

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

APPLICATION NO. Y/K9/11

- Applicant** : Tsui Mei Yuk
- Plan** : Approved Hung Hom Outline Zoning Plan (OZP) No. S/K9/26
- Application Site** : No. 23 Winslow Street, Hung Hom, Kowloon
- Site Area** : 70m² (about)
- Lease** : (a) Hung Hom Inland Lot No. 239 s.F with a lease term of 75 years renewable for 75 years commencing on 1.1.1901
(b) Subject to “Noisy Noisome or Offensive Trade or Business” clause
- Zoning** : “Residential (Group A) 4” (“R(A)4”)
[‘Columbarium’ is not a Column 1 nor Column 2 use under “R(A)” zone]
- Proposed Amendment** : To rezone the application site from “R(A)4” to “R(A)7”

1. The Proposal

- 1.1 The applicant proposes to rezone the application site (the Site) from “R(A)4” to “R(A)7” on the Hung Hom OZP (**Plan Z-1**) with ‘Columbarium’ included as a Column 2 use that requires planning permission from the Town Planning Board (the Board). A Schedule of Uses for the “R(A)7” zone was submitted and no development restriction is proposed for the “R(A)7” zone (**Appendix IV**).
- 1.2 The Site is currently occupied by a 6-story residential building with its G/F being occupied by a columbarium named 上善軒 and upper floors for residential use. The rezoning is to facilitate the continuous operation of the columbarium on the G/F of the existing building.
- 1.3 The major development parameters of the columbarium are summarized as follows:

Site Area	70 m ² (about)
Total Gross Floor Area (GFA) of the Columbarium at G/F of the existing building	70 m ² (about)

Car Parking Space	Nil
Loading/Unloading Bay	
No. of Niches (Single-urn)	606

- 1.4 The applicant advised that the subject columbarium commenced operation on 20.10.2012 and out of the 606 niches, 286 niches are filled, 25 niches are let but unfilled and 295 niches are available for letting out. ‘Columbarium’ is not a Column 1 nor Column 2 use under the “R(A)” zone. The applicant has not submitted any technical assessment to support the application.
- 1.5 The floor plan submitted by the applicant is shown in **Drawing Z-1**.
- 1.6 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 20.12.2017 (Appendix I)
 - (b) Email dated 21.12.2017 clarifying the site location, site area and number of niches in the columbarium (Appendix Ia)
 - (c) Email dated 22.12.2017 clarifying the site area of the application (Appendix Ib)
 - (d) Email dated 3.1.2018 clarifying the current status of the niches in the columbarium (Appendix Ic)
 - (e) Letter dated 21.2.2018 providing responses to departmental comments (Appendix Id)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are provided in Section 10 of the Application Form and **Appendix Id** which are summarized as follows:

- (a) the government is unable to provide sufficient permanent niches to meet the territorial demand. The subject columbarium, which provides niches on a daily or monthly rental basis, can provide a temporary place to accommodate the ashes of the deceased until their family can secure a permanent niche from the government, which may take 2 to 5 years;
- (b) crowd management could be controlled through advance booking for worship. Only 20-25 visitors would be allowed each day. Staffs would be deployed to control the flow of visitors. The pavement is wide enough to accommodate visitors waiting to enter the columbarium;
- (c) the traffic congestion problem could be resolved by widening Winslow Street and Lo Lung Hang Street from one-lane to two-lanes;
- (d) during Ching Ming and Chung Yeung festivals, visitors would be encouraged to use public transport so as to minimize traffic impact in the area; and
- (e) only 1 joss stick is allowed persons and burning of offerings would not be allowed inside the columbarium so as to minimize the environmental impact on the surrounding areas.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by notifying all owners in the building. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

List of the Information of Private Columbaria issued by the Development Bureau

4.1 The subject columbarium is one of the private columbaria under Part B of the List of the Information of Private Columbaria issued by the Development Bureau. There are 26 other columbaria under Part B of the List in the surrounding areas of the Site (**Plan Z-5**). Part B of the list refers to private columbaria made known to the Lands Department (LandsD) and/or Planning Department (PlanD) that do not fall under Part A. Part A refers to private columbaria which are in compliance with user restrictions in the land leases and the statutory town planning requirements, and are not illegally occupying Government land.

