

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

APPLICATION NO. Y/ST/42

- Applicant** : Ku Ngam Ching Yuen Limited represented by Vision Planning Consultants Limited
- Plan** : Approved Sha Tin Outline Zoning Plan (OZP) No. S/ST/34
- Site** : Lots No. 60 s.A, 60 s.B, and 561 in D.D.184 and Adjoining Government Land, South of Che Kung Miu Road, Tai Wai, Sha Tin, N.T.
- Site Area** : about 1,989m² (including Government Land of 459m² (about 23% of the Site))
- Lease** : Lot 60 s.A in D.D. 184 – Agricultural Lot
Lot 60 s.B in D.D. 184 – Agricultural Lot
Lot 561 in D.D. 184 – Building and Garden Lot
- Zoning** : “Village Type Development” (“V”)
- Proposed Amendment** : To rezone the application site from “V” to “Government, Institution or Community” (“G/IC”)

1. The Proposal

- 1.1 The applicant proposes to rezone the application site (the Site) from “V” to “G/IC” to continue the current religious institution and columbarium uses on Site, under the name of Ku Ngam Ching Yuen (古巖淨苑) (KNCY) (**Plan Z-1**). The applicant has not proposed a tailor-made Notes for the Site. According to the Notes of the OZP for the “G/IC” zone, ‘Religious Institution’ is always permitted under Column 1 while ‘Columbarium’ is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the main temple of KNCY was established at the Site in 1951 and the columbarium building came into existence after 1980. The Site is currently occupied by four buildings including a single-storey main temple (千佛寶殿), two two-storey columbarium (I (觀音堂) and II (地藏殿)) and a two-storey toilet. Some shrines are placed in the western part of the Site. There are also some single-storey temporary structures including a kiosk, refreshment/sitting area, a kitchen, circulation area, worship area, and an accommodation for staying nuns. These temporary structures, except the kiosk, will be removed. A one-storey fire service pump room and new entrance portal and signage are proposed at the Site (**Drawings Z-3 and Z-4**). The opening hour of KNCY is from 8:00am to 4:30pm daily, and from 8:00am to 5:00pm during Ching Ming and Chung Yeung festival days

and two weekends before and after the festival days including public holidays in between.

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

Site area	About 1,989 m ² (including Government land of about 459m ²)	
GFA	About 514.7m ²	
	Existing Buildings	486.5m ²
	Main Temple	146.2m ²
	Columbarium I	159.6m ²
	Columbarium II	136.7m ²
	Toilet (renovated)	44m ²
	Temporary Structure	
	Kiosk	25.8m ²
	Proposed Buildings/Structures	2.4m ²
	Proposed FS Pump Room	N/A
	Proposed Entrance Portal and Signage	2.4m ²
Plot Ratio	About 0.259	
Site Coverage	About 22%	
Building Height	About 3m to 7.7m	
	Existing Buildings	4.9m to 7.7m
	Main Temple	7.7m
	Columbarium I	6.3m
	Columbarium II	7.3m
	Toilet (renovated)	4.9m
	Temporary Structure	
	Kiosk	3.4m
	Proposed Buildings/Structures	3m to 5m
	Proposed FS Pump Room	3m
	Proposed Entrance Portal and Signage	5m

- 1.4 There are a total of 1,969 niches and 907 memorial tablets within the columbarium buildings. The breakdown of their sale and occupation conditions are shown as follows:

No. of Niches		Columbarium I (觀音堂)	Columbarium II (地藏殿)	Total
Sold and occupied before 30.6.2017	<i>Single-urn</i>	0	329	329
	<i>Double-urn</i>	0	169	169
	Sub-total	0	498	498
Sold and unoccupied before 30.6.2017	<i>Single-urn</i>	0	37	37
	<i>Double-urn</i>	0	77	77
	Sub-total	0	114	114
Unsold	<i>Single-urn</i>	586	24	610
	<i>Double-urn</i>	361	386	747
	Sub-total	947	410	1,357 ¹
Total No. of Niches		947	1,022	1,969

¹ According to the applicant, 154 unsold niches have been reserved for charity purpose

