

TOWN PLANNING BOARD

**Minutes of 734th Meeting of the
Metro Planning Committee held at 9:00 a.m. on 12.1.2024**

Present

Director of Planning
Mr Ivan M. K. Chung

Chairman

Mr Wilson Y.W. Fung

Vice-chairman

Ms Sandy H.Y. Wong

Mr Franklin Yu

Mr Daniel K.S. Lau

Ms Lilian S.K. Law

Professor Jonathan W.C. Wong

Professor Roger C.K. Chan

Mr Ben S.S. Lui

Mr Timothy K.W. Ma

Professor Bernadette W.S. Tsui

Assistant Commissioner/Urban
Transport Department
Mr. Chow Bing Kay

Chief Engineer (Works)
Home Affairs Department
Mr Paul Y.K. Au

Principal Environmental Protection Officer (Territory South),
Environmental Protection Department
Miss Queenie Y.C. Ng

Assistant Director/Regional 1,
Lands Department
Ms Trevina C.W. Kung

Deputy Director of Planning/District
Mr C.K. Yip

Secretary

Absent with Apologies

Mr Stanley T.S. Choi

Mr Ricky W.Y. Yu

In Attendance

Chief Town Planner/Town Planning Board
Ms Josephine Y.M. Lo

Town Planner/Town Planning Board
Ms Sandy S.Y. Yik

Agenda Item 1

Confirmation of the Draft Minutes of the 733rd MPC Meeting held on 22.12.2023

[Open Meeting]

1. The draft minutes of the 733rd MPC meeting held on 22.12.2023 were confirmed without amendments.

Agenda Item 2

Matter Arising

[Open Meeting]

2. The Secretary reported that there were no matters arising.

Deferral Case

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

Presentation and Question Sessions

3. The Secretary reported that there was one case requesting the Town Planning Board to defer consideration of the application. Details of the request for deferral, Members' declaration of interests for the case and the Committee's views on the declared interests were in **Annex 1**.

Deliberation Session

4. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information, as recommended in the Paper.

Kowloon District

Agenda Item 3

Section 12A Application

[Open Meeting (Presentation and Question Sessions Only)]

Y/K18/11 Application for Amendment to the Approved Kowloon Tong Outline Zoning Plan No. S/K18/21, To rezone the application site from “Residential (Group C) 1” to “Government, Institution or Community (14)”, 25 Cumberland Road, Kowloon Tong, Kowloon
(MPC Paper No. Y/K18/11A)

Presentation and Question Sessions

5. The following representatives from the Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point:

PlanD

Ms Vivian M.F. Lai	-	District Planning Officer/Kowloon (DPO/K)
Ms Vicki Y.Y. Au	-	Senior Town Planner/Kowloon (STP/K)

Applicant’s Representatives

Gan En Tang Management Limited	-	Mr Kong Man Pan
	-	Mr Chiu Yuk Wing
Toco Planning Consultants Limited	-	Mr Ted Chan
	-	Mr Daniel Wei
	-	Ms Jacqueline Ho
OZZO Technology (HK) Limited	-	Mr Stanley Chan
	-	Ms Lily Lin

6. The Secretary reported that the applicant's legal advisor submitted to the Town Planning Board (TPB) on 11.1.2024 a further information (FI), i.e. a letter with appendices of three previous decisions of the Town Planning Appeal Board (TPAB) and an extract of minutes of TPB meeting held on 3.11.2023, to provide additional justifications to substantiate the application (i.e. the FI). A copy of the letter was tabled and two full sets of its appendices were deposited at the meeting for Members' review. The FI consisted of additional justifications, with reference to previous TPAB's decisions, in support of the application without any changes of the applied rezoning, proposed uses and scheme, and nature of the application. In accordance with the TPB Guidelines No. 32A on submission of FI in relation to applications for amendment of plan, planning application and review made under the Town Planning Ordinance (TPB PG-No. 32A), the version applicable to the application which was received by TPB before the enactment of the amended Town Planning Ordinance (the amended Ordinance), the FI could be accepted for processing and exempted from publication and recounting requirements. The applicant's representatives were encouraged to further elaborate on the FI submission during their presentation to facilitate Members' understanding of the FI.

7. The Chairman extended a welcome and explained the procedures of the meeting. He then invited PlanD's representatives to brief Members on the background of the application.

8. With the aid of a PowerPoint presentation, Ms Vicki Y.Y. Au, STP/K, briefed Members on the background of the application, the proposed rezoning of the application site (the Site) from "Residential (Group C) 1" ("R(C)1") to "Government, Institution or Community (14)" ("G/IC(14)"), with 'Religious Institution' and 'Columbarium' uses incorporated under Column 2, to facilitate regularisation of the current columbarium use under the name of Gan En Tang at the Site, departmental and public comments, and the planning considerations and assessments as detailed in the Paper. PlanD did not support the application.

[Professor Roger C.K. Chan and Mr Franklin Yu joined the meeting during PlanD's presentation.]