Private Columbaria Ordinance

4.2 The Private Columbaria Ordinance (PCO), which regulates the operation of private columbaria through a licensing scheme, came into effect on 30.6.2017. The Private Columbaria Licensing Board (PCLB) is now receiving applications for licence, exemption or temporary suspension of liability (TSOL). The type(s) of specified instruments that the operator of a columbarium may apply for is determined by the date of commencement of operation of the columbarium.

- (a) Licence (牌照): Only private columbaria that have obtained a licence may sell or newly let out niches. A private columbarium seeking a licence must comply with all statutory and government requirements (including building-related, planning-related and land-related requirements) and a management plan in respect of the columbarium must be submitted to PCLB.
- (b) Exemption (豁免書): For a pre-cut-off private columbarium (i.e. it was in operation immediately before the ‘cut-off time’ being 8am on 18.6.2014), the columbarium will be eligible for application of an exemption if it is a dated columbarium (i.e. commenced operation with niches sold or with ashes interred in a niche before 1.1.1990 and is still in operation). Its operator must freeze its scale of operation and cease selling/letting out new or unoccupied niches by the cut-off time.
- (c) TSOL (暫免法律責任書): An operator of a pre-cut-off private columbarium in seeking a licence or an exemption may apply to the PCLB for TSOL if he/she needs time to work towards meeting the relevant requirements. TSOL would enable the columbarium to continue operating and providing services before a licence or exemption is granted. During the period, the

columbarium could not sell/let out any new or unoccupied niches.

- 4.3 Based on the information provided by the applicant, the subject columbarium at the Site may be considered as a pre-cut-off private columbarium (i.e. commenced operation before 8am on 18.6.2014) but not a dated columbarium (i.e. did not commence operation before 1.1.1990). Hence, the columbarium is not eligible for application for exemption. If it has to apply for licence, it will have to satisfy all conditions highlighted in paragraph 4.2(a) above.
- 4.4 Furthermore, according to the policy initiative related to traffic impact assessment (TIA) of pre-cut-off columbaria announced by Government on 22.11.2017, if a pre-cut off columbarium would like to sell or newly let out niches after 30.6.2017, or any post-cut-off columbarium would like to submit planning or licence applications for their development, the TIA mechanism is required.

5. Previous Application

There is no previous rezoning application in respect of the Site.

6. Similar Application

There is no similar application for amendment to the OZP to allow 'Columbarium' use (as Column 1 or Column 2 use) in any zoning under the OZP.

7. The Site and its Surrounding Areas (Plans Z-1 and Z-2, Photos on Plans Z-3 and Z-4)

7.1 The Site:

- (a) is currently occupied by an existing 6-storey building with the subject columbarium named 上善軒 (which is not a permitted use under the "R(A)4" zoning) operating on G/F and domestic use at the upper floors (**Plans Z-3 and Z-4**); and
- (b) the main entrance of the building is at Winslow Street and the back door exit onto Wa Fung Street (**Plan Z-2**).

7.2 The surrounding areas have the following characteristics:

- (a) adjoining the Site to the north and east are clusters of residential developments zoned "R(A)4" with commercial use on G/F (some are columbarium and/or funeral related business) (**Plan Z-5**); and
- (b) to its immediate south is a godown zoned "Comprehensive Development Area" ("CDA"). Further south of the "CDA" zone are the Kowloon Public Mortuary and International Funeral Parlour.

8. Planning Intention

The planning intention of the "R(A)" zone is primarily for high-density residential

developments. Commercial uses are always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building. 'Columbarium' is not a permitted use under "R(A)" zone.

