

立法會
Legislative Council

Ref : CB2/PL/FE

LC Paper No. CB(2)1341/09-10
(These minutes have been seen
by the Administration)

Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Tuesday, 9 February 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP (Deputy Chairman)
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon KAM Nai-wai, MH
Dr Hon LEUNG Ka-lau
- Members attending** : Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
- Member absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP
- Public Officers attending** : Items V and VI

Prof Gabriel M LEUNG, JP
Under Secretary for Food and Health

Items IV and V

Mrs Angelina CHEUNG FUNG Wing-ping
Principal Assistant Secretary for Food and Health (Food) 1

Item IV only

Dr York CHOW Yat-ngok, GBS, JP
Secretary for Food and Health

Mr Philip CHAN Kwan-ye, JP
Deputy Secretary for Food and Health (Food)2

Mr CHEUK Wing-hing, JP
Director of Food and Environmental Hygiene

Dr Constance CHAN Hon-ye, JP
Controller, Centre for Food Safety
Food and Environmental Hygiene Department

Mr Marcello De GUIZA
Projector Director
PricewaterhouseCoopers Limited

Mr Albert WONG
Team Leader
PricewaterhouseCoopers Limited

Mr Antonio FERNANDES
Lead Consultant
PricewaterhouseCoopers Limited

Item V only

Dr LAU Chau-ming
Assistant Government Chemist (Analytical & Advisory
Services Division)
Government Laboratory

Mr Terence CHAN Sing-sing
Executive Administrator (Accreditation)
Innovation and Technology Commission

Item VI only

Mr Francis HO
Principal Assistant Secretary for Food and Health (Food) 2

Miss Amy YUEN
Principal Assistant Secretary for Development (Planning
and Lands) 2

Miss Winnie TSE
Principal Assistant Secretary for Home Affairs (Civic
Affairs) 3

Mr ROSS Graham Martin, JP
Deputy Director of Lands (Specialist)
Lands Department

Mr LAU Sing
Assistant Director of Planning/Board

Ms Alice LAU Yim, JP
Deputy Director of Food and Environmental Hygiene
(Environmental Hygiene)

Ms Rhonda LO Yuet-yee, JP
Assistant Director (Operations) 2
Food and Environmental Hygiene Department

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2)5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Josephine SO
Senior Council Secretary (2)1

Ms Maisie LAM
Senior Council Secretary (2)6

Ms Sandy HAU
Legislative Assistant (2)5

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I. Confirmation of minutes
(LC Paper No. CB(2)883/09-10)

The minutes of the meeting held on 12 January 2010 were confirmed.

II. Information paper(s) issued since the last meeting

2. There was no information paper issued since the last meeting.

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III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)884/09-10(01) and (02))

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 9 March 2010 at 2:30 pm -

- (a) Progress report on implementation of the enhanced measures to step up environmental hygiene to combat human swine influenza; and
- (b) Proposed amendments to Sweeteners in Food Regulations (Cap. 132U).

IV. Food Safety Bill

(LC Paper Nos. CB(2)884/09-10(03) and (04))

4. Secretary for Food and Health ("SFH") briefed Members on the detailed proposals of the Food Safety Bill ("the Bill"), the results of the related public consultation and the findings of the Business Impact Assessment ("BIA") study, details of which were set out in the Administration's paper (LC Paper No. CB(2)884/09-10(03)).

5. Mr WONG Kwok-hing welcomed the introduction of the Bill which sought to strengthen legislative control on food safety. Mr WONG then asked the following questions -

- (a) what was the legal responsibility of food retailers, say, restaurants and bakeries, who manufactured food found to be unfit for human consumption under the Bill; and
- (b) what measure would be implemented by the Administration to control the quality of seawater used for keeping live fish and shell fish intended for sale for human consumption to dovetail with the implementation of the Bill.