9. The Chairman then invited the applicant's representatives to elaborate on the application. With the aid of a PowerPoint presentation, Messrs Kong Man Pan, Daniel Wei and Stanley Chan, made the following main points:

Legal Perspective in the FI

- (a) the FI set out the legal perspective on PlanD's recommendation of not supporting the application, in that PlanD's recommendation was not in line with the principles of fairness, reasonableness and consistency and failed to consider the Government's policy on 'pre-cut-off columbarium'. Besides, there needed to be legal advice to properly guide the Committee in discharging its duties to act fairly, reasonable and with consistency in considering the application. Details were elaborated below;

Background of Gan En Tang

- (b) Gan En Tang at the Site was established by Mr Kong Hoi Sang (the founder), i.e. Mr. Kong Man Pan's father, who migrated to Hong Kong in 1960s. With sufficient assets built up, the founder decided to dedicate more efforts in community services and charitable activities such as involvement in clansmen associations and social services for elderlies between 1990s and 2000s. Noting the elderlies' concerns on after-death arrangement and given the insufficient supply of niches in the community, the founder converted the Site, located in the midst of some religious institutions (e.g. Fei Ha Ching Shea) in Kowloon Tong, for a religious institution cum columbarium use in 2008 with a view to serving the community needs. The founder later passed away in 2019. To continue pursuing the founder's will in providing niches to serve the community, the application was submitted to regularise the established columbarium at the Site without increase in the total number of niches;

Unfounded Planning Considerations

- (c) while relevant government departments raised no objections on technical

aspects, the planning application was not supported on the grounds that the current zoning of “R(C)1” was considered appropriate for the Site and there was no strong justification to rezone the Site for the religious and columbarium uses, which were considered incompatible with the residential neighbourhood;

- (d) as detailed in paragraph 11 of the Paper, the major planning considerations were land use incompatibility and possible nuisance to the neighbourhood and potential adverse traffic impact, as well as that the approval of the application would encourage the emergence of similar planning applications. However, PlanD’s recommendation on the application was inconsistent with that on a previously approved similar planning application in Kowloon Tong as elaborated below, and failed to consider the Government’s policy on ‘pre-cut-off columbarium’ under the Private Columbaria Ordinance (PCO);

Previous Recommendations/Decisions on Similar Applications

- (e) as highlighted in the FI, PlanD’s recommendation for the current application was not consistent with their previous recommendation on a similar planning application (No. A/K18/336) for religious institution (Buddhist Temple) at Look Year Yuen, which was located to the north of the Site within the same “R(C)1” zone. Look Year Yuen with 2,090 ancestral tablets for worshipping purpose was on a par with Gan En Tang with 3,358 niches, also for worshipping purpose, under the current application in terms of development scale and operational nature. The application No. A/K18/336 was approved on the consideration of no adverse impact on the surrounding areas. When considering that application, Members, while noting that the religious use of Look Year Yuen was not in line with the planning intention of the “R(C)1” zone, generally had no objection to the application and also observed the diversified land uses of the Kowloon Tong Garden Estate (KTGE) area. Given Look Year Yuen and Gan En Tang were located within the same “R(C)1” zone and of similar nature in terms of land use, the considerations

and recommendation put forth by PlanD for the current application were not justified, as they were inconsistent with that for the previously approved application No. A/K18/336;

- (f) the planning circumstances of the town planning appeal case No. 5/2021 (the Appeal) for columbarium within a religious institution at Gig Lok Monastery in a “G/IC” zone in Tuen Mun were also comparable to the current application as both developments involved ‘pre-cut-off columbaria’ and the sites were in close proximity to residential developments. As set out in paragraphs 38, 52.2, 58 and 68 of the decision on the Appeal, the Appeal was allowed by the TPAB on the considerations that the columbarium use could cater for community need and was not a sensitive facility; the majority supporting public comments and relevant Government policies on ‘pre-cut-off columbarium’ should be taken into account; it was not uncommon for residential developments to be located in close vicinity of columbarium use; and assessment on traffic impact and nuisance caused to the neighbourhood should be evidence-based. For Gan En Tang, the alleged nuisance to be caused appeared to be based on speculation, as there was no objection to or adverse comment on the application from relevant government departments, including the Commissioner for Transport (C for T) and the Commissioner of Police (C of P), and also, the majority of public comments on the application was supportive;

Consideration of ‘Pre-cut-off columbarium’ Policy

- (g) Government’s policy initiatives in handling ‘pre-cut-off columbarium’, emphasising a “pragmatic and sensitive approach” to minimise the losses of people who had purchased the niches and any social disruption arising from massive displacement of interred ashes, had not been taken into account in assessing the current application by PlanD. This was inconsistent with the policy initiatives of the Government. The application was actually in line with the said policy in that the applicant had endeavoured to fulfil relevant requirements to obtain approval-in-principle for a temporary suspension of liability (TSOL), and to submit the current application for complying with

the licensing requirements of the Private Columbaria Licensing Board (PCLB). As specified in the decisions on the Appeal, it was important to take consideration of the policy initiative on ‘pre-cut-off columbarium’;

Land Use Compatibility

- (h) it was prevalent that residential and columbarium uses co-existed in densely populated areas such as Happy Valley, Pok Fu Lam, Hong Kong Funeral Home and Kowloon Funeral Parlour. For instance, Sin Hing Tung in Tuen Mun (28m distance from Tuen Mun Plaza) and Kun Chung Temple in Fanling (15m distance from Fortune House) were examples of columbarium uses being in close proximity to residential developments. As for Gan En Tang, it was located in the periphery of KTGE area and had a distance of about 50m from the nearest residential use, which was segregated by a road to its east;
- (i) given the smaller scale of columbarium use under the application, i.e. only 3,358 niches on G/F of Gan En Tang (about 21% of total gross floor area), the arrangement of indoor worshipping with no burning of joss papers and boundary wall around the Site, potential nuisance and adverse visual impact arising from the columbarium use on the surrounding areas were envisaged to be minimal;
- (j) from land use terms, the columbarium use at Gan En Tang was considered compatible with the adjacent neighbourhood which was characterised with a mix of residential and non-residential uses. The Site was bounded by a religious institution to the immediately north, a vacant hotel to the south and a school to the west. Taking into account its unique site context and being the only ‘pre-cut-off columbarium’ (i.e. columbarium in operation and ashes interred in niches immediately before the “cut-off time”, 8 a.m. on 18.6.2014) in the “R(C)1” zone of KTGE area, approval of the application would not set an undesirable precedent for other similar applications;

