



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

5 January 2018

Your Ref.:

Our Ref.:

Secretary to the Panel on Food Safety and Environmental Hygiene
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn.: Ms Josephine SO)

Dear Ms So,

Panel on Food Safety and Environmental Hygiene Meeting on 12 December 2017

**Supplementary Information to Panel Paper on
“Implementation of the Private Columbaria Ordinance”**

At the Panel on Food Safety and Environmental Hygiene (“Panel”) meeting on 12 December 2017, the Government briefed Members on the implementation of the Private Columbaria Ordinance (LC Paper No. CB(2)467/17-18(03)). As per the Panel Chairman’s suggestion, our response to the issues raised in the submission from the Alliance for the Concern over Columbarium Policy (“Alliance”) is at **Annex** for Member’s information. The Panel also requested the Government to provide the following supplementary information:

- (a) *the estimated amount of revenue forgone associated with extending the waiving of relevant payments for regularization from pre-cut-off columbaria eligible for an exemption in all other respects to pre-cut-off columbaria eligible for a licence in all other respects ("the waiving arrangement") and the calculation method adopted/factors and variables taken into account in the Administration's assessment of land value premium to be paid by operators of those 131 columbaria claiming to be pre-cut-off columbaria; and*

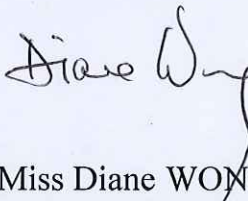
- (b) *information about the 131 private columbaria that had voluntarily joined the Notification Scheme and would likely to be benefit under the waiving arrangement, including the name, address and size of those columbaria and the number of pre-cut-off sold niches in each of the columbaria.*

As these two issues have also been raised in the Alliance's submission, Members may wish to see our response to questions no. 9 and no. 6 respectively at **Annex**.

2. Further, as suggested by Members, we will address the caseload of Private Columbaria Appeal Board ("PCAB"), i.e. the estimated number of appeal cases to be received and processed by PCAB, in the initial licensing and appeal stages (i.e. in the first three years of the implementation of the licensing regime) in the relevant Finance Committee paper.

3. As regards Members' request for holding a public hearing, the Panel may wish to consider having this in or after April 2018, as the status on the applications for specified instruments received would be better known after 29 March 2018.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Diane Wong", with a long vertical line extending downwards from the end of the signature.

(Miss Diane WONG)
for Secretary for Food and Health

Government's response to the letter from the Alliance for the Concern
over Columbarium Policy dated 11 December 2017 on the
two policy initiatives related to pre-cut-off private columbaria

Overall response

We must emphasise that we need to resolve properly the historical problems which have accumulated over the years. Quite a number of people had purchased niches from pre-cut-off private columbaria or even interred the ashes of their deceased relatives therein before the Government announced the introduction of the proposed licensing regime. Given this, we need to adopt a pragmatic and sensitive approach towards the consumers who have purchased these niches, and the dedicated persons whose ashes have been interred, so as to avoid any losses or social disruption arising from massive displacement of interred ashes. In contemplating the policy initiatives, the Government mainly takes into account the overall interests of the community and the need to minimise the impact on the descendants, in particular their wish of not having the interred ashes of the deceased disturbed as far as practicable.

Response to individual questions

Q(1)	Do the two “relaxation” measures endorsed by the Executive Council (ExCo) on 21 November 2017 go against the decision made by the Legislative Council (LegCo) after its scrutiny of the Bill?
Q(2)	In accordance with the Ordinance enacted on 30 June 2017, any columbarium commenced operation before 1990 may apply for an exemption while others can only apply for a licence or temporary suspension of liability (TSOL). Under what legislation or authority can the ExCo alter the LegCo decision unilaterally? Are there any precedents?
Q(3)	When did the ExCo make the relevant decision? What information was it based on?
Answer:	<p>The policy initiatives endorsed by the ExCo on 21 November 2017 are administrative measures. We made them public by issuing a LegCo Brief and a press release on 22 November. Please see the considerations and justifications in the LegCo Brief.</p> <p>The ExCo decisions neither contradict nor alter the provisions of the Private Columbaria Ordinance (the Ordinance), which was passed by the LegCo on 25 May 2017 and gazetted on 30 June 2017.</p>

