

**APPLICATION FOR AMENDMENT OF PLAN**  
**UNDER SECTION 12A OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. Y/ST/39**

- Applicant** : Chen Pui Fung represented by Eric Tang & Associates Ltd.
- Plan** : Draft Sha Tin Outline Zoning Plan (OZP) No. S/ST/33 at the time of submission  
Approved Sha Tin OZP No. S/ST/34 currently in force
- Application Site** : Lots 356, 357 (Part) and adjoining Government Land in D.D. 185
- Site Area** : About 695.4 m<sup>2</sup> (including Government Land of 417.8m<sup>2</sup>)
- Lease** : Lot 356  
(a) building lot held under New Grant No. 6679  
(b) no house erected on the lot shall be more than two storeys in height  
(c) no grave or human remains shall be deposited on the lot  
(d) the lot shall not be used as a “Chai Tong” or for any other purpose of a similar nature
- Lot 357  
(a) agricultural and garden lot held under New Grant No. 6679.  
(b) 239 sq. ft. (22.2 sq.m.) converted to building land  
(c) no grave or human remains shall be deposited on the lot  
(d) no house erected on the building land portion shall be more than two storeys in height
- Zoning** : “Village Type Development” (“V”) (at the time of submission and remains unchanged on the extant OZP No. S/ST/34)
- Proposed Amendment** : To rezone the application site from “V” to “Religious Institution” (“RI”)

**1. The Proposal**

- 1.1 The applicant seeks planning permission to rezone the application site (the Site) from “V” to “RI”, which is a new zoning proposed by the applicant, to continue the current religious institution and columbarium uses on site, under the name of Tsing Lin Tsing She (淨蓮精舍) (**Plan Z-1**). The applicant has proposed a set of Notes for the proposed “RI” zone (**Appendix II**), under which both ‘Religious Institution’ and ‘Columbarium (within a Religious Institution or extension of existing Columbarium only)’ are Column 1 uses permitted as of right.
- 1.2 According to the applicant, four buildings falling within the Site are used as main temple (Structure A), columbarium (Structure B), communal structure (Structure C)

and toilet (Structure D). Besides, there is an incinerator located to the west of the communal structure. According to the information provided by the applicant, the columbarium formed part of the temple. The main temple is 2 storeys high while the other structures are 1 storey high (**Drawings Z-1 and Z-3**). A piece of land abutting the main temple and the communal structure at the eastern portion of the Site is used as a garden dotted with some shrines. It is granted for garden purpose under a Government Land Licence (GLL)<sup>1</sup>. There are 1,018 niches accommodated in the columbarium building, and a religious ash pagoda. The condition of sale and occupation of the niches as at 30.6.2017 as provided by the applicant is as follows:

Classification	Single-Urn Niche	Double-Urn Niche	Total
No. of Niches	925	93	1,018
No. of Sold Niches	597	67	664
• No. of Sold & Occupied Niches	436	58	494
• No. of Sold but Not Yet Occupied Niches	161	9	170
No. of Niches Available for Sale	328	26	354

- 1.3 The development parameters of the notional scheme provided by the applicant are as follows:

Site Area	About 695.4m <sup>2</sup> (including Government land of 417.8m <sup>2</sup> )		
GFA	Structure A:	Main Temple	239.2m <sup>2</sup>
	Structure B:	Columbarium	34.2m <sup>2</sup>
	Structure C:	Communal Structure	83.8m <sup>2</sup>
	Structure D:	Toilet	13.5m <sup>2</sup>
	Total: About 370.7m <sup>2</sup>		
Plot Ratio	About 0.53		
Site Coverage	About 36.1%		
No. of Buildings	4		
Building Height	1 to 2 storeys		
No. of Niches	1,018 (accommodated in columbarium building only)		
Private Open Space	About 417.8m <sup>2</sup>		

- 1.4 The Site is currently served by an existing footpath. It is not directly served by any vehicular access and no car parking facilities and loading/unloading bays are proposed at the Site.
- 1.5 In support of the application, the applicant has submitted the application form with attachments on 13.4.2018 (**Appendix I**).

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the attachments to the application form (**Appendix I**). They can be summarized as follows:

<sup>1</sup> The said GLL had been granted to the then owners of lot 356 and 357 from 1.1.1961 for the purpose of garden use and no structure is permitted. According to District Lands Officer/Shia Tin, Lands Department, the GLL had already been cancelled on 1.11.2002. The current occupation of Government land and erection of structures is unauthorized.