No Adverse Traffic Impact

- (k) being located within walking distance from the MTR Kowloon Tong Station and various bus stops along Waterloo Road, the Site was well served by public transport. There would be no car park provision at the Site. Visitors were encouraged to access the Site via public transport. According to the worst-case scenario (i.e. no mitigation measures in place) in the submitted traffic impact assessment (TIA), it was estimated that there would be not more than 20 vehicles (i.e. for about 40 visitors) within half an hour. The adverse traffic impact arising from the columbarium use on the KTGE area was considered minimal and acceptable. The peak grave sweeping periods covering Ching Ming and Chung Yeung Festivals (festival days) and three consecutive weekends/public holiday(s) before and after the festival days would not coincide with the peak of pick-up and drop-off activities in the adjacent non-residential uses such as religious institutions and schools on normal days;

- (l) that said, the applicant would implement various measures, including ‘no driving nor taxi policy’ and a mandatory visit-by-appointment booking system that restricted the maximum number of visitors during the grave sweeping periods, in order to minimise any potential impact. These traffic and crowd management would be duly incorporated in the Management Plan for the licence application and would be monitored by PCLB. Such traffic and crowd management would also be reviewed and updated on a regular basis before festival days for consideration of relevant departments (i.e. C for T and C of P). It was noted that similar planning applications for columbarium use in Tuen Mun with traffic mitigation measures, i.e. mandatory provision of shuttle bus service, were approved by the TPB; and

- (m) concerning the current traffic-related complaints, it should be noted that there were only negligible number of niches occupied (i.e. 32 niches) at the moment which would not induce adverse traffic impact on the surrounding areas. The traffic growth due to occupation of niches in future was considered acceptable according to the TIA conducted as the traffic generated would not overstrain the surrounding road network during the

peak hours on normal days.

[Ms Sandy H.Y. Wong joined the meeting during the presentation of applicant's representatives.]

10. As the presentations of PlanD's representative and the applicant's representatives were completed, the Chairman invited questions from Members.

Background of Gan En Tang and the Columbarium Uses

11. Some Members raised the following questions:

- (a) whether Gan En Tang was a charitable organisation;
- (b) the land use of the Site over the years;
- (c) whether the applicant was aware of the residential zoning of the Site when the Site was acquired;
- (d) noting that approval-in-principle for TSOL application was granted to Gan En Tang by the PCLB, the implication on its current operation;
- (e) the target consumers of the unsold niches and details on the sales contract of the niches; and
- (f) whether the operation of Gan En Tang/columbarium use at the Site would still be continued and possible impact on the social services if the application was not agreed.

12. In response, the applicant's representative, Mr Kong Man Pan, made the following main points:

- (a) Gan En Tang was not registered as a charitable organisation as considerable amount of capital in relation to the private property was involved and it was complicated to comply with various laws and regulations. Should the columbarium be regularised, the applicant intended to set up a private fund

to enable a reasonable sum of money generated from the revenue of the columbarium be reserved to support its operation and other community services;

- (b) a residential care home for elderly (RCHE) was operated at the Site by another party when the Site was acquired by the founder in 1996. Subsequently when the rental contract was renewed, the use of the Site was changed to a kindergarten with a view to providing social services to cater for the needs in the community and the founder was the supervisor of the kindergarten at that time. Noting that school use could not be operated on a permanent basis at the Site due to land use restriction and the concerns on shortfall of niches among elderlies in the community, the founder established Gan En Tang in 2008 in consultation with professionals for the purpose of promoting social service rather than adopting a business model for profit-making;
- (c) whilst he had no involvement in acquisition of the Site and decision-making on the land use at that time, it was believed that the founder should have noted the zoning of “R(C)1” when dealing with the land use restriction of not allowing kindergarten use at the Site. According to some old documents in 2011, it could be traced that there were some discussions with relevant government departments on regularisation of columbarium use at the Site and the statutory procedures i.e. application for a licence under PCO and planning application;
- (d) in the past nine years, the applicant had endeavoured to comply with different requirements to the satisfaction of relevant government departments for continuing the operation of the columbarium. Approval-in-principle for TSOL application was granted by PCLB in 2021 with a validity period of 3 years, during which the columbarium could still be operated. The number of niches proposed under the current application remained the same since the establishment of Gan En Tang in 2008;
- (e) the columbarium was intended to serve the consumers in need, and consignment sales arrangement was prohibited. Relevant clauses would be

stipulated in the sales contract, i.e. assigning the niche to the specific deceased and such assignment could not be changed. There were two possible operation modes for the columbarium as advised by PCLB. One was to charge the consumers a lump sum in one go for financing and sustaining a long term operation of columbarium and this was not preferred by the applicant. The applicant tended to lease out the niches to the clients for a period of, say 10 years with reference to the validity period of the columbarium licence under the PCO. It was tentatively planned that the consumers would be required to pay in advance two-year rent as deposit plus one-year rent. It would be stipulated in the sales contract that deposit would be refunded proportionally if the columbarium licence could not be renewed. In case rent could not be received from the consumers for a period of time, i.e. no descendants taking care of the niches could be found, the applicant would carry out the ash disposal procedures set out in the PCO, i.e. scattering of cremains after two years of grace period. If a columbarium licence could be obtained for the columbarium, the applicant would follow up with a number of procedures, including application for lease modification (where land premium would be determined), setting up of a private fund for the operation, etc.. The price of niches could not be ascertained at the current juncture, as it was largely hinged on the amount of land premium required; and

- (f) Gan En Tang was founded with an aim to meet the shortfall of niches in the community. If the application was not agreed and a columbarium licence could not be secured, neither Gan En Tang nor the columbarium thereat would continue to be operated. In the event that the columbarium ceased operation, the consumers would be notified and given about two years' time to handle the interred ashes i.e. interring the ashes of the deceased in public niches managed by the Food and Environmental Hygiene Department (FEHD). The proposal for setting up a private fund for financing future operation of columbarium/social services would unlikely be materialised, as the Site would likely be converted back for residential use given its prime location where it was uneconomical to use it for provision of social services. The applicant might consider to continue providing social services in other

locations.