9. Comments from Relevant Government Bureau/Departments

9.1 The following Government bureau/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 (S for FH) and the Director of Food and Environmental Hygiene (DFEH):
- (a) the PCO, which regulates the operation of private columbarium through a licensing scheme, has come into effect on 30.6.2017 upon gazettal;
 - (b) under the PCO, 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 PCO or specified by the PCLB, 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 PCLB for approval. The management plan should show that suitable measures on traffic and public transport arrangements or management would be taken to minimize any adverse impact that operation of the columbarium may have on the neighbourhood. In determining whether to approve an application for a licence, the PCLB must have regard to the public interest and may have regard to any other relevant considerations;
 - (c) with the enactment of the PCO on 30.6.2017, the PCLB has started to receive applications for specified instruments (i.e. a licence, an exemption or a temporary suspension of liability) since 30.12.2017. Among other requirements, all private columbaria applying for a licence under the PCO will be required to submit a management plan to the PCLB for consideration in order to minimize any adverse impact of the columbarium operation on the local community. According to the policy measure announced by the Government on 22.11.2017, niches sold before 30.6.2017 in respect of pre-cut off columbaria will be treated as the baseline at or below which departments concerned will generally not call for a TIA while the conventional TIA will still be required from pre-cut off columbaria when the applicants seek approval from the TPB for niches still available for sale and from any post-cut-off columbarium for their columbarium development. "Pre-cut off columbarium" refers to private columbarium which was in operation, with ashes interred in niches, immediately before 8am

on 18.6.2014, and

- (d) a set of composite application for Licence and TSOL was received from the subject columbarium on 26.2.2018 and is under processing. The information of niches in the subject columbarium (as at 30.6.2017) provided by the operator to FEHD in July 2017 indicate that there 416 niches are sold/let and filled while there are 190 niches available for sale/letting out¹.

Land Administration

9.1.2 Comments of the District Lands Officer/Kowloon West, Lands Department (DLO/KW, LandsD):

- (a) no objection to the application;
- (b) the Site falls within Hung Hom Inland Lot No. 239 s.F (“the Lot”) which is held under a Government Lease subject to a lease term of 75 years renewable for 75 years commencing on 1.1.1901. The lease is subject to “noisy noisome or offensive trade or business” clause (“OTC”);
- (c) the G/F of the Site is proposed for temporary storage of cremains, depending on the facts and circumstances of the case, the operation of a temporary columbarium may be in breach of the OTC; and
- (d) if the rezoning application and the subsequent planning application for columbarium use are approved by the Board, the applicant has to apply to LandsD for a lease modification or temporary waiver for any breach of lease modifications. However, there is no guarantee that the lease modification or temporary waiver applications will be approved. Such application, if received by LandsD, will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event any such application is approved, it would be subject to such terms and conditions including, among others, the payment of premium or waiver fee and administrative fee as may be imposed by LandsD.

Traffic Aspect

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

According to site observation, Winslow Street and the connecting roads are heavily trafficked, particularly in the morning when frequent pick-up activities at nearby funeral parlours take place. The applicant should provide a traffic review to assess the traffic and transport implications as well as adequacy of pedestrian access of the proposed rezoning and

¹ The information previously provided by the subject columbarium to FEHD in July 2017 on the breakdown of the number of niches (i) sold/let and filled, (ii) sold/let but not filled and (iii) available for sale/letting is different from the information provided in **Appendix Ic** as highlighted in paragraph 1.4 above. The total number of niches in both sources of information are 606.

recommend improvement measures, if required. There is reservation on the application as the applicant has failed to demonstrate that the subject columbarium will not create adverse traffic impact.