The ExCo decisions made in April 2014 and January 2016 (i.e. for a pre-cut-off columbarium confirmed to be eligible for **an exemption** in all other respects in respect of the niches sold before the pre-cut-off time and its pre-cut-off religious ash pagoda fulfilling certain requirements, upon receipt of an application, the Government may consider regularising breaches of relevant lease conditions and / or unlawful occupation of unleased land by way of a waiver and / or a short term tenancy (STT), and consider waiving the relevant waiver fees, STT rentals and administrative fees before and during the validity period of the specified instrument. Each application will be considered on a case by case basis, having regard to its circumstances and merits) were indeed administrative measures. In fact, the ExCo decision made in November 2017 (i.e. a pre-cut-off columbarium confirmed to be eligible for **a licence** in all other respects in respect of the niches sold before the pre-cut-off time and its pre-cut-off religious ash pagoda fulfilling certain requirements, upon receipt of an application, the Government may consider regularising breaches of relevant lease conditions and / or unlawful occupation of unleased land by way of a waiver and / or an STT, and consider waiving the relevant waiver fees, STT rentals and administrative fees before and during the validity period of the specified instrument. Each application will be considered on a case by case basis, having regard to its circumstances and merits) was also an administrative measure. There is no difference between the two in terms of their nature.

The traffic impact assessment (TIA) is not a statutory requirement. The guiding principle for the Government is whether the traffic and pedestrian flow brought by a columbarium is at an acceptable level. In this connection, the ExCo decision made in November 2017 (i.e. the departments concerned to assess the applications submitted to the Town Planning Board and the Licensing Board under an empirical evidence approach) is also an administrative measure. In actual practice, it also takes into account the traffic impact.

Only those pre-cut-off columbaria meeting the requirements **for a licence** in all other respects, which include more than 10 relevant requirements covering planning; building; fire safety; environmental protection; electricity, lift and escalator safety; management plan; financial proposal; right to use premises; deed of mutual covenant, etc. Pre-cut-off columbaria will not automatically be granted a licence under the above two policy initiatives. The Licensing Board will consider each application in accordance with the application requirements stipulated under the Ordinance.

Q(4) The Food and Health Bureau (FHB) indicated that the “relaxation” measures were put in place after consultation with the trade. Had it consulted other stakeholders such as nearby residents, the District Councils, the LegCo and other concern groups? If yes, please advise on the parties consulted, their views and the consultation period. If no, please provide the reason(s).

Answer: After the announcement of the Private Columbaria Bill in 2014, the Government has all along maintained close communication with stakeholders (including the trade, the residents, the District Councils, the Legislative Council and other concern groups), and has participated in the hearings with deputations organised by the relevant Committee under the Legislative Council. The FHB and the FEHD know that the land premium and TIA issues are the concerns of LegCo Members, members of the public, operators and consumers, and consider that we have grasped the very

divergent concerns and views of different stakeholders. Given the above and the consideration about interests involved and the need for confidentiality, we have not made prior consultation with the trade on the concrete policy initiatives covered in the ExCo decision.

Q(5) According to paragraph 8 of the paper provided by the Government (fseh20171212cb2-467-3-c), “Based on a Notification Scheme administered by the Food and Environmental Hygiene Department (“FEHD”) when the Bill was announced in June 2014, there remain now as many as 131 private columbaria that have voluntarily joined the Notification Scheme.” However, the Alliance for the Concern over Columbarium Policy (the Alliance) found that the number of private columbaria published quarterly by the Development Bureau (DEVB) was inconsistent with the figure (i.e. 131 private columbaria) given in the paper.