13. In respect of the regulation of private columbarium, Ms Vivian M.F. Lai, DPO/K, supplemented the following main points:

- (a) the operation of private columbaria was regulated under PCO. While the columbarium at Gan En Tang was not eligible for application of exemption in view of the stricter requirement for interment of ashes before 1.1.1990 and the restriction on freezing the number of interred niches, an approval-in-principle for TSOL application was granted to the applicant by the PCLB with a validity period of 3 years up to 2.9.2024 given the compliance with the application requirements for TSOL including building or land-related requirements. Planning requirement was not checked in vetting TSOL application, which was for a tolerated period only;
- (b) according to Private Columbaria Affairs Office (PCAO), a licence was not deemed approved when TSOL application was granted for the columbarium and the applicant could not sell/let out any new or unoccupied niches prior to obtaining a licence. While the operation of the columbarium at Gan En Tang could be continued during the validity period of TSOL, the applicant should make use of the time to fulfil all relevant requirements for licence application including but not limited to planning aspect (i.e. compliance with the Ordinance, which would be considered separately). Failing which, the applicant had to prove to the satisfaction of the PCLB that necessary steps had been taken with reasonable expedition, or otherwise, the PCLB would not extend the validity of TSOL;
- (c) albeit the policy initiatives of adopting a pragmatic and sensitive approach in respect of land premium and TIA concerning ‘pre-cut-off columbarium’ seeking a licence, ‘pre-cut off columbarium’ would not automatically be granted a licence as a result of the said policy initiatives and the PCLB would consider each application in accordance with requirements for a licence as set out in PCO as indicated in the Government’s press release of 22.11.2017;

- (d) according to the statistics quoted in the letter for follow-up action on meeting of Panel on Food Safety and Environmental Hygiene dated 30.11.2023, there were some rejected cases (i.e. 50) from 30.12.2017 to 15.11.2023 for application of specific instruments under PCO including licence, exemption and TSOL on regulatory and pragmatic grounds; and
- (e) if a private columbarium ceased operation for whatever reasons, the operator should carry out the ash disposal procedures set out in the PCO, including returning the ashes to the eligible claimants and delivering unclaimed ashes to the FEHD for disposal.

14. In response to a Member's query on the number of niches, Mr Kong Man Pan said that according to the PCO, no niches sold/newly let out were allowed until a license was obtained for a 'pre-cut-off columbarium'. Hence, there was no increase in the number of niches (both the total and the number of interred niches) at Gan En Tang since 2014. The operation of the columbarium at Gan En Tang could be sustained due to private land ownership without the financial burden on renting a premises. Given the prolonged processing time for application of a licence, some columbaria were closed due to shortfall of financial support before the licence could be obtained.

Planning Considerations on Columbarium Uses

15. Some Members raised the following questions:
- (a) what planning considerations and priority were amongst policy of government departments, land use compatibility and site history, for assessing the proposal of rezoning the Site from "R(C)1" zone to "G/IC(14)";
 - (b) noting the FI and the applicant's oral presentation, whether there was any inconsistency in PlanD's recommendations on the similar application No. A/K18/336 for Look Year Yuen and the current application;
 - (c) with reference to the FI, clarification on the differences in planning

circumstances of the quoted Appeal and the current application in terms of land use compatibility; and

- (d) the planning implications on the Kowloon Tong Outline Zoning Plan (OZP) or the KTGE should the application be agreed.

16. In response, Ms Vivian M.F. Lai, DPO/K, made the following main points:

- (a) PlanD's recommendation on the application had taken into account the planning intention of the Site and the adjacent neighbourhood in a wider context. KTGE area was planned and developed as a low-rise and low-density residential neighbourhood back in 1920s. There was no change to such a planning intention until now. With reference to some site photos and background information, it was noted that the use of the Site had been changed over the decades, from a residential use to RCHE in 1990s, then a kindergarten in 2000s, and now Gan En Tang. As revealed in the land use survey in 2013, KTGE area was dominated by low-rise residential clusters intermixing with some non-residential uses such as schools, hotels and social welfare facilities with/without planning permission. Over the years, some non-residential uses were converted to residential use (e.g. from a proposed school with planning permission to a residential unit facing Surrey Lane) which reinforced the established and planned residential character of the locality. While 'Flat' was always permitted, non-residential uses such as religious institutions, schools and social welfare facilities were Column 2 uses subject to planning permission. There was no provision for 'Columbarium', which was neither a Column 1 nor Column 2 use under the "R(C)" and "G/IC" zones on the Kowloon Tong OZP. According to the Notes of "G/IC(14)" zone proposed under the current application, there was no Column 1 use and 'Columbarium' and 'Religious Institution' were incorporated under Column 2. Approval of the current application and subsequent approval of the 'Columbarium' and 'Religious Institution' uses for the Site under section 16 application might lead to a change in the character of the locality. The application was not agreed having taken into account the issues of land use compatibility with the residential neighbourhood and the policy initiatives for 'pre-cut-off

columbarium’;