No. of Memorial Tablets		Columbarium I (觀音堂)	Columbarium II (地藏殿)	Total
Sold and occupied	<i>Single</i>	211	0	211
	<i>Double</i>	462	0	462
	Sub-total	673	0	673
Sold and unoccupied	<i>Single</i>	18	0	18
	<i>Double</i>	170	0	170
	Sub-total	188	0	188
Unsold	<i>Single</i>	0	0	0
	<i>Double</i>	46	0	46
	Sub-total	46	0	46
Total No. of Memorial Tablets		907	0	907

- 1.5 According to the submitted Landscape Master Plan (LMP) (**Drawing Z-9**), 10 existing trees within the Site will be retained, and 18 new heavy standard trees are proposed to be provided within the Site. Metal fences and planters are proposed along the northern and eastern boundaries to provide a soft buffer edge between the Site and its surroundings.
- 1.6 The Site is not served by any vehicular access and has no parking and loading/unloading facilities. According to the Traffic Impact Assessment (TIA) submitted, the existing pedestrian facilities are able to cope with the pedestrian demand during peak hours in festival periods. For crowd management, a visit-by-appointment arrangement is proposed. All visitors are required to make appointment in specific time slots before visit. A maximum of 24 and 22 visitors will be allowed on G/F of Columbarium I and G/F of Columbarium II respectively in each time slot. A waiting area of about 95m² will be designated outside the Main Temple (**Drawing Z-8**).
- 1.7 The Site is served with an independent pedestrian access to Che Kung Miu Road (**Drawing Z-4 and Plan Z-4a**) and the applicant is committed to fence off the entire KNCY compound to avoid unnecessary disturbance to its neighbouring developments (**Drawings Z-10 to Z-12**).
- 1.8 An Environmental Assessment (EA) is submitted to demonstrate the environmental impact of the proposal. No burners/furnaces will be provided and no sound amplification system will be used during ceremonies and thus there will be no adverse air quality and noise impact generated from the proposal. The capacity of the septic tank and soakaway system and four portable toilets to be provided during festival periods are able to cope with the sewage generated and there will be no adverse water quality and sewerage impact due to the proposal.

1.9 In support of the application, the applicant has submitted the following documents:

- (a) Application form received on 30.10.2018 **(Appendix I)**
- (b) Planning Statement (including TIA, EA, tree preservation and landscape proposals (TPLP), drainage impact assessment (DIA) and sewerage impact assessment (SIA))
- (c) Further Information (FI) received on 11.1.2019 in response to departmental comments enclosing a geotechnical planning review report (GPRR) and a revised TPLP [#]
- (d) FI received on 7.3.2019 in response to departmental and public comments enclosing revised EA and TIA [#]
- (e) FI received on 20.5.2019 in response to departmental comments enclosing revised GPRR and provide clarifications on niche information [#] **(Appendix Ia²)**
- (f) FI received on 7.8.2019 in response to departmental and public comments enclosing revised EA and TIA [#]
- (g) FI received on 6.1.2020 in responses to Transport Department's comments enclosing a revised TIA [#]
- (h) FI received on 27.7.2020 in responses to departmental comments [^]
- (i) FI received on 7.9.2020 in responses to Transport Department's comment and enclosing a Technical Note for TIA [#]

[^] accepted and exempted from publication and recounting requirements

[#] accepted but not exempted from publication and recounting requirements

1.10 The application was originally scheduled for consideration by the Rural and New Town Planning Committee (the Committee) on 1.11.2019. Upon request by the applicant, the Committee agreed to defer a decision on the application for two months on 1.11.2019 and 26.5.2020. After the last deferral, the applicant submitted FI on 27.7.2020, 7.9.2020 and 20.11.2020 and the application is scheduled for consideration by the Committee on 4.12.2020.