Would the FHB provide details of the 131 private columbaria which had voluntarily joined the Notification Scheme (the DEVB’s list) as at 18.6.2014		The DEVB’s list as at 30.9.2014		The DEVB’s list as at 29.9.2017	
Part A Private columbaria which are not cemeteries	Part B	Part A Private columbaria which are not cemeteries	Part B	Part A Private columbaria which are not cemeteries	Part B
15	107	15	113	15	121
Remarks			Hong Dao Tang at Kwai Chung, Che Wan Seen Yuen at Lau Fau Shan and The Shrine at San Tin, Yuen Long have been ordered to cease business. They should not be considered as pre-cut-off premises even if they have submitted their applications. However, Che Wan Seen Yuen is still found on the list on 30.9.2017.		

Answer: First of all, the Notification Scheme administered by the FEHD and the DEVB’s list of private columbaria are two separate mechanisms.

According to DEVB, the DEVB’s list aims to provide the public with information on private columbaria that have been made known to the Lands Department and/or Planning Department, and that the departments have reasons to believe that they are operating as columbaria. However, the information does not serve to provide any pointers relating to licensing and the private columbaria listed do not necessarily fulfill licensing requirements under the Ordinance. The information is for general reference and is updated every three months. As information on implementation of the Ordinance will be separately published by the FEHD, the DEVB will provide a final update on the land/lease (user restrictions) and planning information relating

to private columbaria at end-March 2018 (i.e. upon expiry of the grace period under the Ordinance), and will cease to update such information thereafter.

Regarding its administrative Notification Scheme launched from June to August 2014, the FEHD had contacted the operators either directly (e.g. by issuing letters) or indirectly (e.g. by placing notices). These operators were invited to join the scheme on a voluntary basis. The purpose of collecting the information is to facilitate consideration on the application for specified instrument (if any) by the Licensing Board and to implement the Ordinance and related work.

Given the different nature of the two lists, the information contained therein is not entirely the same.

Q(6) Would the FHB provide a breakdown of columbaria by type and a list setting out their names?

Type of columbaria	No. of columbaria	List of columbaria
Pre-1990 columbaria, with documentary proof		
Pre-1990 columbaria, without documentary proof		
Not pre-1990 columbaria		
Total		

Answer: A breakdown of columbaria by type is as follows:

Type of columbaria	No. of columbaria
Columbaria which claimed to have commenced operation before 1990 with relevant document	28
Columbaria which claimed to have commenced operation before 1990 without relevant documentary	59
Not claimed to be columbaria which commenced operation before 1990	44
Total	131

The FEHD launched the administrative Notification Scheme in June 2014 for participation on a voluntary basis. The purpose of collecting the information is to facilitate consideration to facilitate consideration on the application for specified instrument (if any) by the Licensing Board and to implement the Ordinance and related work. The information collected is from third parties, and must be used for the purpose for which the data is collected. As not all operators have given consent to the Government to disclose their names and addresses, we are not in a position to provide the list at the moment.

Moreover, the above estimates are based on the existing information held by the FEHD. As individual columbaria may be able to provide circumstantial evidence

to prove their status as pre-1990 columbaria in the end, it is inappropriate for the FEHD to unilaterally disclose their particulars at this stage.

The Licensing Board will make announcements after receiving applications for specified instruments. By then, the public will know which private columbaria have applied for an exemption, a licence and the related TSOL.

Q(7) According to the LegCo paper, 59 private columbaria may not be able to (but not fail to) provide any documents to prove that they have commenced operation before 1990. What kind of supporting documents are required? Why were these private columbaria classified as pre-1990 columbaria under the Notification Scheme on 18 June 2014? Are there any cases in which private columbaria have provided false information? If so, any penalty for these columbaria?

Answer: According to section 20(3) of the Ordinance, the operation of a columbarium commenced on the earlier of the following times: (a) the earliest time when a set of ashes was interred in any niche in the columbarium; or (b) the earliest time when an interment right in respect of any niche in the columbarium was sold. Under the Notification Scheme, a private columbarium can only be classified as pre-1990 columbaria so long as it could provide supporting documents (e.g. contracts and photos etc.) to prove that a set of ashes was interred in any niche in the columbarium or an interment right in respect of any niche in the columbarium was sold before 1 January 1990.

