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17 September 2010

Sai Lam Temple Foundation Ltd
No. 198 Sheung Wo Che
Shatin
New Territories

Dear Sirs,

Re: Sai Lam Temple

This letter provides an update on the actions taken by Sai Lam Temple in response to the Government's allegation that Sai Lam Temple's operation as a columbarium is in violation of regulations.

Through its letters of 20 October and 6 November 2009 the Lands Dept claimed Sai Lam Temple's operation as a columbarium for storing cremated ashes on Lot No. 296 breaches General Condition No.15 of Government Notice 570 (which states "*without the consent of the District Officer, no grave shall be made on, nor shall any human remains be interred in, or deposited on the lot held either in earthenware jars or otherwise*") (the "**Lease Condition**").

Sai Lam Temple has engaged us to assist in handling the Lands Dept's allegations. Upon a review of Sai Lam Temple's case, we consider that Sai Lam Temple has good arguments that it is not in breach of the Lease Condition, as cremated ashes are not "human remains". This is an issue which can only be resolved by the Court. Currently there is no Court determination (and therefore no legal conclusion) as to this issue. Pending a Court determination, the Government's suggestion is merely its opinion. As you will have seen from newspaper reports over the past year, a number of other columbariums agree with your interpretation of the Lease Condition. Further, the Lease Condition only applies to part of Sai Lam Temple's land. In our view, it is clear (and the Government

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has not suggested to the contrary) that the lease conditions of other parts of Sai Lam Temple's land allow it to operate as a columbarium.

Nonetheless, with the aim of serving the best interest of your customers and the public, Sai Lam Temple has proactively liaised with the Lands Dept to explore the possibility of achieving an amicable resolution. Sai Lam Temple has had meetings and correspondence with the Lands Dept.

During those discussions, the Lands Dept indicated that Sai Lam Temple should first make a re-zoning application to the Planning Dept to conform with the Shatin Outline Zoning Plan (the "Plan") and only when the planning position is confirmed would the Lands Dept deal with the lease issue, including considering any application by Sai Lam Temple to modify the Lease Condition.

However, Sai Lam Temple has never received any complaint from the Planning Dept of non-compliance or contravention of the Plan.

Sai Lam Temple has engaged a town planning expert to advise as to the planning issue. Contrary to the Lands Dept's indication, the town planning expert has advised that as Sai Lam Temple was storing cremated ashes well before the effective date of the Plan, Sai Lam Temple's continued operation as a columbarium is not in contravention of the Plan¹. Accordingly, there is no outstanding planning issue for Sai Lam Temple to clear with the Planning Dept and it is not necessary for Sai Lam Temple to make any re-zoning application.

In April 2010, we further corresponded with the Lands Dept on behalf of Sai Lam Temple to convey Sai Lam Temple's stance that there is no outstanding planning issue and therefore no re-zoning application is necessary. At the same time, Sai Lam Temple also indicated it would like to resolve the lease issue amicably, by applying for a modification of the Lease Condition with a payment of a reasonable land premium as appropriate.

On 2 June 2010, the Secretary for Food and Health, Dr York Chow, told the Legislative Council the Lands Dept's stance is "*where land owners apply for regularising a breach of land lease requirements, or intend to apply for modification of lease conditions for the provision of columbarium facilities, the Lands Department will consider and process the application*". In light of this representation by Dr Chow, Sai Lam Temple applied for modification of the Lease Condition (the "**Lease Modification Application**") for the provision of columbarium facilities, with an indication that Sai Lam Temple is willing to further discuss appropriate conditions, including the payment of a reasonable land premium.

Despite Sai Lam Temple's valid explanation regarding the planning issue and the representations by Dr Chow regarding the lease issue, on 2 June 2010 the Lands Dept confirmed its refusal to process Sai Lam Temple's Lease Modification Application and insisted it would only consider any lease modification application once the planning position has been confirmed.

In light of the Lands Dept's stance, Sai Lam Temple asked the Planning Dept whether there is any non-compliance or any contravention of the Plan which

¹ Note (3)(a) of the covering notes of the Plan provides that "*no action is required to make the existing use of any land or building conform to this Plan until there is a material change of use or the building is redeveloped*". In the present case, there has been no material change of use of the land, as Sai Lam Temple has continued to store cremated ashes. There has also been no redevelopment of buildings on the land.

warrants a re-zoning application. Our letter of 22 June 2010 asked the Planning Dept to state if it has any disagreement as to Sai Lam Temple's stance.

So far, the Planning Dept has not suggested any contravention of the Plan by Sai Lam Temple. The Planning Dept only replied in July 2010 and invited Sai Lam Temple to provide proof if it claims existing use. We explained to the Planning Dept that its invitation was misconceived, as the legal burden is on it to show that Sai Lam Temple has been in contravention of the Plan and is not entitled to any "existing use" status.

However, the Planning Dept did not confirm that Sai Lam Temple has no outstanding planning issue. Sai Lam Temple understands, as advised by its town planning expert, that the Planning Dept is not in a position to issue such a confirmation, as there are no provisions in the Town Planning Ordinance which allow any person to apply for or the Planning Dept to issue one.

In light of the technicality of the current law, which prevents Sai Lam Temple from obtaining a positive confirmation of existing use status and no outstanding planning issue from the Planning Dept, realistically Sai Lam Temple could only obtain a "negative confirmation" of no non-compliance or no contravention of the Plan on the basis that the Planning Dept has, for over 2 years (when it was first aware of Sai Lam Temple's case) and up until now, despite earlier deadline imposed, never suggested Sai Lam Temple is in contravention of the Plan. Through our letter of 30 August 2010 to the Planning Dept, Sai Lam Temple sought to seek a second negative confirmation by expressly stating to the Planning Dept that unless the Planning Dept, within 14 days (i.e. by 13 September), puts forward a positive case, with particulars, reasons and evidence, that Sai Lam Temple does not have any existing use status or otherwise subject to or in contravention of the requirements of the Plan, Sai Lam Temple shall take the Planning Dept's silence as a confirmation that Sai Lam Temple is not subject to any planning issue.

The Planning Dept only issued a holding reply on 6 September 2010 and did not ask for time extension for a reply. The Planning Dept did not by 13 September 2010 raise, and still so far has not raised (with particulars, reasons and evidence) any contravention of the Plan by Sai Lam Temple. A further letter dated 17 September 2010 to the Planning Department was issued by us to confirm our client's stance. In the circumstances, we consider the Lands Dept should accept that Sai Lam Temple is not subject to any outstanding planning issue and should process Sai Lam Temple's Lease Modification Application without further delay. We consider it is unacceptable for the Lands Dept to take advantage of the technical inability of the Planning Dept to issue confirmation of existing use status and no outstanding planning issue to refuse to process Sai Lam Temple's Lease Modification Application.

If the Lands Dept continues unreasonably to refuse to process Sai Lam Temple's application by 22 September, Sai Lam Temple will be forced to, and has confirmed instructions for us to, complain to the Government's Office of the Ombudsman in relation to the Lands Dept's unreasonable conduct in this matter and ask the Ombudsman to direct the Lands Dept to process the Lease Modification Application without further delay.

We are confident that, once the Lands Dept has processed and approved Sai Lam Temple's Lease Modification Application, all disputes as to Sai Lam Temple's alleged violation of regulations would be resolved and Sai Lam

Temple's operation as a columbarium will be regarded by the Government as formally regularised.

Yours faithfully

A handwritten signature in black ink, appearing to read "Deacons". The signature is written in a cursive, somewhat stylized font.

Deacons