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

Traffic Impact

- (a) 23 Winslow Street is occupied by a 6-storey tenement building aged more than 50 years with 2 flats on each floor. Enquiries reveal that the columbarium has been in operation since October 2012 with daily patronage ranging from 10 visitors in normal days to 70 visitors during peak periods. As the Site is situated in the hub of Hung Hom, local residents could easily access to it on foot while other visitors could attend the Site by various means of public transport facilities such as buses, minibus, taxies and MTR;
- (b) the subject columbarium is not fully occupied at the moment and no traffic problem has been observed so far. Yet, it is possible that adverse traffic impact may occur if all 606 niches in the columbarium and those in other columbaria are fully occupied in the future. According to his office's record, there are 27 known columbaria in the area;

Overcrowding During Ching Ming and Chung Yeung Festivals

- (c) according to C of P's records, around 40 to 70 visitors per day attended the subject columbarium during Ching Ming and Chung Yeung Festivals. During peak periods, the applicant proposes allowing 20 to 25 visitors to enter the Site at any time with 2 to 3 staffs deployed to manage the crowd flow. No complaint case against the Site has been received in 2017;
- (d) considering that the niches in the columbarium are not fully occupied at the moment, overcrowding issue may possibly occur in the event of full occupation of all 606 niches of the columbarium or those in other columbaria in the vicinity in future; and
- (e) based on the above, there is reservation the application from traffic impact and crowd management perspectives.

Environmental Aspect

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

- (a) no objection to the application from environmental perspective;
- (b) the proposed columbarium use mainly includes storage of niches for worshipping in an indoor environment which does not involve any potential noisy activities; and

- (c) in view of the nature of the proposed columbarium, insurmountable environmental impacts from the proposed columbarium are not anticipated. Notwithstanding, the funeral activities business are active in part of Hung Hom area around Winslow Street, where complaints related to air nuisance caused by on-street burning of paper offerings (such as incense and joss paper) have been received from stakeholders of the area including District Council members and residents. Hence, the applicant is recommended to observe and follow the relevant suggestions and requirements in EPD's website 'http://www.epd.gov.hk/epd/english/compliance_ass/others/joss.html', in particular, the "Guidelines on Air Pollution Control for Joss Paper Burning at Chinese Temples, Crematoria and Similar Places" and "Guidelines on Air Pollution Control for Paper Artifacts Burning at Funeral Parlours and Other Places of Worship" in order to minimize the potential air nuisance arising from burning of paper offerings to the nearby residents.

Building Matters

- 9.1.6 Comments of the Chief Building Surveyor/Kowloon, Buildings Department (CBS/K, BD):
- (a) no comment on the application; and
- (b) attention should be drawn to PNAP APP-154 regarding the design requirements for columbarium.

Fire Safety

- 9.1.7 Comments of the Director of Fire Services (D of FS):
- (a) no comment on the application; and
- (b) detailed requirements, amongst others, in relation to fire safety aspect will be issued upon receipt of formal submission referred from licensing authority.

District Officer's Comments

- 9.1.8 Comments of the District Officer (Kowloon City), Home Affairs Department (DO(KC), HAD):
- (a) Kowloon City District Council (KCDC) had unanimously passed the following resolutions:
- 「要求政府停止繼續於紅磡區內簽發殮葬商牌照」 (18.9.2008);
 - 「反對在九龍城區增設葬儀館」 (12.11.2009);
 - 「強烈要求政府立例禁止在民居及鄰近居民設置骨灰龕」 (12.11.2009);

- (b) the continuous proliferation of funeral service business in Hung Hom has been triggering overwhelming objections from Hung Hom residents. According to the latest information from the website of the Food and Environmental Hygiene Department, 48 out of 59 licensed undertakers of burial (do not debar temporary storage of ashes within licensed premises) in Kowloon are operated in Hung Hom as at 2.1.2018. In previous undertaker's licence consultation exercises, some respondents expressed that the share of the funeral service business was disproportionately high in Hung Hom when compared to other districts;
- (c) comments gathered during consultation exercises should be taken into account in the decision making process; and
- (d) a KCDC member has provided standard letters from 11 local residents and 436 signatures objecting to the application due to environmental, traffic and nuisance concerns, etc. (which are similar to those raised in the public comments as detailed in paragraph 10.2 below) (**Appendix II**).