In future, columbaria shall submit their applications for specified instruments as required by the Ordinance. According to section 99 of the Ordinance, a person who commits an offence of providing false or misleading information is subject to the maximum penalty of a fine of \$500,000 and imprisonment for two years. In addition, if an applicant for a specified instrument deceives the Government, thus resulting in prejudice to the Government, that person commits the offence of fraud under the Theft Ordinance, the maximum penalty for which is imprisonment for 14 years. And if any operator and consumer conspire to deceive the Government, that operator and consumer commit the offence of conspiracy to defraud. Such an act contravenes common law and is punishable under the Crimes Ordinance, the maximum penalty for which is also imprisonment for 14 years.

Q(8) It is stated in paragraph 24(a) of the document that there are about 486 000 niches in 30 columbaria which have obtained rezoning or planning permission or do not require rezoning or planning permission.

(i) Status and number of relevant niches

Status of niches	Number
Pre-enactment sold niches where ashes have interred	
Pre-enactment sold niches where ashes have yet to be interred	
Niches still available for sale	
Total	

- (ii) If an empirical evidence approach is not approved in respect of 101 columbaria, about 139 900 niches (about 76 000 pre-enactment sold niches where ashes have been interred and 63 000 pre-enactment sold niches where ashes have yet to be interred) would be affected. According to the Alliance's understanding, about one-thirds of unauthorised columbaria are located in the commercial/residential buildings in urban areas (such as Hung Hom, Mongkok). Under the existing licensing conditions, the chance of these columbaria obtaining a TSOL is very slim. In this connection, the FHB must provide clear information for Members and the public to have an accurate grasp of the situation. The Alliance requests information on the locations of relevant columbaria as follows:

Status of niches	Number	Located in commercial/residential buildings in urban areas	Located in commercial/residential buildings in non-urban areas
Pre-enactment sold/let-out niches where ashes have interred			
Pre-enactment sold/let-out niches where ashes have yet to be interred			
Niches still available for sale or letting out			
Total			

Answer: In respect of (i), a breakdown of niches is set out below:

Status of niches	Number
Pre-enactment sold niches where ashes have interred	297 000
Pre-enactment sold niches where ashes have yet to be interred	100 000
Niches still available for sale	89 000
Total	486 000

In respect of (ii), the numbers of columbaria are listed below:

Type of columbaria	Number
Located in commercial/residential buildings in urban areas	23
Located in commercial/residential buildings in non-urban areas	0
Total	23

Regarding the above private columbaria located in commercial/residential buildings in urban areas, they are covered by outline zoning plans but have not yet obtained rezoning or planning permission. Also, as building safety requirements are pre-requisite requirements for a licence under the Ordinance, we believe that those private columbaria in urban areas currently located in premises in upper floors of

	<p>multi-storey buildings with a single staircase and intermingled with residential dwellings will face tremendous difficulties in seeking a licence. Besides, section 23(3) of the Ordinance provides that where a deed of mutual covenant is in force in respect of the columbarium premises, a columbarium applying for a licence, must provide a written legal advice of a legal practitioner confirming that there is no express restrictive covenant in the deed as specified by that provision of the Ordinance.</p> <p>We must emphasis, the above figures are obtained through the classification of data collected under the administrative Notification Scheme on a voluntary basis. The Licensing Board will look into the status and number of niches of the relevant operators in depth, when they scrutinize their applications for specified instruments.</p>
Q(9)	<p>According to the information currently known to the Government on the niches in columbaria applying for land premium waiver, what is the maximum amount of land premium estimated to be forgone?</p>
Answer:	<p>Only those pre-cut-off columbaria confirmed to be eligible for a licence <u>in all other respects</u> may apply for waiving the relevant waiver fees, STT rentals and administrative fees before and during the validity period of the specified instrument in respect of the niches sold before the cut-off time and its pre-cut-off religious ash pagoda fulfilling certain requirements, when they apply for regularising breaches of relevant lease conditions and / or unlawful occupation of unleased land. Moreover, each application will be considered on a case by case basis, having regard to its circumstances and merits</p> <p>Currently, it is difficult for us to assess the actual number of columbaria and niches that can benefit from the above arrangement. We will not know the number of columbaria making applications until 29 March 2018 (i.e. the deadline for the pre-cut-off columbaria to submit their applications). Meanwhile, neither can we tell the number of columbaria eligible for the pre-cut-off columbarium status or fulfilling other requirements for licences, let alone the number of columbaria whose application would finally be approved under the waiving arrangement.</p> <p>Furthermore, the means for regularisation and the terms may vary, taking lease modification as an example, the land premium will be assessed according to the full market value of the site at the time of its application, and may vary due to the original use stated in the land lease, the location of the private columbaria and its number of niches etc. Therefore, it is not possible for us to estimate the amount of land premium involved.</p> <p>In introducing the waiving arrangement, the Government mainly takes into account the overall interests of the community and the need to minimise the impact on the descendants, in particular their wish of not having the interred ashes of the deceased disturbed as far as practicable.</p>
Q(10)	<p>On 28 March 2017, the Lands Department announced that it would strengthen its enforcement measures and would no longer accept applications for “regularisation of unlawful occupation of government land” made by occupiers. All existing occupiers who meet the requirements (e.g. town planning requirements) are still</p>