² A consolidated report containing the finalized technical assessments and Responses-to-Comments tables (**Appendix Ia**) was submitted by the applicant on 20.11.2020 which has consolidated all the previous submissions; thus the relevant FIs are not attached in this Paper.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in section 6 of the planning statement and the FIs (**Appendix Ia**). They can be summarized as follows:

- (a) The proposal is in line with the Government's policy to adopt a three-pronged approach in order to cater for the long-term demand for niches. The columbarium facilities provided by the Government are already operating at full capacity. The proposal could serve as an alternative to satisfy the general community's demand for columbarium niches.
- (b) KNCY Limited is a non-profit making organization which has been serving the community in different aspects. 86 out of the 612 sold niches are unconditionally received from the abandoned Sheung Jik Yuen in Lam Tsuen. 154 unoccupied niches have been reserved for charity purpose. The applicant has no intention to expand the KNCY compound or to increase the number of niches in the near future.
- (c) The Site has been operating as religious institution and columbarium uses for more than half a century.
- (d) The Site is located at the periphery of the existing "V" zone with independent pedestrian access. The proposed rezoning will not cause any conflict with the existing and future village development. The compound has been serving the local community for more than 69 years and the adjacent villagers are well aware of the existence of the KNCY compound and have accepted it as a neighbour now and in future. The applicant will fence off the entire KNCY compound to avoid unnecessary disturbance to its neighbouring developments.
- (e) The inclusion of the KNCY compound in "V" zone will create unnecessary ambiguity in terms of the land area calculation to cater for the demand of Small House development site and the anticipated expectation of villagers who are entitled to Small House development. The Site should not and cannot be treated as possible land for Small House development. Rezoning the KNCY compound from "V" to "G/IC" is the appropriate, and is logical and rational from land-use planning standpoint.
- (f) If the proposed rezoning application is agreed by the Board, the applicant will have to submit detailed technical assessments to justify the operation of the columbarium at the subsequent s.16 application stage. The Board and the Government will retain full authority to monitor and control the operation of the columbarium.
- (g) The approval of this rezoning application will encourage the applicant to apply additional effort to improve the on-site environment, drainage, sewerage and air quality control. The existing joss paper burning facilities would be removed once the rezoning application is approved.
- (h) The TIA, SIA, DIA, EA and TPLP show that the proposed rezoning will not cause adverse impact on traffic, sewerage, drainage, environmental aspects in the area. The GPRR shows that the proposed rezoning will be geotechnically feasible. The 10 existing trees on site will be retained in situ and no landscape impact is anticipated.

- (i) The development will not set an undesirable precedent given that a similar application (No. Y/ST/13) has been approved in the Sha Tin area on the same OZP and the proposed rezoning will not cause adverse impacts.

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

The applicant is the sole “current land owner” of Lots No. 60 s.A, 60 s.B, and 561 in D.D.184. Detailed information would be deposited at the meeting for Members’ inspection. For the adjoining government land, the “owners’ consent/ notification” requirements as set out in the “Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) are not applicable.

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, and was rezoned from partly “V” and partly shown as ‘Road’ to wholly “V” since 14.8.1998. Since then, ‘Religious Institution’ use has been permitted as of right in “V” zone until the gazetting of the draft Sha Tin OZP No. S/ST/19 on 16.1.2004. The Notes of the “V” zone were amended to put ‘Religious Institution (other than Ancestral Hall)’ as a Column 2 use requiring planning permission. As for ‘Columbarium’ use, it has neither been a use permitted as of right under Column 1 nor a use that may be permitted on application to the Board under the Notes for “V” zone.

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 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.

5. **Previous Application**

The Site is part of the subject of a previous application (No. Y/ST/31), which was submitted by the same applicant in 2015, for rezoning the Site from “V” to “G/IC” for columbarium use with 3,087 niches and 901 memorial tablets. The application was subsequently withdrawn by the applicant on 11.10.2016.

6. Similar Applications

- 6.1 There is no similar rezoning application for religious institution within the same “V” zone near Lee Uk Village. Nevertheless, there are five similar applications (Nos. Y/ST/13, Y/ST/24, Y/ST/29, Y/ST/35 and Y/ST/39) for proposed rezoning of “V” to “G/IC” in another “V” zone on the Sha Tin OZP which were partially agreed or rejected by the Committee between 2012 and 2018 (**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 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) covering the same site for rezoning from “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, while another two applications (Nos. Y/ST/35 and Y/ST/39) covering the same site for rezoning from “V” to “G/IC” to facilitate religious institution and columbarium uses at Tsing Lin Tsing She (淨蓮精舍) were rejected by the Committee on 28.7.2017 and 6.7.2018 respectively. These applications were rejected 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-4f)

7.1 The Site is:

- (a) located to the west of Lee Uk Village and about 135m to the southwest of MTR Che Kung Temple Station;

- (b) currently occupied by a religious compound known as KNCY with the main temple established in the 1950s and the columbarium buildings came into existence after 1980. According to the applicant, KNCY started offering selling of niches in 1980. Since then, other new buildings and temporary structure came into existence to support the operation of KNCY;
- (c) partly within the ‘Village Environs’ (‘VE’) of Lee Uk Village; and
- (d) not served by direct vehicular access. Nevertheless, there is an independent pedestrian access within the Site leading to Che Kung Miu Road, which connects to the existing pedestrian walkway and cycle track.