- (a) The application is for the pre-requisition of application for specified instruments under the Private Columbaria Ordinance. The existing structure over the Site is a temple named “Tsing Lin Tsing She” which has been built for over 50 years before the gazettal of the first OZP.
- (b) The lot owners claim that the usage of the four structures within the Site has not been altered. The temple did not have further extension except minor maintenance undertaken. The columbarium forms part of the temple and also existed over 50 years. Special condition may be granted in order to make sure the structure will not have further development.
- (c) The existence of the structures at the Site does not affect the past, present and future environmental conditions and traffic flow of the concerned region. The number of worshippers to the subject columbarium is insignificant as compared with the large scale columbarium nearby. Reservation shall be made by the worshippers before visit as a traffic control measure to avoid creating adverse traffic impact to the area.
- (d) According to the confirmed minutes of the 584<sup>th</sup> meeting of the Committee on 28.7.2017, Members understood that the temple might have already existed for a long time and the temple might be treated as an existing use.

### 3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. For the adjoining government land, the “owner’s consent / notification” requirements as set out in the “TPB Guidelines” (TPB PG-No.31) are not applicable to the application.

### 4. **Background**

#### Zoning History of the Site

- 4.1 The Site was covered by the statutory plan since the first statutory plan covering Sha Tin area was gazetted on 28.4.1961. Since then, both ‘Religious Institution’ and ‘Columbarium’ uses have not been permitted as of right at the Site under the statutory plan. As stipulated in the Covering Notes of the OZP, no action is required to make the existing use of any land or building conform to the OZP until there is a material change of use or the building is redeveloped. 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 statutory plan was in force, it must be a use permitted under that statutory plan before the existing use right can be claimed. According to the Town Planning Board Guidelines No. 24C (TPB PG-No. 24C) for Interpretation of Existing Use in the Urban and New Town Areas, 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.

#### The Private Columbaria Ordinance

- 4.2 The Private Columbaria Ordinance, which regulates the operation of private columbaria through a licensing scheme, has come into operation from 30.6.2017. On 22.11.2017, two policy initiatives were announced by the Government to address the land premium and traffic impact assessment (TIA) issues of pre-cut-off columbaria (i.e. a columbarium which was in operation before 8:00 a.m. on 18.6.2014 with interred ashes in niches) seeking a licence. For the policy initiative relating to TIA, the Government has decided to use an empirical evidence approach as the basis for assessing traffic impacts in processing the licence application from a pre-cut-off columbarium whose operation only involves the number of niches sold before 30.6.2017. Operators of individual columbaria have the responsibility to provide practicable mitigation measures within their capability and submit a management plan setting out such measures during the licence application stage. The Government departments will reflect to the Private Columbaria Licensing Board their views on suitable mitigation measures that should be followed up by individual cases.

#### The Pai Tau Cluster

- 4.3 The Site falls within an area zoned “V” on the OZP. The Site also falls within the common boundary of Village Environs (‘VE’) of the four recognized villages of Pai Tau, Tin Liu, Sheung Wo Che and Ha Wo Che. Including the subject columbarium, there are 13 known private columbaria falling within the same “V” zone or “VE” of the recognized villages (**Plan Z-1**). Of which, one of them falls within an area zoned “Other Specified Uses’ annotated ‘Columbarium’ (i.e. Po Fook Hill) and another falls within an area zoned “Other Specified Uses’ annotated ‘Cemetery’ (i.e. Tao Fong Shan Christian Cemetery).
- 4.4 According to the information collected by Food and Environmental Hygiene Department (FEHD), there is an overall of about 130,000 niches in the Pai Tau cluster area that has already been sold as at 30.6.2017. Currently, traffic and pedestrian flow management arrangements for the Pai Tau cluster including road closure of section of Pai Tau Street, setting up of barriers, cones and signage for directing crowd and traffic, crowd control measures outside MTR Sha Tin Station and at the footbridge connecting MTR Sha Tin Station and Pai Tau Street are already implemented by the Government in the area. Moreover, departments concerned have already prepared contingency plans to cater for ad hoc situations. According to observation, with traffic and pedestrian flow management arrangements as well as contingency plans, the traffic and pedestrian flow level in the area during the peak hours is at least at an acceptable level.