6. Responding to Mr WONG's first question, SFH and Controller, Centre for Food Safety ("Controller, CFS") said that -

- (a) under section 54 of the Public Health and Municipal Services Ordinance (Cap. 132), no person should sell any food which was intended for but unfit for human consumption. However, Cap. 132 provided a defence for a person selling food found to be unfit for human consumption if the person could prove that he purchased the food as being an article which could lawfully be sold and with a written warranty to that effect, and he had no reason to believe that it was otherwise; and

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- (b) to enhance food traceability, the Bill would require all food retailers to keep records of the business from which it obtained its food, but not information on the ultimate consumers to whom it sold the food as it was impractical to do so and would impose a huge burden on the trade and the consumers.

7. Regarding Mr WONG's second question, SFH said that the subsidiary legislation to make it an offence for a person to extract seawater from a prohibited area for the purpose of keeping live fish would come into force on 1 August 2010. SFH further said that under the Bill, fishermen who distributed their capture would be required to maintain capture records covering the date and period of it, the common name of the capture, the total quantity and the catch area.

8. Whilst expressing support for the Bill, Mr WONG Yung-kan raised the following concerns -

- (a) non-regulation of oyster culture within Hong Kong waters would undermine the effectiveness of the Bill in safeguarding food safety; and
- (b) not all fishermen might be aware of the registration scheme and the record-keeping requirement proposed under the Bill, having regard to the fact that many fishermen nowadays fish outside Hong Kong waters for a stretch of six months and beyond.

9. SFH and Deputy Secretary for Food and Health (Food) 2 ("DSFH(Food)2") responded as follows -

- (a) under the Bill, primary producers like oyster farmers who distributed their produce would be regarded as "food distributors" and would be required to register with the Director of Food and Environmental Hygiene ("DFEH"). The information required under the registration procedure would include the applicant's particulars, contact details and the food type being imported or distributed. The registration scheme would assist DFEH in establishing better communication with food traders and contacting them quickly in the event of a food incident. Notwithstanding the requirement for all food importers and food distributors to register with DFEH, the Bill would require any person who, in the course of business, imported, acquired or supplied food in Hong Kong by wholesale to keep transaction records of the business from which the food was obtained and the business to which it was supplied. DFEH would be empowered to inspect the records maintained by food traders;

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- (b) to enhance the oyster industry's effectiveness, the Agriculture, Fisheries and Conservation Department had all along been rendering technical advice and vocational training to local oyster farmers; and
 - (c) the Administration had consulted the fishery trade through meetings with the trade associations representing different sectors of the trade (live marine fish, freshwater fish and chilled marine fish), and individual fish traders (marine fish farm, freshwater fish farm and importer of seafood).
10. Mr WONG Yung-kan remained of the view that oyster culture in Hong Kong should be regulated, as had been done for marine fish culture in Hong Kong. The Chairman suggested that this matter be included in the outstanding list of items for discussion by the Panel. Members did not raise any queries.
11. The Chairman asked the following questions -
- (a) whether, apart from transferring new Part VA of Cap. 132 to the Bill, consideration would be given to transferring Part V of the same and the related subsidiary legislation to the Bill. New Part VA empowered DFEH to make orders to prohibit the import and supply of problem food and order a food recall when he had reasonable grounds to believe that public health was at risk;
 - (b) whether dropping the earlier proposal to make it an offence in the Bill for any person to knowingly sell food obtained from unregistered food importers or distributors (unless they were exempted) in the course of a trade or business was made in favour of the trade;
 - (c) what other earlier proposals in the Bill were dropped and the reasons for doing so; and
 - (d) how detailed should food importers record the place from which they imported the food.
12. SFH and DSFH(Food) 2 responded as follows -
- (a) the Administration had considered transferring Part V of Cap. 132 and the related subsidiary legislation to the Bill. However, to do so would delay the implementation of the Bill to enable DFEH to trace problem food swiftly and thoroughly in the event of food incidents, among others. Hence, decision was made to first enact the Bill to enhance the protection of public health and consumer interests;