7.2 The surrounding areas have the following characteristics:

- (a) the Site is located within a GIC cluster within the “V” zone. Other than the KNCY compound at the Site, there are three religious institutions namely Buddhist Tzu Chi Foundation Hong Kong (佛教慈濟基金會) adjoining the Site to the west, Che Kung Miu (車公廟) to the further west, and Chi Hong Ching Yuen³ (慈航淨院), which is a religious institution-cum-columbarium development, to the southwest. Another religious institution, ELCHK Salvation Lutheran Church (基督教香港信義會救恩堂), is located to the south-eastern fringe of the “V” zone (**Plan Z-2b**);
- (b) to the east is the village cluster of Lee Uk Village; another village cluster of San Tin (**Plan Z-2b**) is located further southwest near Chi Hong Ching Yuen at the other side of a densely vegetated knoll; and
- (c) two local open space (Lei Uk Tsuen Garden No.1 and Lei Uk Tsuen Garden No. 2) are located to the northeast and northwest nearby.

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.

³ According to Food and Environmental Hygiene Department (FEHD), application for exemption and temporary suspension of liability (TSOL) has been received by the Private Columbaria Licensing Board for “Chi Hong Ching Yuen”.

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:

Licensing Requirement

9.1.1 Comments of the Director of Food and Environmental Hygiene (DFEH):

General Comments

- (a) the Private Columbaria Ordinance, which regulates the operation of private columbaria through a licensing scheme, has come into operation from 30.6.2017 upon gazettal. Under the Private Columbaria Ordinance, an operator of any columbarium will have to obtain a licence before he may sell or newly let niches. Columbaria seeking a licence must comply with the statutory requirements under the Private Columbaria Ordinance, including those relating to land leases or other land instruments, town planning and building and fire safety. The applicant must also submit a management plan to satisfy the Private Columbaria Licensing Board (the Licensing Board), i.e. the licensing authority under the Private Columbaria Ordinance, that adequate measures would be taken to minimise the traffic, environmental and other adverse impact that operation of the columbarium may have on the neighbourhood. In determining whether to approve an application for a licence or exemption (if applicable), the Licensing Board must have regard to the public interest and may have regard to any other relevant considerations;

Comments Specific to the Site

- (b) so far as the subject private columbarium (KNCY) is concerned, a set of application (licence, exemption and temporary suspension of liability) have been received by the Licensing Board. As requested by the applicant, the application was split into two sets of applications (licence and temporary suspension of liability; and exemption and temporary suspension of liability) and the applications are being processed by the Private Columbaria Affairs Office (PCAO); and
- (c) for the proposed “visit-by appointment” arrangement, detailed proposal has to be incorporated into the management plan under licence application for the Licensing Board's consideration and approval.

Enforcement on “visit-by-appointment” scheme

- (d) if the Licensing Board decides to approve the licence application, the approved management plan will be included in the licensing conditions for the licensee's observance. Private Columbaria Enforcement Team officers of FEHD would conduct inspections to licensed private columbaria in the period of Ching Ming and Chung

Yeung Festivals and their shadow period. Any breach of licensing condition detected, verbal warning, written warning or enforcement notice may be issued to the licensee for rectification. A person holding a specified instrument must comply with the conditions imposed on the specified instrument. Otherwise, he/she has to bear one or more than one of the consequences under the Private Columbaria Ordinance. Enforcement notice will be served to the specified instrument holder should there be contravention of licensing condition, so as to end, remedy or prevent the contravention. Depending on the actual circumstances, the non-compliance of conditions could lead to the revocation, or suspension for a period of the specified instrument.