- (b) Look Year Yuen, a Buddhist temple located to the north of the Site within “R(C)1” zone, came into existence in 1978, i.e. prior to the gazettal of the first statutory plan for Kowloon Tong area in 1979. The Look Year Yuen site was subject to two applications for religious institution use. Application No. A/K18/6 involving regularisation of an existing temple was approved in 1980 given its historical background. Application No. A/K18/336 was for redevelopment of the existing two-storey religious institution for meeting the operational need and promoting Buddhism including holding spiritual lectures and meditation services. The proposal covered 2,090 ancestral tablets for worshipping purpose which was considered an integral part of the religious institution. The application was approved with conditions (i.e. no columbarium/urns/niches and no new ancestral tablets provided within the site) given its unique site history, no additional increase in the number of tablets therein even if the existing tablets were to be removed in the future and the implementation of traffic mitigation measures. The development scheme, site history and planning circumstances of Look Year Yuen were different from that of the current application;
- (c) the columbarium use in Gig Lok Monetary under the Appeal was built in 1950s long before the residential clusters were developed in its surrounding area. The land use character was different from the established residential neighbourhood in KTGE area which was developed since 1920s; and
- (d) the Site was located in a predominantly low-rise residential neighbourhood intermixed with some non-residential uses with/without planning permission. Plan Z-1 of the Paper indicated that “G/IC” zones were scattered in the north, south and centre of the KTGE area bounded by major roads (i.e. To Fuk Road and Waterloo Road), and “G/IC” uses were not sporadically developed in the area. Indeed no applications for religious institution use had been considered and approved by the TPB since 2007. The recent application for Look Year Yuen involving redevelopment of an

existing religious institution was approved with conditions in 2020 given the unique planning circumstances and site history. The inclusion of columbarium use was out of character for the established residential neighbourhood, affecting the integrity of the KTGE area.

Traffic Impact and Mitigation Measures

17. Some Members raised the following questions:
- (a) whether relevant government departments had any comment on/objection to the proposed traffic arrangement (i.e. provision of nil car park provision and one loading/unloading bay (L/UL) within the Site); and
 - (b) how the ‘no driving nor taxi policy’ would be implemented and monitored.
18. In response, Ms Vivian M.F. Lai, DPO/K, made the following main points:
- (a) noting that two waiting spaces and one L/UL bay with nil parking provision were proposed under the notional scheme and there was site constraint in planning for vehicle manoeuvring, C for T initially had concern from traffic engineering perspective due to the possibility of tailing back of vehicles entering the Site onto the public road outside the Site and restrictions on move-in/out and u-turn of vehicles. Nevertheless, C for T subsequently had no adverse comment on the application based on the conclusion of TIA that no adverse traffic impact would be resulted with the implementation of the proposed mitigation measures including a mandatory visit-by-appointment booking system and ‘no driving nor taxi policy’; and
 - (b) the application was to rezone the Site to provide for subsequent section 16 application for columbarium use. Since the current application was for rezoning, no conditions could be imposed if the rezoning was agreed and the notional scheme submitted was not binding. The proposed mitigation measures i.e. ‘no driving nor taxi policy’, if incorporated in the Management Plan under the application for columbarium licence, could be monitored by the PCAO of the FEHD. As advised by PCAO, while

measures such as mandatory provision and use of shuttle bus service were common and generally enforceable, the implementation and enforcement of the proposed 'no driving nor taxi policy', which was merely a self-initiative, under the current application could not be ascertained as there was no precedent case.

19. A Member enquired whether the conclusion of no nuisance/adverse traffic impact was derived on the basis of the existing condition of the Site (i.e. 32 sold and occupied niches). In response, Mr Daniel Wei said that no nuisance and adverse traffic impact would be resulted in the neighbourhood given the current small scale of the columbarium. Mr Stanley Chan supplemented that there were two waiting spaces and one L/UL bay at the Site that enabled pick-up and drop-off activity in case the visitors went against the 'no driving nor taxi policy'. Such measures would be stipulated in the sales contract for the consumers/visitors to follow, and penalties such as increase in management fee would be imposed to discourage any non-compliance with these house rules.

20. Noting the restrictions on the maximum number of about 40 visitors per each 30-minute worshipping session during the grave sweeping period, a Member asked how such control on maximum number of visitors would be implemented and how long it would take to cater all consumers' worship needs if all the 3,358 niches were sold and occupied. In response, Mr Stanley Chan said that the Site was situated in a convenient location within walking distance from MTR Kowloon Tong Station and various bus stops along Waterloo Road. Provision of shuttle bus service for accessing the Site, as for other columbaria in rural areas, was not applicable. According to the TIA submitted, adverse traffic impact due to influx of visitors for worship purpose would not be substantial given there would be a mandatory visit-by-appointment booking system which restricted the maximum number of visitors for each 30-minute worshipping session. Without the above mitigation measures, it was estimated that about nine days (festival days and three consecutive weekends before and after these festival days) would be required to cater for all visitors' worship needs if all the 3,358 niches were fully occupied. The peak hours (i.e. about 10 a.m. to 11 a.m.) would only surface at grave sweeping period, which would not coincide with the peak traffic flow in normal days.

Others

21. In response to a Member's enquiry on the proposed environmental mitigations, i.e. closure of existing toilets and use of portable toilets, Mr Daniel Wei said that all the existing toilets at the Site would be closed permanently as proposed in the Sewerage Impact Assessment.

22. In response to the Chairman's enquiry on whether there were inconsistencies in the decisions of the previous and current applications in view of the TPB's legal duties as claimed in the FI, Ms Vivian M.F. Lai, DPO/K, reiterated that PlanD had holistically assessed the current application taking into account the relevant departmental comments, current policy and licencing mechanism under PCO for 'pre-cut-off columbarium', planning intention of the "R(C)" zone and the KTGE area as well as the public comments before making a recommendation, as set out in the Paper for the Committee's consideration.

23. As there were no further questions from Members, the Chairman informed the applicant's representatives that the hearing procedure of the application had been completed and the Committee would deliberate on the application in their absence and inform the applicant of the Committee's decision in due course. The Chairman thanked PlanD's and the applicant's representatives for attending the meeting. They left the meeting at this point.

[Messrs Daniel K.S. Lau and Franklin Yu left the meeting at this point.]

[The meeting was adjourned for a 5-minute break.]