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- (b) there was no question of the Administration favouring the food trade in dropping the earlier proposal to make it an offence in the Bill for any person to knowingly sell food obtained from unregistered food importers or distributors (unless they were exempted) in the course of a trade or business. During public consultation and the BIA study, food traders raised concerns that it was not practicable for food businesses to check the registration status of different food suppliers before every transaction. They also considered that the responsibility of registration should fall on the individual food importers or distributors. Taking into account the views obtained and that the proposed record-keeping requirement would help to enhance food traceability, a decision was made to drop the proposal. The Administration believed that the Bill had struck a proper balance in not imposing a huge burden on the food trade whilst safeguarding public health and consumer interests;
- (c) no other earlier proposals in the Bill were dropped. However, having considered the views of the trade, the fee level for registration and renewal of registration for a three-year term would be kept under \$200 and the retention period of transaction records would be linked to the shelf-life of the food in that transaction or capture records would be required to be kept for a period of three months (for live aquatic products and food with a shelf-life of three months or less, e.g. fresh meat) or 24 months (for food with a shelf-life over three months, e.g. canned food); and
- (d) food importers should record the contact details of the food they imported.

13. The Chairman agreed that the enactment of the Bill should not be delayed. Nevertheless, he urged the Administration not to drag its feet in transferring Part V of Cap. 132 and the related subsidiary legislation to the Bill, including reviewing the provisions concerned to bring them up-to-date to better meet present day circumstances. SFH responded that the Administration would do so at an appropriate time after the implementation of the Bill.

14. Mr WONG Yung-kan asked -

- (a) whether a person who brought into Hong Kong a small quantity of food for, say, tasting purpose, would be required to register with DFEH; and
- (b) whether a food importer who sold food to a food distributor and the food distributor concerned had to each keep records of such transaction.

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15. SFH and DSFH(Food) 2 responded as follows -

- (a) a person who brought into Hong Kong food, regardless of the quantity, for tasting purpose would still be required to register with DFEH if the food concerned was intended for sale for human consumption. However, bona fide travellers who imported food in their personal baggage for non-commercial use would not be required to do so; and
- (b) it was necessary for both the food importer and the food distributor to keep records of such transaction to enhance food traceability.

16. The Chairman noted from paragraph 23 of the Administration's paper that food retailers whose principal business was not the distribution or supply of food to other retailers or catering establishments would not be required to register. The Chairman asked how the Administration could determine that a food retailer was indeed a food retailer.

17. DSFH(Food) 2 responded that transaction records of food retailers could be inspected to determine if the principal business of the food retailers was in the distribution or supply of food to other retailers or catering establishments. DSFH(Food) 2 further said that the Administration appreciated the difficulties for food retailers to distinguish between business customers and ultimate customers. Hence the Bill would provide a defence if the food retailer concerned could show that it was the retailer's normal business to supply food by retail and it was reasonable to assume that the particular transaction was not a wholesale supply.

18. Mr WONG Yung-kan said that it was of paramount importance that CFS staff were well-equipped to determine who was a food retailer and who was a food distributor for effective enforcement of the Bill.

19. Controller, CFS responded that a code of practice on enforcement of the Bill would be formulated for training health inspectors who would be primarily responsible for carrying out the enforcement work. The food trade would be consulted on the code of practice before implementation.

20. In closing, the Chairman said that Members would closely scrutinise the Bill which was planned for introduction into the Legislative Council ("LegCo") in June 2010.

V. Outsourcing of food testing services
(LC Paper Nos. CB(2)884/09-10(05) and (06))

21. Under Secretary for Health and Food ("USFH") briefed members on the progress of the outsourcing of food testing services carried out by the

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Government Laboratory ("GL"), details of which were set out in the Administration's paper (LC Paper No. CB(2)884/09-10(05)).

22. The Chairman asked whether CFS would initiate prosecution actions against the vendors, if the food samples outsourced to the private sector for testing were tested to be exceeding the legal limits for harmful substances.

23. USFH responded that for the time being, prosecution actions would only be taken based on results of food testing conducted by GL. The court only admitted testing results of formal enforcement samples, in which the sample taken would be split in three to be kept by the vendor, CFS and GL as evidence in case of prosecution.