Religious Policy

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

- (a) no objection to the application from the religious point of view; and
- (b) the applicant, Ku Ngam Ching Yuen Limited, is a bona fide religious and tax-exempted charitable body registered under section 88 of the Inland Revenue Ordinance. According to the record of the Chinese Temples Committee, Ku Ngam Ching Yuen is registered as a Chinese Temple under the Chinese Temples Ordinance.

Land Administration

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

- (a) there are three private lots and a portion of government land involved in the Site. Lot 60 s.A and Lot 60 s.B in D.D. 184 are agricultural lots sold under New Grant No. 3848. Amongst other conditions, no building shall be erected on the lots and no grave or human remains shall be deposited on the lots. Lot 561 in D.D. 184 is a building and garden lot sold under New Grant No. 8244 subject to GN No. 364 of 1934 as amended by GN No. 50 of 1940. Amongst other conditions, no building shall be used as a “Chai Tong” and no grave or human remains shall be deposited on the lot. Besides, a substantial portion of the Site falls within the VE of Lee Uk Village;
- (b) breaches of lease were previously identified by LandsD within Lot 561 in D.D. 184 and the relevant warning letter dated 8.6.2017 against non-compliance with the user restriction has been registered in the Land Registry;
- (c) the current proposal for columbarium and temple use is not permissible under lease. Besides, there are Government land involved in the Site, including the area of the existing entrance/exit of the KNCY compound. If the planning application is approved by the Board, the lot owner has to apply to LandsD for lease modification and to regularize the unlawful occupation of the

Government land, or such other appropriate land document as required under the applicable policy. However, there is no guarantee that the application must be approved. The details of the proposal to be covered in the application will be further examined and verified. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord at its sole discretion and any approval would be subject to such terms and conditions including, among others, payment of premium and administrative fee as may be imposed by LandsD. LandsD reserves the right to take land control action;

- (d) some control measures of management plan like “visit-by-appointment” etc. put up by the applicant are not related to land and buildings and they will not be written into the lease through the mechanism of lease modification, STT or similar land documents;
- (e) the Site partially falls within the ‘VE’ of Lee Uk Village. The number of outstanding Small House applications for Lee Uk Village and San Tin Village are 1 and 3 respectively while the estimated number of 10-year Small House demand are 12 and 78 respectively; and
- (f) the applicant should acknowledge that removal of the existing structure which falls within Lot No. 561 in D.D. 184 encroaching onto the adjoining government land should be undertaken at its own expense. The Government will accept no responsibility or liability for any damage, nuisance or disturbance caused to or suffered by the applicant by reason of the presence of the said structure. The applicant should indemnify and keep indemnified the Government from and against all liabilities, claims, costs, demands, actions or other proceedings whatsoever arising whether directly or indirectly out of or in connection with the presence and subsequent demolition of the said structure.

Traffic

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

having reviewed the revised TIA and the applicant’s responses (**Appendix Ia**), and noting that FEHD confirms to take up the enforcement on “visit-by-appointment” scheme, he has no adverse comment on the application from traffic engineering viewpoint.

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

- (a) he has no in-principle objection to the application; and
- (b) it is also noted that there is only one pedestrian entrance for grave-sweepers to enter/exit the subject columbarium.

Environment

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

- (a) having reviewed the revised EA and the applicant's responses (**Appendix Ia**), he has no objection to the application as:
 - (i) the applicant confirmed that there will be no burners or furnace provided in the Site, and the burning of ritual papers and joss stick is strictly prohibited within the KNCY compound;
 - (ii) no sound amplification system is used during ceremonies; and
 - (iii) the applicant has demonstrated there would be sufficient capacity of the septic tank and soakaway system after expansion to cater for the sewerage generated.

Water Supply

9.1.7 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) his detailed comments on the application is at **Appendix III**.