Deliberation Session

24. The Chairman recapitulated that the application for rezoning the Site from "R(C)1" to "G/IC(14)" was to regularise the operation of an existing religious institution cum columbarium at Gan En Tang. The Site was located within KTGE area, which was planned and developed for residential use since 1920s and such planning intention for the area remained unchanged and appropriate. Although there were no adverse comments or objections from relevant government departments, the application was not agreed by PlanD mainly on the considerations that the planning intention of "R(C)1" zone was appropriate for the Site and the religious institution cum columbarium use was incompatible with the

residential neighbourhood as detailed in the Paper.

25. The Chairman remarked that the FI contained justifications which were pertaining mainly to that: (i) there was inconsistency in the decisions on the current application and the similar applications of Look Year Yuen and Gig Lok Monastery; (ii) the religious cum columbarium use was not incompatible with the surrounding residential use; (iii) the recommendation of not supporting the application was not in line with the Government policy on ‘pre-cut-off columbarium’; and (iv) there would be impact on a social enterprise contributing to the community.

26. With regard to the issues of inconsistency and compatibility, the Chairman said that Look Year Yuen and Gig Lok Monastery were different from the current application in terms of site history and context. Look Year Yuen had existed long before the gazettal of the first statutory plan for the area and the related application was for in-situ redevelopment of the religious use with the freezing number of ancestral tablets but no columbarium niches, whereas Gik Lok Monastery was established in 1950s existed earlier than the residential developments in its adjacent areas. The current application for religious institution cum columbarium use was not comparable with the two applications mentioned in terms of land use compatibility and potential nuisance.

27. Concerning the Government’s policy on private columbaria, it should be noted that the approval of TSOL application bore no implication on approval of a columbarium licence. TSOL was to enable the applicant to work towards meeting all relevant requirements, including those under planning regime, to the satisfaction of government departments in order to obtain a valid licence for columbarium at Gan En Tang. Indeed, the columbarium was operated irrespective of contravening the requirements under the planning and lands regimes. The Lands Department had issued a warning letter to the applicant regarding breaches of the lease in 2011.

28. The Chairman invited Members to consider the application including the FI and the justifications provided by the applicant at the meeting. It was noted that the further justifications in the FI had largely been recapitulated by the applicant’s representatives during the presentation session as well as largely elaborated and discussed by both the applicant’s and PlanD’s representatives in their responses during the question and answer session. The Chairman also invited Members to consider if legal advice was needed to be sought prior to making a decision on the application.

29. Noting that the FI was submitted just one day before the meeting, few Members raised whether it could form part of application or if the TPB could refuse to accept it. A Member also asked whether it was reasonable to stipulate a cut-off time for submission of FI in order to allow reasonable time for Members' consideration.

30. In response, the Secretary said that applicants could submit FIs to further substantiate their applications as long as the submissions fulfilled the requirements specified in TPB PG-No. 32A that the FI would not result in a "material change" to the nature of the application (i.e. no major change to the proposed use and development parameters in general). The FI, which only provided further justifications for the application with reference to previous application and town planning appeal decisions and did not involve material change to the nature of the application or new technical assessment, could be accepted and formed part of application. Given the nature of the FI, it could also be exempted from the publication/recounting requirements.

31. The Secretary further explained that there was no stipulation on specified periods for FI submission for applications made under the pre-amended Ordinance (the version in force prior to 1.9.2023), which was applicable to the current application. For applications submitted under the amended Ordinance currently in force, submission of FI had to be made within the specified periods (i.e. within two months after the receipt of application or deferment period upon deferral by the TPB for FI submission).

32. The Chairman said that for planning applications, there were cases that deferral was recommended at the meeting due to the receipt of FI submission involving new/revised technical assessments in the last minute. Such deferral was to allow the TPB to review and take account of the new submissions before making a fair decision on the application. In handling the FI, Members could consider if more time was required to deliberate the justifications and seek departmental comments before making a decision on the application.

33. After deliberation, Members agreed that the FI providing further justifications with supplementary information could be accepted as part of the application and be exempted from publication and recounting requirements as there was no new/revised development proposal or technical assessment that warranted further departmental comments or notification to the public. Members noted that the claims/justifications in the FI had been largely covered in the applicant's presentation and elaborated and discussed in the question

and answer session; and the appendices attached to the FI, including three previous TPAB's decisions and an extract of minutes of TPB meeting held on 3.11.2023 were available in the public domain. After consideration of the submission (including the FI) and responses made by the applicant's and PlanD's representatives, Members considered that there was no need to seek legal advice or defer the consideration of the application.

34. Some Members also expressed that it was unfair for the applicant to accuse without valid grounds in the FI that PlanD's recommendation would mislead the TPB in carrying out its duty in a fair and reasonable manner. It was considered appropriate, as per the extant established practice, for PlanD after weighing up all relevant planning considerations to make a recommendation to facilitate Members' discussion and consideration of the application. All along, the TPB would exercise independent judgement in discharging its statutory duty and considered the application in accordance with the Ordinance in a fair and reasonable manner with reference to individual circumstances of the case and relevant planning considerations.