24. The Chairman expressed concern that the food concerned might no longer be available for taking of follow-up samples by CFS. USFH responded that outsourcing of GL's food testing work had no bearing on the efficiency of initiating prosecutions against vendors for selling problem food, as formal enforcement sample would have to be taken for testing for prosecution regardless of whether the testing of routine surveillance was done by GL or private laboratory in the first place. USFH further remarked that although taking formal enforcement sample in the first place during routine surveillance would no doubt shorten the time gap prior to initiating prosecution actions against vendors selling problem food, a balance had to be struck as this would involve considerable resources and might limit the number of samples taken for routine surveillance as well as the surveillance scope with the existing resources.

25. The Chairman queried whether outsourcing GL's food testing work to the private sector would delay the time for CFS to initiate prosecution actions against the vendors selling problem food, as how soon GL could carry out testing on the problem food would depend on how fast the private laboratory concerned would notify CFS. USFH responded that it was stipulated in the GL's outsource contracts and in the internal guidelines that private laboratories must immediately notify CFS of any food samples found to be unsatisfactory.

26. The Chairman said that in the Direct Investigation Report on the Effectiveness of Administration of Code on Access to Information published by the Office of the Ombudsman in January 2010, the Food and Environmental Hygiene Department ("FEHD") was criticised for failing to comply with the Code on Access to Information ("the Code") on disclosing the exact level of melamine for food samples that had passed the test upon request. USFH responded that FEHD eventually agreed to release the information requested. USFH further said that actions had been taken to ensure FEHD's compliance with the Code.

27. Mr WONG Yung-kan noted that in the coming year, GL planned to outsource up to 70% of its routine food testing work to the private sector involving some 107 000 tests (about 12 000 samples). Mr WONG asked

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whether the private sector had sufficient chemists to take up such outsourcing work.

28. USFH responded that to his understanding, the private sector had no shortage of manpower to take up more food testing work planned to be outsourced by GL in the coming year. USFH further said that the Hong Kong Council for Testing and Certification ("HKTCT"), established by the Government in September 2009, was presently formulating a development plan, identifying measures to enhance the capacity and quality of the local testing and certification industry and to strengthen manpower training and upgrading professional standards. HKTCT would complete the formulation of the development by end of first quarter/early second quarter this year for submission to the Chief Executive for consideration.

29. Mr KAM Nai-wai asked -

- (a) whether there was any plan to outsource more than 70% of the routine food testing work carried out by GL to the private sector in future;
- (b) what measures were taken to ensure the quality of outsourced food testing services, including speedy turn around time; and
- (c) whether there was any plan to outsource GL's routine food testing work to private laboratories outside Hong Kong.

30. USFH responded as follows -

- (a) there was no plan to outsource the percentage of GL's routine food testing work beyond 70% at this stage. Review would be conducted at a later stage to examine the justification and viability of increasing the outsourcing percentage;
- (b) private laboratories undertaking outsourcing contracts from GL must be accredited by the Hong Kong Accreditation Service under the Innovation and Technology Commission in the specific tests and maintain the accreditation status throughout the contract period. In addition, during the contract period, GL would implement a number of quality assurance measures including on-site audits and quality control means such as introduction of blind samples/split samples and control checks to monitor the performance of the contract laboratories including the quality of the test results;
- (c) the turn around time for testing individual food item ranged from two days to a few weeks, depending on the food types and the testing methods used. For certain food items which required more complicated testing methods, longer time might be required; and

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- (d) the Administration presently had no plan to outsource GL's routine food testing work to private laboratories outside Hong Kong, as the local testing and certification industry had the capacity and capability to undertake GL's outsourcing contracts.

31. In response to Mr Vincent FANG's enquiry on the reason for outsourcing GL's food testing work to the private sector, USFH said that this was to enable GL to re-deploy its resources to focus on new test method development, to cope with new testing work arising from amendments of food legislation and perform other duties including analytical tests for urgent food incidents, enhancing the testing capability of the local laboratories, management of outsourcing activities, and chemical metrology work.