Urban Design and Landscape

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

Urban Design and Visual

- (a) according to the Planning Statement (**Appendix Ia**), the scale of the proposed development will remain the same as existing and the applicant has no intention to further expand the proposed development in future. From urban design and visual perspectives, she has no particular comment if the existing building bulk is apparently not affected;

Landscape

- (b) she has no objection to the application from landscape planning perspective; and
- (c) based on the aerial photo of 2018, the Site is situated in an area of urban landscape character in between Lei Uk Tsuen Garden No.1 and No. 2, a low-rise residential area, along Che Kung Miu Road. According to the Tree Assessment Schedule (**Appendix Ia**), a total of 14 trees within the Site were surveyed. All surveyed trees are of common species. No important tree or OVT is found within the Site. Two trees (i.e. T07 and T08) were damaged by typhoon

“Mangkhut” and removed in September 2018 for public safety. Two invasive trees, *Leucaena leucocephala* (i.e. T01 and T02) are proposed to be removed. The remaining 10 existing trees are proposed to be retained. Further to the above, according to the LMP, 18 new trees together with shrubs and groundcovers planting are proposed as green buffer within the Site. In consideration of the above, adverse impact on existing landscape resources arising from the application is not anticipated.

Fire Safety

9.1.9 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.

Building Matters

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

- (a) according to the approved building plans dated 23.2.1989, a single-storey temple building with a single-storey detached lavatories were approved by the Building Authority (BA). However, it is noted that the existing two-storey toilet building does not tally with the said approved lavatories. Besides, there is no record of approval by the BA for the existing Columbarium I and Columbarium II;
- (b) if the existing structures are New Territories Exempted House (NTEH) under the Building Ordinance (Application to the New Territories) Ordinance (Cap. 121), DLO/ST, LandsD should be in a better position to comment on the application; and
- (c) his detailed comments on the application is at **Appendix III**.

Heritage

9.1.11 Comments of the Executive Secretary (Antiquities & Monuments), Antiquities and Monuments Office (ES(A&M), AMO):

the existing buildings at the Site are neither graded historic building and/or building proposed to be graded by the Antiquities Advisory Board (AAB) or item on the “List of New Items” pending for AAB assessment. It is noted that a Grade 2 historic building, namely Che Kung Temple at Che Kung Miu Road, Tai Wai, Sha Tin is located over 90 m away from the Site. In view of the fact that the application is submitted to regularize the

existing use of the Site and only minor works to remove temporary structures is involved, the AMO has no comment on the application from heritage conservation perspective.

Geotechnical Aspect

9.1.12 Comments of the Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

having reviewed the revised GPRR (**Appendix Ia**) submitted by the applicant, he has no further geotechnical comments on the planning application.

Local Views

9.1.13 Comments of the District Officer/Shu Tin, Home Affairs Department (DO/ST, HAD):

she is of the view that concerns of the public should be taken into due consideration and dealt with prior to approval of application.

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/North (2), Civil Engineering and Development Department;
- and
- (e) Director of Leisure and Cultural Services

10. Public Comments Received During Statutory Publication Period

10.1 The application and its FIs were published for public inspection. During the statutory public inspection periods, a total of 507 public comments were received. Of them, 474 from the current Chairman and members of the Sha Tin District Council, Chairman of the Shatin Rural Committee, Management Office of Greenview Garden, local concern group, Indigenous Inhabitant Representatives and villagers of Lee Uk Village and Sha Tin Tau Village, local residents and individuals raise objection to the application. The remaining 33 comments from individuals support the application in which 32 of them are in the form of a standard letter. Their views are summarized as follows:

Objecting Views (474)

- (a) the Site encroaches onto government land. The granting of government land to private columbarium for profit-making activities is unjustified.
- (b) the land in “V” zone should be reserved for villagers. The approval of the application will further reduce the land in “V” zone which could be used for small house development;
- (c) the columbarium would cause visual impact, affect the “fung shui” of the village and the mental and physical health of the residents nearby;

- (d) the traffic congestion problem in the vicinity of the Site during festival periods is severe. The proposal which involves 1,969 niches and 907 memorial tablets would further worsen the traffic congestion problem, and lead to cumulative traffic impacts on the surrounding road networks, in particular Che Kung Miu Road;
- (e) located close to existing housing estates and village settlements, the columbarium use which involves joss paper burning would lead to fire risk, air and noise pollution; and
- (f) the approval of the application will set an undesirable precedent for similar applications.

Supporting Views (33)

- (g) as Tai Wai has developed into part of Sha Tin New Town, the Site is located at a convenient location of the New Territories.

10.2 The whole set of public comments have been deposited at the meeting for Members' inspection. Samples of the public comments are attached at **Appendix II**.