	<p>required to pay in advance a “fine” equivalent to 12 month’s market rent and other related fees. They also have to pay a “forbearance fee” chargeable at market rental rates pending approval. According to the Lands Department, this new measure aims at requiring the occupiers to pay a price for their act of unlawful land occupation. How come the policy initiatives are inconsistent with the policy of the Lands Department? Why did the authority not tighten its measures in the light of the enforcement measures announced on 28 March 2017 by at least requiring the payment of a fine?</p>
Answer:	<p>The cut-off time for grandfathering pre-cut-off columbaria is 8 a.m. on 18 June 2014. As we explained to the Bills Committee in the past the waiving arrangement for the issue of an exemption (see LC Paper No. CB(2)986/16-17(04)), the applicant must prove to the satisfaction of the Licensing Board that:</p> <ul style="list-style-type: none"> (a) the pre-cut-off columbarium complies with the land-related requirements. In other words, it has to seek regularisation of unlawful occupation of unleased land, if any, as ring-fenced in item (b) below (where waiving payment for regularisation may be considered on a case-by-case basis), in order to be eligible for the issue of the relevant specified instrument; and (b) the extent of “occupation of land as is necessary for, or ancillary to, the operation of the columbarium” is limited to that as was necessary for, or ancillary to, its operation as at the cut-off time. <p>The requirements listed in (b) above are applicable not only to the waiving arrangement in respect of the issue of an exemption referred to at that time (see section 20(1)(c) of the Ordinance), but also to the waiving arrangement in respect of the issue of a licence currently contemplated (see section 19(1)(c) of the Ordinance).</p> <p>As the current administrative measure (waiving arrangement for the issue of a licence) is an extension of the waiving arrangement for the issue of an exemption in 2014 and 2016, the Government considers it appropriate for the current administrative measure to be based on the arrangement in 2014 and 2016 as well as the latest information known to the Government. The Lands Department announced on 28 March 2017 the enforcement actions against unlawful occupation of government land and tightening of the arrangement in application for regularization. They are not applicable to pre-cut-off columbaria which fulfilled the abovementioned requirements.</p>
Q(11)	<p>During the grave-sweeping seasons, the Government need to deploy police officers and implement special traffic management measures to tackle the traffic problems caused by the unauthorised development of columbaria. How much government funding has been spent on the work? Would the Government impose a fee for taking such measures? If yes, how much is it? If no, what are the reasons?</p>
Q(12):	<p>There are already a number of unauthorised columbaria causing nuisance to the nearby residents due to the traffic impact and the traffic management measures. The unauthorised development of columbaria has disrupted the peaceful living environment of the neighbourhood and caused much inconvenience to the residents. As a result, residents living near unauthorised columbaria, including Ching To Yuen</p>