VI. Columbarium development

(LC Paper Nos. CB(2)884/09-10(07) to (08) and CB(2)943/09-10(01) to (03))

32. USFH briefed members on the latest progress in the development of columbarium facilities in Hong Kong, details of which were set out in the Administration's paper (LC Paper No. CB(2)884/09-10(07)). USFH assured members that the Administration would map out a series of short, medium and long-term measures in due course to increase the supply of columbarium facilities and enhance protection of the rights of consumers of private columbaria.

33. Members noted the referral memorandum dated 9 February 2010 on issues raised at the meeting between LegCo Members and Kowloon City District Council ("KCDC") members on 28 January 2010 relating to regulation of private columbaria and funeral trades and the submissions from 各界關注骨灰龕法案大聯盟 and KCDC tabled at the meeting (LC Paper Nos. CB(2)943/09-10(01) to (03)).

Private columbarium

34. The Chairman asked when the Administration would revert to the Panel on the short, medium and long-term measures for, inter alia, enhancing protection of the rights of consumers of private columbaria.

35. Mr KAM Nai-wai asked whether consideration would be given to introducing legislation to provide a licensing regime to regulate the operation of private columbaria so as to better protect the hirers or buyers of private niches. According to a recent survey conducted by the Democratic Party, more than 60% of the respondents supported the introduction of a statutory licensing system. Mr WONG Sing-chi, Mr TAM Yiu-chung and Dr Priscilla LEUNG expressed similar views. Mr TAM and Dr LEUNG pointed out that if the

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Administration did not take resolute actions to regulate the operation of private columbaria as soon as practicable, the large profit margin of the trade would attract more people to operate private columbaria in various districts without complying with the relevant requirements on planning, construction design and building standards, as well as conditions of the land lease.

36. USFH responded that the Administration adopted an open attitude and would listen to the views of members and the community before deciding on the suitable short, medium and long-term measures for increasing the supply of columbarium facilities and enhancing protection of the rights of consumers of private columbaria. The Food and Health Bureau had set up a Working Group ("the Working Group") in co-ordination with the Development Bureau, the Home Affairs Bureau and various departments to study measures in this regard. USFH further said that the Administration would not rule out the possibility of introducing a licensing regime to regulate columbarium business, but he stressed that licensing was not the only solution to tackle the problems associated with columbarium development. For instance, objection from the District Councils ("DCs") and local communities to the development of public columbarium facilities in their districts had impeded many relevant projects to cope with the public demand. It was also necessary for the Administration to address the issues arising from increasing number of newly-built private columbaria that had yet to commence operation but involved suspected irregularities. In mapping out the way forward, the Administration would also need to take into account the undesirability of affecting the buyers of niches provided by private columbaria which had operated for a long time but might not comply with the relevant legislation and land lease requirements.

37. Mr Kam Nai-wai expressed concern about the prevalence of unscrupulous operation of columbarium niches in breach of land use requirements stated in land lease. He urged the Administration to take lease enforcement actions against these cases to generate deterrent effect, as it took time for the Administration to consider whether a licensing system should be introduced in the long run.

38. Principal Assistant Secretary for Development (Planning and Lands) 2 ("PAS(P&L)2") responded that upon receipt of a complaint about operation of columbarium niches in breach of land use requirements stated in land lease, the Lands Department ("LandsD") would deploy its staff to carry out inspection on the site concerned. Legal advice would be sought on the lease conditions which might be involved in the actual circumstances, and follow-up action taken as appropriate. If a site was found to be in breach of the lease conditions, LandsD would take lease enforcement action and request the parties concerned to purge the breach immediately. Where landowners applied for regularising a breach of land lease requirements, or intended to apply for modification of lease conditions for the provision of columbarium facilities, LandsD would consider and deal with the case. It would normally advise applicants to apply for and obtain the planning permission first, and would consider the views of the relevant departments in the process.