## 5. Previous Application

The Site is part of the subject of a previous s.12A rezoning application No. Y/ST/35, which also include the adjacent Lot 521 in D.D.185 to the north of the Site, submitted by the same applicant on 16.12.2016 for rezoning the Site from “V” to “G/IC” to continue the current religious institution and columbarium uses of 1,111 niches on site (**Plan Z-2**). The application was rejected by the Committee on 28.7.2017 on grounds of incompatibility with the general village setting in the area, reduction in area of “V” zone for small house development, adverse traffic and geotechnical impacts and setting of undesirable precedent.

## 6. Similar Applications

- 6.1 There are three similar applications (Nos. Y/ST/13, Y/ST/24 and Y/ST/29) for proposed rezoning of “V” to “G/IC” in the same “V” zone on the Sha Tin OZP which were partially agreed or rejected by the Committee between 2012 and 2015 (**Plan Z-1**).
- 6.2 Under application No. Y/ST/13, the “V” zone of Pai Tau Village where Chi Ha Toi (紫霞台(安樂祠)) is situated was proposed to be rezoned to “G/IC(1)” with ‘Columbarium’ as a Column 1 use to regularize the columbarium use therein. On 10.2.2012, the Committee decided to partially agree to the application by rezoning the concerned “V” site to “G/IC” with ‘Columbarium’ included as a Column 2 use on the consideration that the subject columbarium was located away from the nearest village clusters and relevant departments had no in-principle objection to the application subject to the submission of detailed technical assessments for the Board’s consideration at the s.16 application stage. Subsequent planning application (No. A/ST/816) for the columbarium use, however, was rejected by the Committee on 8.11.2013 and by the Board on review on 11.4.2014 as the traffic impact assessment submitted failed to demonstrate that the proposed columbarium would have no adverse pedestrian and vehicular traffic impact and the approval of the application would set an undesirable precedent for the development of columbarium use which would lead to a general degradation of the traffic conditions of the area.
- 6.3 Two applications (Nos. Y/ST/24 and Y/ST/29) for rezoning of “V” to “G/IC” to facilitate religious institution and columbarium uses at Wai Chuen Monastery (慧泉寺) were rejected by the Committee on 22.11.2013 and 16.1.2015 respectively mainly on the grounds that the applicant failed to demonstrate there would be no adverse traffic impact on the surrounding areas and the approval of the rezoning application would set an undesirable precedent for other similar rezoning applications in the area for the development of columbarium use. The cumulative effect of approving such similar applications would lead to proliferation of columbarium use and a general degradation of the traffic conditions of the area.

## 7. The Site and its Surrounding Areas (Plans Z-1 to Z-5)

7.1 The Site is:

- (a) located within the ‘village environs’ (‘VE’) of four recognized villages, namely Pai Tau, Tin Liu, Sheung Wo Che and Ha Wo Che at the upper sloping areas of Pai Tau;
- (b) currently occupied by three<sup>2</sup> existing buildings for religious institution and columbarium uses without valid planning permission under the name of Tsing Lin Tsing She; and
- (c) accessible via an existing footpath with a width of about 1m to 4m leading from Pai Tau Street and further connects to the Sha Tin Railway Station

<sup>2</sup> According to the applicant, there are four buildings within the Site currently used as main temple (Structure A), columbarium (Structure B), communal structure (Structure C) and toilet (Structure D). However, based on the site inspection and site photos taken on 27.4.2018 (**Plan Z-4d**), Structure B and Structure D together is a single structure for columbarium instead of two separate structures as claimed by the applicant.

with a total distance of about 800m (**Plans Z-2, Z-4a and Z-5**). There is no vehicular access to the Site.

7.2 The surrounding areas have the following characteristics:

- (a) the surrounding areas are predominantly sloping areas covered by dense vegetation with clusters of religious institutions and columbaria as well as sporadic domestic structures;
- (b) to the east is a cluster of village settlements, with the closest domestic structure at about 10m from the Site; and
- (c) there is a stream located at about 25m to the south of the Site.