11. Planning Considerations and Assessments

The Proposal

- 11.1 The applicant proposes to rezone the Site from "V" to "G/IC" in order to continue the current religious institution and columbarium uses with a total of 1,969 (including 1,357 unsold) niches and 907 (including 46 unsold) memorial tablets in a religious institution-cum-columbarium compound (**Plan Z-2a and Drawings Z-1 to Z-6**). According to the Notes of the OZP for the "G/IC" zone, 'Religious Institution' is always permitted and 'Columbarium' is a Column 2 use requiring planning permission from the Board.
- 11.2 According to the information provided by the applicant, the main temple of KNCY was established in 1951 (i.e. before the first statutory plan covering the Sha Tin area in 1961) and the columbarium use within the Site started in 1980s. Since the Site was wholly zoned "V" in 1998 and 'Religious Institution' use was a permitted use in "V" zone until the gazetting of the draft Sha Tin OZP No. S/ST/19 on 16.1.2004, if the 'Religious Institution' use is in existence before 16.1.2004 and has continued since its existence, it can be tolerated under the Town Planning Ordinance.
- 11.3 On the other hand, 'Columbarium' use has never been a permitted use at the Site. The rezoning application involving columbarium use needs to be comprehensively assessed taking into account the overall setting and technical concerns.

Land Use Compatibility

- 11.4 The Site is situated at the southern side of Che Kung Miu Road and is surrounded by a green hill knoll and rural neighbourhood comprising village settlements, tree groups and religious institutions. While that Site is currently zoned "V", the Site is

located in a GIC cluster within the subject “V” zone, with Buddhist Tzu Chi Foundation Hong Kong (佛教慈濟基金會), Che Kung Miu (車公廟) and Chi Hong Ching Yuen (慈航淨院) located to its west and southwest, which have come into existence for decades. To the immediate east of the Site are mainly occupied with village-type houses of Lee Uk Village. The KNCY compound is located at the periphery of the existing “V” zone with its sole entrance directly abutting Che Kung Miu Road. It is accessible via an independent pedestrian access which will not be shared with the villagers nearby. In order to minimize disturbance to the nearby village houses and to provide a soft buffer edge to its surroundings, the applicant proposed to provide planters and metal fences at the boundaries of the Site, and is committed to fence off the entire KNCY compound to avoid unnecessary disturbance to its neighbouring developments (**Drawings Z-9 to Z-12**). In view of the overall setting of the Site, it is considered that there would be limited nuisance to the nearby village houses in terms of potential intermixing of grave-sweepers and villagers in this locality. CTP/UD&L, PlanD has no objection to the application from the urban design and visual perspective.

Traffic Impact and Crowd Management

- 11.5 The columbarium development is expected to generate traffic and attract large number of visitors during the peak hours of festival days. In this regard, a “visit-by-appointment” arrangement is proposed by the applicant in which all visitors are required to make appointment in specific time slots before visit. A maximum of 24 and 22 visitors will be allowed on G/F of Columbarium I and G/F of Columbarium II respectively in each time slot. Having reviewed the TIA submitted by the applicant and noting that FEHD will take up the “visit-by-appointment” arrangement, C for T has no adverse comment on the application from traffic engineering viewpoint. C of P also has no in-principle objection to the application.
- 11.6 Regarding the “visit-by-appointment” arrangement proposed by the applicant, it will be required to be submitted as part of the management plan under licence application for the Licensing Board’s consideration and approval. If the Licensing Board decides to approve the licence application, the approved management plan will be included in the licensing conditions for the licensee’s observance, and monitored by the Private Columbaria Enforcement Team of FEHD. The applicant is also required to comply with other relevant licensing conditions imposed by the Licensing Board.

Other Technical Aspects

- 11.7 Having reviewed the EA, DEP has no objection to the application as there will be no burners or furnace provided in the Site, no sound amplification system used during ceremonies and sufficient capacity of the septic tank and soakaway system to cater for the sewerage generated. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective as adverse impact on landscape resources is not anticipated, and has no particular comment on the application from urban design and visual perspectives if the existing building bulk is apparently not affected. Other Government departments including D of FS, CE/C, WSD and CE/MS, DSD have no objection to/comment on the application.