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39. Citing the case of Tsiu Keng Village referred to in the submission from 各界關注骨灰龕法案大聯盟 as an example, Mr WONG Sing-chi criticised the Administration for failing to take effective measures to eradicate the problem of unscrupulous people developing private columbaria at sites within the "Village Type Development" zone contravening the planned use and the land lease. He asked whether the Administration would take immediate actions to prohibit the continuance of the suspected unauthorised developments involving private columbaria so as to ease the concern and anxiety of nearby residents on the one hand, and on the other hand protect customers from deceptive practices in the sale of private niches.

40. USFH responded that the Administration was calling on the trade to increase their transparency, in order to enhance the public's confidence. It would also look into ways to achieve this end by, for instance, setting up a voluntary registration system in the short term to make information more transparent with a view to enhancing consumer protection. In the meantime, before the purchase of private niches, it was advisable for the public to ask the sellers of niches to provide them with full and complete information to ensure that the private niches were in compliance with the relevant legislation and land lease requirements. They should also seek professional advice where necessary. A Planning Department ("PlanD") hotline (i.e. 2315 0000) was also available for members of the public to enquire about planning matters. Depending on the complexity of the subject, staff of PlanD would answer the enquiries immediately or according to the specified target timeframe of the performance pledge.

41. As regards the case of Tsiu Keng Village, Assistant Director of Planning/Board ("ADP/B") and Deputy Director of Lands (Specialist) ("DDL(S)") responded as follows -

- (a) the Town Planning Ordinance (Cap. 131) ("TPO") provided that the use and development of land should comply with the land use zonings in the relevant statutory plan. Except for "existing uses" or uses always permitted, any development without a valid planning permission would be regarded as unauthorised developments. The landowners were also required to ensure that the existing/proposed use of their land was in compliance with all the requirements in the land leases and if considered appropriate, an application could be submitted to LandsD requesting a modification of the lease conditions;
- (b) upon receiving complaints of alleged unauthorised developments and breach of land lease requirements on the sites in question, staff of PlanD and LandsD had conducted site inspections. A letter had been issued by PlanD to remind the concerned parties that the sites and building structures thereon fell within an area zoned "Village Type Development" on the approved Kwu Tung South Outline

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Zoning Plan where "columbarium" use was not permitted. LandsD had also advised the landowner that planning permission should first be obtained before applying for modification of lease to permit the provision of columbarium facilities;

- (c) PlanD could only issue an Enforcement Notice to the parties concerned under section 23 of TPO if there was evidence of an unauthorised development. Where breaches of lease conditions were detected, LandsD would issue letters to the parties concerned requiring them to rectify the breaches. There was however lack of evidence of an unauthorised columbarium at the site and no cinerary urns were found in the uncompleted building structures in the site; and
- (d) appropriate enforcement actions would be taken by PlanD and LandsD if there was evidence of breaching the TPO and land lease conditions.

42. The Chairman sought clarification as to whether the Planning Authority could only institute prosecution when cinerary urns had been accommodated in the alleged unauthorised development. He pointed out that this would in turn lead to the undesirable consequence of affecting the buyers of these private niches when the Authority took the enforcement actions. Moreover, there was a possibility that the unscrupulous operators would move the cinerary urns away from the columbarium during inspection.

43. ADP/B responded that under TPO, a person who undertook or continued an unauthorised development committed an offence. Given that under criminal law the prosecution had to prove beyond reasonable doubt all elements of the offence, the Planning Authority had to base on evidence to confirm that the Tsui Keng Village case was an unauthorised development, such as accommodating cinerary urns at the sites where "columbarium" was not a permitted use under the statutory plan. It should be noted that the concerned parties could make an application to the Town Planning Board ("TPB") for planning permission or a change of planned land use in accordance with TPO. An authorised columbarium would no longer be an unauthorised development.

44. In response to Mr WONG Sing-chi's enquiry on whether the Government had instituted prosecutions in respect of unauthorised columbaria, ADP/B said that enforcement action had been taken against two cases of unauthorised columbaria. Subsequently, the concerned parties had successfully obtained planning permission for applications for the columbarium facilities at the sites concerned. DDL(S) said that in lease enforcement cases where the parties concerned disagreed that there was a breach of lease conditions, such cases would likely be settled by the court. PAS(P&L)2 pointed out that the enforcement actions of the Authority were targeted at ensuring proper land use and their effectiveness should not just be determined by the number of

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successful prosecution against irregularities.