9.2 The following Government departments have no comments on the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Chief Highway Engineer/Kowloon, Highways Department; and
- (c) Chief Engineer/Mainland South, Drainage Services Department.

10. Public Comments Received During Statutory Publication Period

10.1 On 29.12.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 19.1.2018, a total of 48 public comments all objecting to the application was received. These submissions were made by 40 individuals, 1 KCDC member, 1 from the landlords of upper floor units in the same building, 4 from Owners' Incorporations of nearby buildings, 1 joint submission from a legislative council member, 1 KCDC member and a local, as well as 1 from the Alliance for the Concern over Columbarium Policy (各界關注骨灰龕大聯盟).

10.2 The main reasons for objecting to the application are summarized as follows:

- (a) the columbarium use is not in line with the planning intention of the "R(A)" zone which is primary for high-density residential developments;
- (b) columbarium use would create adverse environmental (air and noise) impacts and nuisance to the area. There is no environmental assessment submitted in support of the application. The on-street sacrificial rites and joss paper burning activities from the columbarium created adverse impact on the environment and pedestrian circulation;
- (c) columbarium use at the Site will aggravate traffic conditions on Wa Fung Street which is a dead-end street;

- (d) columbarium use is not compatible with the residential use at the subject building and will adversely affect the property value of the building. It may also be in breach of the building covenant;
- (e) columbaria should be located away from residential area. The new columbaria in Tuen Mun Tsang Tsui and Sandy Ridge Cemetery will be able to meet the public demand for niches; and
- (f) there are a number of illegal columbaria in the area. Approval of the application would set an undesirable precedent for other similar applications.

11. Planning Considerations and Assessments

11.1 The applicant proposes to rezone the Site from “R(A)4” to “R(A)7” and provided a Schedule of Uses for the “R(A)7” zone that included ‘Columbarium’ as a Column 2 use (**Appendix IV**). The rezoning is to facilitate the continuous operation of the subject columbarium on the ground floor of the existing building, while the upper floors will continue to be used for residential purpose. The applicant advised that the columbarium commenced operation on 20.10.2012.

Planning Intention

11.2 The Site and its surrounding areas are zoned “R(A)4” with planning intention for high-density residential developments and ‘Columbarium’ use is not a permitted use under the “R(A)” zone. The proposed rezoning does not involve change in the “R(A)” zoning for the Site and the Schedule of Use except for permitting ‘Columbarium’ use upon application to the Board in the “R(A)7” zone. Columbarium is considered not compatible with the residential use, not to mention to locate it in different floors of a building. Hence, the inclusion of ‘Columbarium’ as a Column 2 use is fundamentally not in line with the planning intention for residential uses on the Site and in the area.

Land Use Compatibility

11.3 The Site falls within a residential area in Hung Hom. Columbarium on the Site creates land use conflict with residential uses within the same building and in the surroundings. Local residents and KCDC members had continuously raised objection to funeral related services in the area on environmental, traffic and nuisance grounds and urged that the proliferation of funeral related services be halted and existing funeral facilities be relocated away from the area.

11.4 According to the List of Information of Private Columbaria issued by the Development Bureau, there are 27 columbaria (including the subject columbarium) and other funeral related businesses operating in the surroundings. However, the subject columbarium as well as those made known to government in the surrounding area are not in compliance with user restrictions in the land leases and/or statutory town planning requirements and are all under Part B of the said List. CBS/K, BD pointed out that attention should be drawn to PNAP APP-154 regarding the design requirements including fire safety and sanitary concerns for columbarium

facilities. The practice notes also state that columbarium facilities should only be accommodated in non-domestic buildings.