## **8. Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

## **9. Comments from Relevant Government Bureaux/Departments**

9.1 The following Government bureaux/departments have been consulted and their views on the application are summarized as follows:

### **Columbarium Policy**

9.1.1 Comments of the Secretary for Food and Health (SFH) and Director of Food and Environmental Hygiene (DFEH):

- (a) the Private Columbaria Ordinance, which regulates the operation of private columbaria through a licensing scheme, has come into effect on 30.6.2017 upon gazettal. Under the Private Columbaria Ordinance, only private columbaria that have obtained a licence may sell or newly let out niches. Any private columbarium which applies for a licence must comply with the Town Planning Ordinance (Cap. 131) and other requirements prescribed in the Ordinance or specified by the Private Columbaria Licensing Board (the Licensing Board), including land-related, building-related, right to use the columbarium premises, deed of mutual covenant (if applicable), fire safety, etc. A licence applicant is also required to submit a management plan to the Licensing Board for approval. The management plan should show that suitable measures on traffic and public transport arrangement or management would be taken to minimize any adverse impact that operation of the columbarium

may have on the neighbourhood;

- (b) in determining whether to approve an application for a licence, the Licensing Board must have regard to the public interest and may have regard to any other relevant considerations; and
- (c) so far as the subject private columbarium, Tsing Lin Tsing She (淨蓮精舍) is concerned, an application for a licence, exemption or temporary suspension of liability has been received by the Licensing Board while the application is being processed. The aforesaid licence application involves a total number of 1,018 niches and a religious ash pagoda, which is yet to be verified by the Private Columbaria Affairs Office (PCAO).

### **Religious Policy**

#### 9.1.2 Comments of the Secretary for Home Affairs (SHA):

- (a) under the prevailing policy, land grant cases relating to religious facilities by religious organisations may be allowed a concessionary premium of 2/3 of the best alternative full market value with policy support. The conditions that have to be satisfied for the Home Affairs Bureau to consider giving the aforesaid policy support are as follows:
  - (i) the applicant has to be a bona fide religious organisation;
  - (ii) the applicant has to be a charitable organisation registered under section 88 of the Inland Revenue Ordinance; and
  - (iii) the facilities concerned are for places of worship and ancillary use.
- (b) he would normally adopt the same principles in considering planning applications related to religious facilities. He notes that Tsing Lin Tsing She is not a charitable organisation registered under section 88 of the IRO. As such, he is unable to provide policy support to the application.

### **Land Administration**

#### 9.1.3 Comments of the District Lands Officer/Sha Tin, Lands Department (DLO/ST, LandsD):

- (a) the Site comprises Lot 356, 357 (Part) in D.D. 185 and adjoining Government land. The information on the private lots is as follows:-
  - (i) Lot 356 is a building lot held under New Grant No. 6679 granted in 1935. No house erected on the lot shall be more than two storeys in height. No grave or human remains shall be deposited on the lot and the lot shall not be used as a “Chai Tong” or for any other purpose of a similar nature;

- (ii) Lot 357 is an agricultural and garden lot held under New Grant No. 6679 granted in 1935. Of which, 239 sq. ft. (22.2 sq. m.) was converted to building land. No grave or human remains shall be deposited on the lot. The use of the lot (other than the building land) for building purpose is not permitted under lease. No house erected on the building land portion shall be more than two storeys in height;
- (b) the applicant stated in para. 3 of the justification that “At the frontage of this temple, LandsD had granted a GLL for the garden purpose, where still used as a garden purpose and some shrines has been placed on this piece of land.”. The said GLL had been granted to the then owners of lot 356 and 357 from 1.1.1961 for the purpose of garden use and no structure is permitted. The GLL had already been cancelled on 1.11.2002. The current occupation of Government land and erection of structures is unauthorized. Unless the application is approved by the Board, appropriate land control action will be taken;
- (c) the proposal is not permitted under lease. If the application is approved, the owners of the lots are required to apply for a land exchange from LandsD to implement the proposal. There is no guarantee that such application will be approved. Such application, if received, will be considered by LandsD acting in its capacity as the landlord at its sole discretion and any approval given will be subject to such terms and conditions including, inter alia, payment of premium and administrative fee as may be imposed by LandsD;
- (d) the Site falls within the common boundary of ‘VE’ of Pai Tau, Sheung Wo Che, Ha Wo Che and Tin Liu; and
- (e) the total number of outstanding Small House applications and the total estimated 10-year Small House demand for Pai Tau, Sheung Wo Che, Ha Wo Che and Tin Liu are 99 and 1,107 respectively.

### **Traffic**

#### 9.1.4 Comments of the Commissioner for Transport (C for T):

- (a) for the 664 niches claimed to have been sold before 30.6.2017, subject to FEHD’s confirmation on the number of type of these niches in the submission, he would have no in-principle objection to the application based on the policy initiative announced by the Government on 22.11.2017. The applicant should submit the traffic part of the management plan proposal for TD’s comment when submitting licence application to the Private Columbaria Licensing Board; and
- (b) for the 354 unsold niches, the applicant fails to demonstrate the traffic impact of those unsold niches. There is no TIA and management plan in the applicant’s submission.