in Tai Wai, Gig Lok Monastery in Tuen Mun, Chung Woo Ching Shea in Tai Po, Sheung Wo Che areas in Sha Tin and Lo Wai district in Tsuen Wan, have been protesting for years. Conflicts occurred between columbaria and residents (please refer to the news articles in Annex: 20121024_Ming Pao_Transport Department implements road closure for unauthorised columbaria and residents criticise the Government for giving its tacit consent to the operation; 20131014_Oriental Daily_People protest against unauthorised columbaria with black ribbons; 20131014_Hong Kong Daily News_Tai Po residents protest with black ribbons against Chung Woo Ching Shea for suspected operation of an unauthorised columbarium). Is the Government going to allow these columbaria to continue operation by exempting them from submitting the TIA to the TPB for rezoning application in respect of their filled niches and sold niches where ashes have yet to be interred? Will the existing traffic management measures continue to be implemented? It is so irresponsible of the Government to let the residents bear all the suffering, which will further intensify the conflicts between local residents, columbarium operators and consumers.

Answer: During the grave-sweeping seasons, government departments will, in view of the actual circumstances, tactically deploy manpower to impose traffic and pedestrian flow management measures on a need basis. These measures are implemented on public safety and public order grounds. In other words, the measures are implemented to serve the public interest rather than individual columbaria. The aim of maintaining the traffic and pedestrian flow in the area as a whole is to facilitate grave-sweeping during the two peak seasons. As the expenditure are covered by the daily expenditure of the departments concerned, the Government does not have any statistics on the manpower and resources in respect of these measures.

Columbaria requiring rezoning or planning permission still have to obtain approval from the TPB. The TPB is an independent statutory body. A columbarium complies with the planning-related requirements only if the columbarium complies with every requirement under the Town Planning Ordinance. Under the existing policy initiative, Government departments will adopt an empirical approach to process the planning or licence applications in respect of niches sold before 30 June 2017 in pre-cut-off columbaria. Columbaria applying for a licence are required to submit a management plan covering the traffic and pedestrian flow management arrangements to the Licensing Board. The Board will then consider the views of relevant departments (including the Transport Department, Hong Kong Police Force, Planning Department and Fire Services Department) as to whether the proposed management and mitigation measures set out in the applicant's management plan are acceptable and whether it is necessary to require the applicant to implement additional mitigation measures. The Board may, if necessary, impose licensing conditions to require the operator to adopt appropriate mitigation measures. We believe that views of the public on the mitigation measures would be considered during the process.

If pre-cut-off columbaria wish to sell or newly let out niches after the enactment of the Ordinance, or post-cut-off columbaria wish to pursue their columbarium developments, they are still required to submit a TIA according to the mechanism when making planning or licence applications.

	Under section 22(2) of the Ordinance, the Licensing Board must have regard to the public interest, and may have regard to any other relevant considerations. The Licensing Board will make announcements according to the Ordinance after receiving applications from columbaria, while the public may provide written submissions for consideration by the Licensing Board.
Q(13)	Does the LegCo have the authority to veto the ExCo decision made on 21 November 2017? Has the FHB assessed the possibility of an application for judicial review against the initiatives? What impact will the judicial review, for which the application for leave is granted, have on the whole licensing process and the implementation of the Ordinance?
Answer:	<p>As the two policy initiatives are administrative measures without involving funding or legislative amendment, submission for LegCo's scrutiny is not required. We would like to stress that these two policy initiatives are pragmatic and appropriate, and in line with the provisions and the legislative intent of the Ordinance.</p> <p>When we handle inherited historical problems, it is necessary for us to undergo a transition stage in migrating to the licensing regime for regulating private columbaria. It is not possible to assess the possibility of an application for judicial review against the policy initiatives. Nevertheless, both we and the public expect that the licensing regime will be rolled out smoothly to enable private columbaria having satisfied the requirements for licence application to obtain a licence as soon as possible, thereby eliminating uncertainties in the market, facilitating an early resumption of the supply of private niches, and allowing consumers to inter ashes of dedicated persons into niches sold before the cut-off time.</p>