Land Administration and Building

- 11.8 According to DLO/ST of LandsD, the existing columbarium and temple use at the Site are not permissible under lease, and a warning letter has been registered in the Land Registry against Lot 561 in D.D. 184 in 2017. DLO/ST of LandsD advises that should the application be approved by the Board, the applicant has to apply for lease modification for columbarium and temple purposes. However, there is no guarantee that such application would be approved.
- 11.9 The Site also falls within the ‘VE’ of one recognized village, Lee Uk Village (**Plan Z-2a**). As advised by DLO/ST, LandsD, Lee Uk Village and San Tin Village have a total of four outstanding Small House applications and their 10-year Small House demand forecast is 90. It is estimated that about 0.15ha (or equivalent to about six Small House sites) of land are available within the “V” zone. While land available within the “V” zones is insufficient to fully meet the future Small House demand of 90 Small Houses, such available land is capable to meet the four outstanding Small House applications. Also, no Small House application within the Site has been received by LandsD.
- 11.10 According to CBS/NTE(1)&L, BD, there is no record of approval by the BA for the existing columbarium structures within the Site and the two-storey toilet building does not tally with the approved building plans. 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.

Previous Application and Similar Applications

- 11.11 The Site is the subject of a previous application No. Y/ST/31 submitted by the same applicant for rezoning the Site from “V” to “G/IC” and the application was subsequently withdrawn by the applicant.
- 11.12 There are five similar applications for proposed rezoning of “V” to “G/IC” in another “V” zone on the Sha Tin OZP. Except for application No. Y/ST/13, all applications (Nos. Y/ST/24, Y/ST/29, Y/ST/35 and Y/ST/39) were rejected by the Committee between 2013 and 2018 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. Application No. Y/ST/13 was partially agreed by the Committee in 2012 and the application site was rezoned to “G/IC” on 26.10.2012. However, the subsequent s.16 and s.17 applications were rejected by the Committee and the Board respectively on 8.11.2013 and 11.4.2014 as the applicant failed to demonstrate that there would not be adverse traffic impact on the surrounding areas. While the similar applications were all rejected either at the s.12A application stage or in the subsequent s.16 and s.17 application stage mainly on the grounds of adverse traffic impact, no fundamental traffic or technical issue have been noted in the current application to continue the current religious and columbarium uses on the Site.

Public Comments

- 11.13 There are adverse public comments and local objection against the application. In this regard, the planning assessment and comments of Government departments above are relevant.

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 has no in-principle objection to the application.
- 12.2 Should the Committee decide to agree/partially agree to the application, the relevant proposed amendments to the Sha Tin OZP, together with the revised Notes and Explanatory Statement, will be submitted to the Committee for approval prior to gazetting under section 5 of the Town Planning Ordinance upon reference back of the OZP.
- 12.3 Alternatively, should the Committee decide not to agree to the subject application, the following reason is suggested for Members' reference:
- the Site falls within an area zoned "V" with the planning intention primarily for development of Small Houses by indigenous villagers. There are existing village houses located to its immediate north and east and the columbarium use will cause nuisance to the surrounding developments. There is no strong planning justification for piecemeal rezoning of the Site from "V" to "G/IC" zone to make provision for application for columbarium use. The current "V" zone for the Site is considered appropriate.

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 reason(s) for the decision should be given to the applicant.

14. Attachments

Appendix I	Application form received on 30.10.2018
Appendix Ia	Consolidated Report received on 20.11.2020
Appendix II	Public comments
Appendix III	CBS/NTE(1), BD's and CE/C, WSD's detailed comments on the application

Drawing Z-1	Lot index plan
Drawing Z-2	Location plan
Drawing Z-3	Plan showing the structures to be removed/renovated
Drawing Z-4	Master layout plan
Drawing Z-5	Ground floor plan
Drawing Z-6	First floor plan
Drawing Z-7	Floor plans of the columbarium buildings
Drawing Z-8	Plan showing the proposed crowd control arrangement
Drawing Z-9	Landscape master plan
Drawings Z-10 to Z-12	Indicative fencing proposal
Plan Z-1	Location plan
Plans Z-2a and Z-2b	Site plan
Plan Z-3	Aerial photo
Plans Z-4a to Z-4f	Site photos

**PLANNING DEPARTMENT
DECEMBER 2020**