9.1.5 Comments of the Commissioner of Police (C of P):

- (a) Tsing Lin Tsing She is located on the hillside of Pai Tau area and is rather remote. The worshippers could only get there firstly by public transport (buses, minibuses, taxies and MTR) and then by walking uphill via a footpath for about 15-20 minutes; and
- (b) the subject columbarium is not fully occupied at the moment and no significant crowd management impact in its vicinity during grave sweeping periods have been observed so far. With traffic and pedestrian flow management being arranged by police and other government departments, the traffic and pedestrian flow level in the vicinity during peak hours is manageable in view of the present number of interred niches. Yet, in view that there is number of religious institutions and private columbarium in the area, there is no information to ascertain the traffic or crowd management impact if all 1,018 niches in the subject columbarium and those in other columbaria in its vicinity are fully occupied in the future.

**Environment**

9.1.6 Comments of the Director of Environmental Protection (DEP):

- (a) he has no objection to the application; and
- (b) the applicant is advised to ensure that wastewater, if any, generated from the operation of incinerator and/or the water pool should be discharged to the public sewer subject to the requirements stipulated under the Technical Memorandum of Water Pollution Control Ordinance – “Standards for Effluents Discharged into Drainage & Sewerage Systems, Inland and Coastal Waters”.

**Urban Design and Landscape**

9.1.7 Comments of Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD):

*Urban Design and Visual*

- (a) she has no comment on the application;
- (b) the scale of the existing building bulk is small. The applicant claims that the existing structures (main temple structure, a columbarium, a communal structure and toilet) have been existed over 50 years and the usage of these structures has not been altered since built;
- (c) nevertheless, if the Site is rezoned, there is no guarantee that building bulk could be confined to existing scale;

*Landscape*

- (d) she has no objection to the application from landscape planning perspective since there is no proposed alteration or new

development within the Site;

- (e) there is a front garden with some pot plants of average landscape value; and
- (f) despite there is no landscape proposal for environmental enhancement included in the application, there is opportunity to provide peripheral landscape planting in the front garden for enhancing the surrounding environment.

### **Building Matters**

#### 9.1.8 Comments of Chief Building Surveyor/New Territories East (1) and Licensing, Buildings Department (CBS/NTE(1)&L, BD)

- (a) regarding Lots 356 and 357(Part) in D.D.185, there is no record of approval by the Building Authority (BA) for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application;
- (b) if the existing structures are erected on leased land without approval of the BD, they are unauthorized under the Building Ordinance (BO) and should not be designated for any approved use under the application;
- (c) for unauthorized building works (UBW) erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO; and
- (d) if the proposed use under application is subject to the issue of a licence, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority.

#### 9.1.9 Comments of the Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD):

- (a) there is no vehicular access to the Site, and no car parking and loading/unloading bay are proposed at the Site. The applicant should clarify the Emergency vehicular access (EVA) provision, public access and means of escape/evacuation from the Site during emergency; and
- (b) there is a columbarium building in the development. The applicant should clarify the provision of fire safety and ventilation in view of the worshipping activities and joss paper burning.

**Fire Safety**

## 9.1.10 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to the satisfaction of FSD. EVA arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Building 2011 administered by BD; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

## 9.2 The following departments have no comments on/ objection to the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Director of Agriculture, Fisheries and Conservation;
- (c) Chief Engineer/Mainland South, Drainage Service Department;
- (d) Chief Engineer/Construction, Water Supplies Department;
- (e) Project Manager/New Territories East, Civil Engineering and Development Department;
- (f) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (g) Director of Leisure and Cultural Services; and
- (h) District Officer/Shu Tin, Home Affairs Department

**10. Public Comments Received During Statutory Publication Period**

On 27.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, four public comments from an adjacent lot owner, Indigenous Inhabitant Representatives and villager of Pai Tau Village and individuals were received objecting to the application (**Appendix III**). Their views are summarized as follows:

- (a) the application would lead to adverse traffic, environmental, ecological and social security impacts, and would affect the living quality of the nearby residents.
- (b) Pai Tau area where the subject columbarium is located is already experiencing traffic congestion issues during festival periods. The approval of the application would worsen the traffic condition.
- (c) the proposal is not in line with the planning intention of the “V” zone. The land in “V” zone should be reserved for villagers.
- (d) the approval of the application would set an undesirable precedent for similar applications.
- (e) there are doubts to the boundary of the lots involved in the application.