35. All Members agreed with PlanD's recommendation of not agreeing with the application and had the following observations:

- (a) the supporting ground of alleviating the shortfall of niches to meet community needs was unsound. Instead, PCO was enacted in 2017 with a view to regulating the operations of private columbaria to ensure that they were in compliance with all statutory requirements, avoiding interface issues and proliferation of such unauthorized or unregulated use;
- (b) the justification on sustaining charitable activities/social enterprise through regularising the columbarium use at the Site was not convincing. Despite the claim of the applicant's representatives, there was no solid proof that the columbarium was for funding charitable activities of Gan En Tang. If the applicant did intend to pursue the founder's will, considerations could be given to other alternatives for carrying out social and community services;
- (c) albeit no adverse comment on nor objection from relevant government departments on technical aspects, the application could not be supported from land use planning perspective. The columbarium use was considered

incompatible with the residential neighbourhood of KTGE area and even other non-residential uses, which were mainly Government, institution or community facilities like schools and kindergarten, scattered in the neighbourhood. Unlike columbarium, such uses were provided for under the “G/IC” zone of the OZP;

- (d) given the differences in site history, site context and development scheme (e.g. provision of tablets in Look Year Yuen and niches in Gan En Tang) of the applications quoted by in the FI and the current application, the applicant’s claim on land use compatibility was unjustified. The applied columbarium was indeed an unauthorized development in breach of relevant ordinances including those under the planning and lands regimes;
- (e) the implementation and enforceability of the proposed mitigation measures i.e. ‘no driving nor taxi policy’, would largely rely on the applicant’s and the consumers’/visitors’ self-initiatives and self-enforcement, and there was doubt on effective mechanism to monitor whether such measure would be duly implemented; and
- (f) the proposed environmental mitigation measure of permanent closure of existing toilets and provision of portal on-site toilets was not substantiated, and such measure might not be approved by the relevant authorities at the general building plan submission stage.

36. After deliberation, the Committee decided not to agree to the application for the following reason:

“the Site is situated within a residential neighbourhood. The extant “Residential (Group C) 1” zone is considered appropriate and there is no strong justification to rezone the Site to “Government, Institution or Community (14)” for religious institution cum columbarium use which is incompatible with the residential neighbourhood.”

[Mr Ben S.S. Lui and Professor Bernadette W.S. Tsui left the meeting at this point.]

Tsuen Wan and West Kowloon District

[Messrs Clement Miu and Michael K.K. Cheung, Senior Town Planners/Tsuen Wan and West Kowloon (STPs/TWK), were invited to the meeting at this point.]

Agenda Item 4

Section 16 Application

[Open Meeting (Presentation and Question Sessions only)]

A/K1/269 Proposed Flat with Permitted Office, Shop and Services and Eating Place Uses in “Commercial (6)” Zone, 43-49A Hankow Road, Tsim Sha Tsui, Kowloon

(MPC Paper No. A/K1/269)

37. The Secretary reported that the application site was located in Tsim Sha Tsui (TST), and Ove Arup & Partners Hong Kong Limited (ARUP) and Lwk & Partners (HK) Limited (LWK) were two of the consultants of the applicant. The following Members had declared interests on the item:

- Mr Stanley T.S. Choi - his spouse being a director of a company which owned properties in TST;

- Mr Franklin Yu - having current business dealings with ARUP; and

- Mr Ricky W.Y. Yu - having current business dealings with LWK.

38. The Committee noted that Messrs Stanley T.S. Choi and Ricky W.Y. Yu had tendered apologies for being unable to attend the meeting, and Mr Franklin Yu had already left the meeting.

Presentation and Question Sessions

39. With the aid of a PowerPoint presentation, Mr Clement Miu, STP/TWK, briefed Members on the background of the application, the proposed development, departmental and

public comments, and the planning considerations and assessments as detailed in the Paper. The Planning Department had no objection to the application.

40. Members had no question on the application.

Deliberation Session

41. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board. The permission should be valid until 12.1.2028, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the approval conditions stated in the Paper. The Committee also agreed to advise the applicant to note the advisory clauses as set out in the appendix of the Paper.

Agenda Item 5

Section 16 Application

[Open Meeting (Presentation and Question Sessions only)]

A/TW/540 Renewal of Planning Approval for Temporary Information Technology and Telecommunication Industries (Data Centre) for a Period of 3 Years in “Comprehensive Development Area (3)” Zone, 2/F, Asia Tone i-Centre, 1 Wang Wo Tsai Street, Tsuen Wan, New Territories
(MPC Paper No. A/TW/540)

42. The Secretary reported that the application premises (the Premises) was located in Tsuen Wan. Mr Stanley T.S. Choi had declared an interest on the item for his spouse being a director of a company which owned properties in Tsuen Wan. The Committee noted that Mr Stanley T.S. Choi had tendered an apology for being unable to attend the meeting.

Presentation and Question Sessions

43. With the aid of a PowerPoint presentation, Mr Michael K.K. Cheung, STP/TWK, briefed Members on the background of the application, the applied use, departmental and public comments, and the planning considerations and assessments as detailed in the Paper. The Planning Department (PlanD) had no objection to the application.

44. A Member asked the reason for imposing an approval condition in relation to the provision of fire service installation for the current renewal application. Mr Michael K.K. Cheung, STP/TWK, explained that the Premises was subject to several previous planning approvals and the fire service installation was already in place. Whilst the Fire Services Department had no in-principle objection to the application, the said approval condition was required for fire safety purpose as the current Certificate of Fire Service Installation and Equipment for the applied use at the Premises was soon to expire in 2024.

Deliberation Session

45. The Chairperson remarked that the Rural and New Town Planning Committee had already adopted a streamlined approach for consideration of renewal applications which fully complied with the relevant requirements under Town Planning Board Guidelines No.

34D for renewal of planning application and PlanD had no objection. Under the streamlined approach, such renewal applications were considered in one go and there was no need for PlanD's representative to brief Members about the details of the applications. The Chairman proposed and the Committee agreed that the same streamlined approach could be adopted for consideration of renewal applications by the Committee.

46. After deliberation, the Committee decided to approve the application on a temporary basis for a period of 3 years, and be renewed from 17.1.2024 until 16.1.2027, on the terms of the application as submitted to the Town Planning Board and subject to the approval conditions stated in the Paper. The Committee also agreed to advise the applicant to note the advisory clauses as set out in the appendix of the Paper.

