ease of reference :

“Remarks : The Lot is held under New Grant No.2714 registered in the Tai Po Land Registry Lease Term, its date of commencement and rent cannot be ascertained from New Grant

In the absence of the lease document, it is not open to Government to make the assumption that the above lot is subject to the terms and conditions as stated in GN No.278.

Yours faithfully,



JBC/ksc
 cc client

陳鑑清律師行

JOHN CHAN & CO

Solicitors, Agents for Trademarks & Patents

470668

香港新界元朗青山道 95-97 號海外信託銀行大廈 8 樓 電話: 2470 0811(六線) 傳真: 2473 2985
 8/F, OTB Building, 95-97 Castle Peak Road, Yuen Long, NT, Hong Kong.
 Tel: 2470 0811(6 lines) Fax: 2473 2985 Dx: 980 015 Yuen Long 1

Principal CHAN KAM CHING, 陳鑑清
 JOHN BARRY
 B Sc (Hons), M Phil

COPY

Your Ref : (44) in DLOTM 439/MLT/83

Date : 25 August 2010

Our Ref : JBC/5/8277/10(JBC)

Person in charge : Mr John B Chan

District Lands Office, Tuen Mun
 6th Floor,
 Tuen Mun Government Offices,
 1 Tuen Hi Road,
 Tuen Mun, NT

By Fax and By Hand

(Fax : 2459 0795)

Attn : Mr YK Wong

Dear Sirs,

Re : Lot No.559 in DD 131

We have instructions from the registered managers of T'ong Tsing Wan Kun (青雲觀堂) to act for them in connection with your letter addressed to the T'ong dated 23 July 2010.

Even assuming that Special Condition No.5 of GN No.278 of 1911 is applicable to the above lot (which we do not admit), we do not accept your assertion that columbarium use is not permitted by virtue of that Special Condition No.5. We see the following question of law raised : whether cremated ashes are human remains within the meaning of Special Condition No.5 of GN No.278 of 1911?

We are of the view that the term "human remains" does not include "cremated ashes".

Yours faithfully,



JBC/ksc
 cc client

電話 Tel: 2451 3250
 圖文傳真 Fax: 2459 0795
 電郵地址 Email:
 本處編號 Our Ref: (44) in DLOTM 439/MLT/83
 (來函請註明本處編號 Please quote this reference in your reply)
 來函編號 Your Ref:

地政總署
 屯門地政處
 DISTRICT LANDS OFFICE,
 TUEN MUN
 LANDS DEPARTMENT

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 6/F, TUEN MUN GOVERNMENT OFFICES
 1 TUEN HI ROAD, TUEN MUN, N.T.
 網址 Web Site: www.landsd.gov.hk

By Ordinary and Registered Post

23 July 2010

T'ong Tsing Wan Kun
 2nd Floor, Block H,
 6 Lee Fat Path,
 Tuen Mun, New Territories.

Dear Sirs,

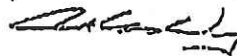
Lot No. 559 in D.D. 131

I write to inform you that I have reason to believe that Lot No. 559 in D.D. 131 ("the Lot") is being prepared for columbarium use.

Please be advised that columbarium use is not permitted by virtue of Special Condition No. 5 published in G.N. No. 278 of 1911 governing the Lot which expressly provides that "*Without the consent of the District Officer no grave shall be made on, nor shall any human remains be interred in, or deposited on the land sold either in earthenware jars or otherwise,*" If the Lot is found to be used as columbarium in breach of the lease conditions, Government will take immediate lease enforcement action against you including but not limited to re-entry action under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126.

All rights of the Government under the relevant land grant or otherwise are hereby expressly reserved.

Yours faithfully,



(Y. K. WONG)

for District Lands Officer, Tuen Mun

貴局檔號：DEVB(PL-P)50/31/06/1

發展局規劃組
香港添馬添美道2號
政府總部西翼17樓

有關：青雲觀(又名青雲觀堂)
新界青山屯門

我們兩人是青雲觀的全體司理。

關於貴局本月13日來信，我們附上填妥的表格，連同我們的代表律師行與屯門地政處之間的來往信件的影印本(共7份)，作為補充資料。



司理 陶根池



司理 陶鑑籌

日期：2012年12月20日