45. Mr WONG Sing-chi asked about the actions that could be taken by the Planning Authority to tackle complaints of alleged unauthorised development if enforcement action would only be made on rare occasions. ADP/B responded that when there was adequate evidence of unauthorised development, the Planning Authority could serve Enforcement Notice on who was responsible for the unauthorised development, requiring the discontinuance by a specified date. Similarly, before the issue of any notice, the Planning Authority must collect sufficient information and evidence to ascertain that the development was an unauthorised development. Non-compliance with the requirements of Enforcement Notice was subject to prosecution. If the Planning Authority was satisfied that the requirements of the notice had been complied with, it would issue a Compliance Notice. PlanD staff would follow up by monitoring the site to ensure that the unauthorised development had been discontinued.

46. Mr WONG Shing-chi said that the Administration's responses showed that the existing actions taken by the relevant government departments could not combat the problem of private columbaria contravening the planned use and the land lease and it was necessary to set up a statutory licensing regime to regulate the operation of private columbaria. The Chairman said that the Democratic Party was of the view that the voluntary registration system proposed by the Administration would only be effective in addressing the problem if it was an interim measure to facilitate an orderly transition to a statutory licensing regime.

47. USFH responded that the setting up of a licensing system was one of the measures being considered. He stressed that the Administration would adopt a multi-pronged approach to tackle the problem, and it would revert to the Panel as soon as practicable after the Working Group had completed the study.

48. Mr WONG Yung-kun asked the Administration whether consideration would be given to providing members of the public with a list of private columbaria which were not in compliance with the relevant legislation and land lease requirements pending the formulation of long-term measures to enhance protection of the rights of consumers of private columbaria.

49. USFH responded that the Administration would consider Mr WONG's suggestion and work with organisations such as the Consumer Council in this regard with a view to facilitating consumers to make an informed choice when purchasing private niches.

Public columbarium

50. Mr TAM Yiu-chung pointed out that apart from rural areas, there was also an expansion of private columbarium in residential buildings in Hung Hom District in recent years. Holding the view that the rampant provision of private columbarium not in compliance with the relevant legislation and land lease

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requirements might be attributed to the heavy demand for columbarium niches and large profit margin of the business, Mr TAM called on the Administration to address the inadequacy of public columbarium.

51. The Chairman asked how the Administration would increase the supply of public columbarium facilities. He noted that SFH had suggested in a media session that different districts should undertake the responsibility to develop columbarium facilities and industrial buildings could be converted into multi-storey columbarium blocks.

52. USFH responded that over the past few years, a number of columbarium projects involving 240 000 niches had been shelved as a result of objection from local communities and DCs concerned. However, in order to address the needs of residents in various districts, different districts or areas should undertake the responsibility to develop columbarium facilities. The Government would actively identify suitable locations for the development of these facilities in different areas in Hong Kong (including urban areas), such as by construction of or conversion into multi-storey columbarium blocks. Besides, circumstances permitting, the Administration would augment through flexible design the supply of niches in the columbarium facilities to be built by increasing the number of storeys of columbarium blocks as well as the number of tiers of niches. The Administration would actively seek to improve the outlook and layout of the proposed columbaria by the provision of landscaping facilities in order to ease the concern and anxiety of the residents. The Administration would also further its efforts in soliciting support from DCs and local communities through continuous communication.

53. Mr KAM Nai-wai asked about the concrete timetable for converting industrial buildings into columbarium blocks. He further asked how did the Administration come up with the estimation that over 170 000 urns could still be accommodated in the existing public niches to cope with part of the demand in the next decade as set out in paragraph 7 of the Administration's paper.