Traffic Impact and Crowd Management

- 11.5 The Site is accessible from Winslow Street and Wa Fung Street. According to C for T, Winslow Street and the connecting roads are heavily trafficked particularly in the morning when frequent pick-up activities at nearby funeral parlours are taken place. C for T advised that the applicant should provide a traffic review to assess the traffic and transport implications of the proposed rezoning and recommend improvement measures, if required. In this regard, the applicant has responded that crowd management would be controlled through advance booking for worship; only 20-25 visitors would be allowed each day; staffs would be deployed to control visitors flow and visitors would be encouraged to use public transport during Ching Ming and Chung Yeung festivals but no formal traffic review had been submitted. C for T has reservation on the application as the applicant has failed to demonstrate that the columbarium would not create adverse traffic impact in the area.
- 11.6 Although no traffic or crowding problems had been observed based on the current operation of the columbarium, C of P has reservation on the application because there is concern that if the subject columbarium with 606 niches are fully interred and the other columbaria in the area are operating at full scale, adverse traffic impact and overcrowding issue may occur.

Environment

- 11.7 DEP has no objection to the application from environmental perspective. However, he advised that funeral businesses are active in part of the Hung Hom area around Winslow Street, where complaints related to air nuisance caused by on-street burning of paper offerings have been received from stakeholders of the area including KCDC members and local residents.

Undesirable Precedent

- 11.8 There is no similar application for amendment to the OZP to permit columbarium use (as Column 1 or Column 2 use) under any zoning on the OZP. Given that the subject columbarium are similar to the other columbaria operating in the area that do not comply with town planning/land lease requirements, approval of this application will set an undesirable precedent and encourage similar applications. The cumulative effect of approving the similar applications would result in further proliferation of columbarium use in the residential area of Hung Hom, thereby aggravating the land use conflict/incompatibility in the residential area, and may worsen the traffic condition and nuisance in the area.

Public Comments

- 11.9 Regarding the public comments objecting to the application for reasons of not being in line with planning intention, incompatible land use, adverse environmental and traffic impacts, causing nuisance to the area as well as setting of undesirable precedent, the assessments in paragraphs 11.2 to 11.8 above are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10, the Planning Department does not support the application for the following reasons:

- (a) the proposed “R(A)7” zone to facilitate a columbarium use on the Site is not in line with the planning intention of “R(A)” zone. The ‘Columbarium’ use is in conflict with the residential use within the subject building and in the surroundings;
- (b) the applicant has failed to demonstrate that the columbarium use would not create adverse traffic impact in the area; and
- (c) the approval of the application would set an undesirable precedent for other similar applications and the cumulative effect of approving such applications would result in aggravation of the land use conflict/incompatibility and adverse traffic impact in the residential area.

12.2 Alternatively, should the Committee decide to agree/partially agree to the application, the Site would be rezoned to “R(A)7” as proposed by the applicant, or other appropriate zoning to fit the planning intention. To ensure that the adverse impact generated by the columbarium development could be properly addressed under the scrutiny of the Committee, ‘Columbarium’ should be placed under Column 2 of the relevant Notes of the OZP requiring the Board’s permission and appropriate development restrictions including the maximum number of columbarium niches of 606 should also be specified. The proposed amendments to the Hung Hom OZP would be submitted to the Committee for agreement prior to gazetting under section 5 or 7 of the Town Planning Ordinance as 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 or to partly 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 20.12.2017
Appendix Ia	Email dated 21.12.2017 from the applicant
Appendix Ib	Email dated 22.12.2017 from the applicant
Appendix Ic	Email dated 3.1.2018 from the applicant
Appendix Id	Letter dated 21.2.2018 from the applicant
Appendix II	Submission from a KCDC member

Appendix III	Public Comments
Appendix IV	Proposed Schedule of Use for the “R(A)”7 zone
Drawing Z-1	Floor Plan
Plan Z-1	Location Plan
Plan Z-2	Site Plan
Plans Z-3 to Z-4	Site Photos
Plans Z-5	Private Columbaria under Part B of the List of Information of Private Columbaria in Hung Hom

**PLANNING DEPARTMENT
MARCH 2018**