## 11. Planning Considerations and Assessments

- 11.1 The applicant proposes to rezone the Site from “V” to “RI” to permit both ‘Religious Institution’ and ‘Columbarium (within a Religious Institution or extension of existing Columbarium only)’ as of right so that the use of religious institution with columbarium with a total of 1,018 niches can be continued in-situ without the need for planning permission from the Board. The application needs to be comprehensively assessed taking into account the overall setting and technical concerns.

### Planning Intention

- 11.2 According to the information provided by the applicant, Structure A under the name of Tsing Lin Tsing She is in existence since the 1950s. There has been expansion for additional structures around Structure A in the subsequent 20 years (**Drawings Z-4 to Z-6**). Other than the structures per se, there is no information to demonstrate when the uses within the structures come into existence. As at 30.6.2017, 354 out of 1,018 niches are yet to be sold. The Site is located in an area zoned “V” on the OZP, which is intended to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. There are four recognized villages in the “V” zone, namely Pai Tau, Tin Liu, Sheung Wo Che and Ha Wo Che.
- 11.3 The Site also falls within the ‘VE’ of the four recognized villages of Pai Tau, Tin Liu, Sheung Wo Che and Ha Wo Che (**Plan Z-1**). As advised by DLO/ST, LandsD, there are 99 outstanding Small House applications and the 10-year Small House demand forecast is 1,107. It is estimated that about 3.02 ha (or equivalent to about 120 Small House sites) of land are available within the “V” zone for Pai Tau, Tin Liu, Sheung Wo Che and Ha Wo Che. As such, there is insufficient land in the “V” zone to fully meet the demand for Small Houses. It is noted that the Site currently involves unauthorized occupation of Government land and erection of structures in the “V” zone as the GLL granted for garden purpose at the concerned Government land had been cancelled on 1.11.2002.

### Land Use Compatibility

- 11.4 The area located in a valley setting leading uphill (**Plans Z-1 and Z-2**) is highly mixed with religious institutions, columbaria and domestic structures. Visitors on foot to these columbaria would mainly make use of a footbridge ramp from Sha Tin Railway Station, a section of Pai Tau Street and footpaths of 1m to 4m wide running on uphill directions, with a total distance of about 800m (**Plan Z-5**). The existing footpath leading to the Site is also the pedestrian access to the village houses nearby and uphill. The proposed columbarium at this locality may result in close juxtaposition of columbarium use and residential use as well as intermixing of gravesweepers and villagers in the location. Notwithstanding the above, quite a number of religious institutions and columbaria in its vicinity have been in existence and operation for a long time. The impact on vehicular and pedestrian traffic is mostly confined to festival periods. As exemplified in the policy initiative announced by the Government on 22.11.2017, the Government is

prepared to use an empirical evidence approach as the basis for assessing traffic impacts for pre-cut-off columbarium whose operation only involves the number of niches sold before 30.6.2017.

#### Traffic Impact and Crowd Management

- 11.5 The development which accommodates religious institution and columbarium is expected to generate traffic and attract number of visitors during the peak hours of festival days. C for T considers that the applicant fails to provide TIA to demonstrate that the 354 unsold niches would not have adverse traffic impact on the surrounding road networks. With existing large columbarium developments in the area, the proposal would attract additional visitors and impose additional loading to the current special traffic arrangement in the area during festival days, in particular the critical point at the pedestrian ramp connecting MTR Sha Tin Station and Pai Tau Street. Also, there is no management plan in the submission to support the application.

#### Building Matters and Land Administration

- 11.6 There is no record of approval by the BA for the structures at Lots 356 and 357 (Part) in D.D.185 at the Site. The structures are therefore suspected to be UBW. CBS/NTE(1)&L of BD advises that granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO. Besides, according to information provided by DLO/ST, the current application is not permitted under the lease and occupation of Government land and erection of structures is unauthorized.

#### Religious Policy

- 11.7 Tsing Lin Tsing She is not a charitable organization registered under section 88 of the Inland Revenue Ordinance (Cap. 112) or a temple registered under the Chinese Temples Ordinance (Cap. 153). SHA cannot provide policy support to the application.