54. Responding to Mr KAM's first question, USFH said that for sites other than those which were zoned for "Other Specified Uses" annotated "Cemetery" or "Crematorium, Columbarium, Funeral Services Centre and Open Space" where "columbarium" use was usually permitted as of right and planning permission from TPB was not required, an application for planning permission or change of land use must be submitted to TPB for development of "columbarium" facilities on the sites. At present, the provision of columbarium was not a permitted use of any of the sites in the industrial buildings in urban areas. ADP/B supplemented that where an application was made to TPB for planning permission or change of land use in connection with the provision of columbarium facilities, TPB, in processing the application, would normally take into account all relevant planning considerations, including land use compatibility, traffic and environmental impacts, as well as views from relevant government departments. It would also conduct public consultation on the case

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in accordance with the statutory procedures laid down in TPO.

55. As regards Mr KAM's second question, Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) ("DDFEH(EH)") advised that there were currently eight public columbaria managed by FEHD providing about 167 900 public niches, all of which had been allotted, though some 300 re-used public niches were available each year for allotment to applicants on the waiting list. There were two types of niches in the public columbaria, i.e. standard niche and large niche which could respectively accommodate two and four urns for holding the ashes of deceased persons with kinship. Kinship generally referred to the spouse, parents, brother, sister, parent-in-law, daughter-in law or son-in-law, or a direct descendant of either the paternal or maternal line of the deceased person whose ashes were the first to be kept in the niche. Most of the public niches were standard niches and there were only a small number of large niches. The estimation that some 170 000 urns could still be accommodated in the existing niches was based on the assumption that the currently unused part of the niches could be utilised to the full extent. DDFEH(EH) said that the Administration would advise the public to make optimum use of existing public niches.

56. The Chairman asked whether it was feasible to split the existing standard niches into half with a view to making the currently unused part become available to meet the demand. USFH responded that it was difficult to do so as it was the depth, and not the width, of a niche that could accommodate two urns.

57. Mr WONG Yung-kan urged the Administration to provide more public niches by, say, constructing basements under the columbarium buildings of existing public cemeteries and constructing cemeteries in outlying islands with small population.

58. USFH responded that the Administration would try to increase the number of niches in newly-built columbaria through flexible design. On the suggestion of constructing cemeteries in outlying islands with small population, USFH responded that it might not be feasible to do so, as ferry companies would have great difficulties in providing adequate ferry service to meet the demand generated by the large number of grave sweepers during the Ching Ming and Chung Yeung Festivals.

Alternative ways of disposal of cremains

59. Mr WONG Sing-chi called on the Administration to step up public education to raise the awareness of the public on the alternatives of disposal of cremains in designated Hong Kong waters or Gardens of Remembrance ("GoRs") which called for change in the social customs. Mr TAM Yiu-chung expressed a similar view.

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60. DDFEH(EH) responded as follows -

- (a) to promote the scattering of cremains at sea, FEHD had, starting from 23 January 2010, provided weekly free ferry service to facilitate the public in the scattering of cremated human ashes at sea. The feedback from users to the disposal of human ashes in this environmental friendly manner had been positive. It was also encouraging to note that amongst the 77 recent applications for scattering of cremated human ashes at sea, 50 applicants chose to use FEHD's ferry service. It was expected that more private enterprises would provide ferry service for the purpose in the future;
- (b) FEHD had been carrying out beautifying works in GoRs under its management. Funding approval was obtained from the Finance Committee of LegCo in July 2009 for the construction of a GoR, among others, at Kiu Tau Road, Wo Hop Shek, for use in 2012. The Administration also planned to provide additional GoRs in existing public cemeteries including Diamond Hill Cemetery to offer more choice to the public; and
- (c) the Administration had been promoting alternative ways of disposal of cremains through the non-governmental organisations operating elderly and end-of-life care services. A promotional video had recently been produced to promote the free ferry service launched by FEHD for scattering cremated human ashes at sea. The Administration welcomed suggestion from members to further promote the alternative ways of disposal of cremains.

Conclusion

61. In closing, the Chairman requested the Administration to revert to the Panel the measures to increase the supply of columbarium facilities and enhance protection of the rights of consumers of private columbaria before the end of the current legislative session. USFH agreed.

62. There being no other business, the meeting ended at 5:55 pm.