[Post meeting note: the approval condition (a) should read "the provision of fire service installation within 6 months from the date of commencement of renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.7.2024"]

[The Chairman thanked PlanD's representatives for attending the meeting. They left the meeting at this point.]

Hong Kong District

[Ms Janet K.K. Cheung, District Planning Officer/Hong Kong (DPO/HK), Ms Erica S.M. Wong, Senior Town Planner/Hong Kong (STP/HK), and Mr Ronald C.H. Chan, Town Planner/Hong Kong (TP/HK) were invited to the meeting at this point.]

Agenda Item 6

[Open Meeting]

Proposed Amendments to the Approved Mid-levels East Outline Zoning Plan No. S/H12/12
(MPC Paper No. 1/24)

47. The Secretary reported that the proposed amendment item A was to take forward the decision of the Committee on a section 12A application (No. Y/H12/2) for a site at Stubbs Road/Tung Shan Terrace, and the proposed amendment items B1 and B2 were to reflect respectively a completed residential development and as-built condition of an area shown as 'Road' at Stubbs Road in Mid-levels East. The following Members had declared interests on the item :

- | | | |
|--------------------|---|---|
| Mr Ivan M.K. Chung | - | co-owning with spouse a property in Happy Valley; |
| Mr Franklin Yu | - | owning a property in Mid-levels East; and |
| Ms Lilian S.K. Law | - | co-owning with spouse a property in Happy Valley. |

48. As the properties owned/co-owned by Mr Ivan M.K. Chung and Ms Lilian S.K. Law had partial/direct view of the amendment items, the Committee agreed that they should be invited to leave the meeting temporarily for the item. The Committee also noted that Mr Franklin Yu had already left the meeting. Mr Wilson Y.W. Fung, the Vice-chairman, took over the Chairmanship of the meeting temporarily.

[Mr Ivan M.K. Chung and Ms Lilian S.K. Law left the meeting at this point.]

49. With the aid of a PowerPoint presentation, Mr Ronald C.H. Chan, TP/HK, briefed Members on the background of the proposed amendments to the outline zoning plan (OZP) and the Notes of the OZP, technical considerations, provision of government, institution and community facilities and open space in the area, consultation conducted and departmental comments as detailed in the Paper. The proposed amendments mainly involved the following:

- (a) Amendment Item A – rezoning a site at 15 and 24 Stubbs Road and 7 Tung Shan Terrace from “Residential (Group C) 1” (“R(C)1”), “Government, Institution or Community (4)” (“G/IC(4)”) and “Green Belt” (“GB”) to “R(C)3” with stipulation of a maximum gross floor area (GFA) of 11,010m² and sub-areas (A), (B), (C) and (D) with maximum building heights (BH) of 104mPD, 120mPD, 125mPD and 134mPD respectively to take forward the decision of the Committee on partially agreeing on a s.12A application (No. Y/H12/2);
- (b) Amendment Item B1 – rezoning a site at 18 Stubbs Road from “Comprehensive Development Area” (“CDA”) to “R(C)4” zone with stipulation of a maximum GFA of 16,800m² and a maximum BH of 120mPD (including roof structures) to reflect the completed residential development; and
- (c) Amendment Item B2 – rezoning a strip of Government land from “CDA” and “R(C)1” to area shown as ‘Road’ to reflect the as-built condition.

50. As the presentation by PlanD’s representative was completed, the Chairman invited questions from Members. Members had no question on the proposed amendments.

51. After deliberation, the Committee decided to :

- “(a) agree to the proposed amendments to the approved Mid-levels East Outline Zoning Plan (OZP) and that the draft Mid-levels East OZP No. S/H12/12A at Attachment II of the Paper (to be renumbered to S/H12/13 upon exhibition) and its Notes at Attachment III of the Paper are suitable for exhibition under

section 5 of the Ordinance; and

- (b) adopt the revised Explanatory Statement (ES) at Attachment IV of the Paper for the draft Mid-levels East OZP No. S/H12/12A (to be renumbered to S/H12/13 upon exhibition) as an expression of the planning intentions and objectives of the Board for the various land use zonings of the OZP and the revised ES will be published together with the OZP.”

52. Members noted that, as a general practice, the Secretariat of the Board would undertake detailed checking and refinement of the draft OZP including the Notes and ES, if appropriate, before their publication under the Ordinance. Any major revision would be submitted for the Board’s consideration.

[The Vice-Chairman thanked PlanD’s representatives for attending the meeting. They left the meeting at this point.]

Agenda Item 8

Any Other Business

53. There being no other business, the meeting was closed at 11:50 a.m..

Annex 1**Minutes of 734th Metro Planning Committee
(held on 12.1.2024)****Deferral Case****(a) Request for Deferment by Applicant for Two Months**

Item No.	Application No.*	Times of Deferment
7	A/H10/97	1 st

Declaration of Interests

The Secretary reported the following declaration of Interests:

Item No.	Members' Declared Interests	
7	The application site (the Site) was located in Pok Fu Lam and C M Wong & Associates Limited (CMWA) was one of the consultants of the applicant.	<ul style="list-style-type: none"> - Mr Ben S.S. Lui for being a director of a company owning properties in Pok Fu Lam, co-owning with spouse a property in Pok Fu Lam, and his spouse owning a car parking space in Pok Fu Lam - Professor Jonathan W.C. Wong for having close relative living in Pok Fu Lam - Mr Franklin Yu for having current business dealings with CMWA

The Committee noted that Mr Franklin Yu had not yet joined the meeting. As the properties/car parking space owned/co-owned by Professor Jonathan W.C. Wong's relative and Mr Ben S.S. Lui and his spouse had no direct view of the Site, the Committee agreed that they could stay in the meeting for consideration of the application for deferral.

*Refer to the agenda at https://www.tpb.gov.hk/en/meetings/MPC/Agenda/734_mpc_agenda.html for details of the planning application.