#### Other Aspects

- 11.8 CTP/UD&L of PlanD has no comment on the application but advises that should the Site be rezoned as proposed in the application, there is no guarantee that building bulk could be confined to existing scale. Other Government departments including DAFC, D of FS and DEP have no comment on/objection to the application.

#### Previous Application and Similar Applications

- 11.9 The Site is the subject of a previous rezoning application No. Y/ST/35 for rezoning the Site from "V" to "G/IC". The application was rejected on 28.7.2017 on grounds of incompatibility with the general village setting in the area, reduction in area of "V" zone for small house development, adverse traffic and geotechnical impacts and setting of undesirable precedent. There are three similar applications (Nos. Y/ST/13, Y/ST/24 and Y/ST/29) in the same "V" zone. Although the application No. Y/ST/13 was partially agreed by the Committee in 2012 to rezone the concerned site to "G/IC" with 'Columbarium' included as a Column 2 use, the subsequent s.16 application was rejected by the Committee at

s.16 stage and the Board on review as the applicant failed to demonstrate that there would not be adverse traffic impact on the surrounding areas. The other two applications (Nos. Y/ST/24 and Y/ST/29) were rejected by the Committee in 2013 and 2015 respectively on the grounds of adverse traffic impact and setting of undesirable precedent for other similar rezoning applications in the area for the development of columbarium use.

#### Setting of Undesirable Precedent

- 11.10 There are other existing religious institutions and columbaria within the same “V” zone. Given the planning intention of the “V” zone and the unresolved traffic concerns, the approval of the application would set an undesirable precedent for other similar rezoning applications in the area for the development of columbarium use. The cumulative effect of approving these applications would lead to a general degradation of the traffic condition of the area, and reduction of land in “V” zone which may otherwise be used for Small House development.

#### Public Comments

- 11.11 There are four public comments received objecting to the application. The major grounds of objection are adverse traffic, environmental, ecological and social security impacts, not in line with planning intention of “V” zone, setting undesirable precedent and retaining the land in “V” zone for villagers. In this regard, the planning assessment and comments of Government departments above are relevant. The objection ground relating to the boundary of the lots is not relevant to the application.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
- (a) the Site comprises a large portion of Government land. There is no strong justification to include the Government land portion in the Site. The current “V” zone is considered appropriate to provide land for Small House development by indigenous villagers. Rezoning of the Site for columbarium use will further reduce the area of “V” zone for Small House development;
  - (b) the applicant fails to demonstrate that the columbarium use would not pose adverse traffic impact on the surrounding areas; and
  - (c) the approval of the application would set an undesirable precedent for other similar rezoning applications for the development of columbarium use. The cumulative effect of approving such similar applications would lead to general degradation of the traffic condition of the area.
- 12.2 Alternatively, should the Committee decide to agree / partially agree to the subject application, the zoning boundary and proposed Notes for the “Religious Institution” would be reviewed. PlanD will recommend zoning amendments to the OZP for consideration of the Committee, including development restrictions,

Column 1 and 2 uses and Remarks of the Notes. The proposed amendments to the Sha Tin OZP together with revised Notes and ES will be submitted to the Committee for consideration prior to gazetting under section 5 of the Town Planning Ordinance after reference back of the OZP.

**13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to agree, partially agree, or not to agree to the application.
- 13.2 Should the Committee decide not to agree to the application, Members are invited to advise what reasons for the decision should be given to the applicant.

**14. Attachments**

<b>Appendix I</b>	Application form with attachments received on 13.4.2018
<b>Appendix II</b>	Proposed Schedule of Uses for “RI” zone
<b>Appendix III</b>	Public comments
<b>Drawing Z-1</b>	Site plan
<b>Drawing Z-2</b>	Plan showing the boundary of Tsing Lin Tsing She
<b>Drawing Z-3</b>	Plan showing the use of the four structures of Tsing Lin Tsing She
<b>Drawing Z-4</b>	Survey sheet in 1957
<b>Drawing Z-5</b>	Aerial photo taken in 1963
<b>Drawing Z-6</b>	Aerial photo taken in 1972
<b>Plan Z-1</b>	Location plan
<b>Plan Z-2</b>	Site plan
<b>Plan Z-3</b>	Aerial photo
<b>Plans Z-4a to Z-4e</b>	Site photos
<b>Plan Z-5</b>	Pedestrian access to the application site

**PLANNING DEPARTMENT  
JULY 2018**