

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance
(Chapter 132)

Public Health and Municipal Services Ordinance (Cemeteries) (Amendment of Fifth Schedule) Order 2012

INTRODUCTION

At the meeting of the Executive Council on 30 October 2012, the Council ADVISED and the Chief Executive ORDERED that the Public Health and Municipal Services Ordinance (Cemeteries) (Amendment of Fifth Schedule) Order 2012 (the Amendment Order) (**Annex**) should be made to delete the New Kowloon Cemetery No. 2 (Little Sisters of the Poor Cemetery) from Part II of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO) (the Fifth Schedule) and delete the Garden of Remembrance (GoR) at Cape Collinson from Part I of the same Schedule.

Annex

JUSTIFICATIONS

2. According to section 118(1) of the PHMSO, any person who, without the permission in writing of the Authority, buries any human remains, or deposits any urn or other receptacle containing any human remains, or scatters the ashes of any human remains after cremation, otherwise than in a cemetery, shall be guilty of an offence. The Fifth Schedule specifies places as “cemeteries” for the purpose of the Ordinance by listing out public and private cemeteries in Hong Kong.

(A) Closure of the New Kowloon Cemetery No. 2

3. The New Kowloon Cemetery No. 2 (Little Sisters of the Poor Cemetery) was first designated as a private cemetery in Part II of the Fifth Schedule in 1928. In 2003, the operator of the cemetery handed over the site for the redevelopment of the St. Joseph’s Home for the Aged. In February

2006, the Town Planning Board (TPB) approved the redevelopment proposal and the approval was further renewed in February 2010. The cemetery site now forms part of a lot in a land exchange proposal currently under negotiation between the lot owner and Lands Department.

4. The cemetery operator has confirmed that all human remains previously buried in the cemetery in question had already been relocated either to the Cheung Sha Wan Catholic Cemetery or to the Chai Wan Catholic Cemetery. The site is no longer used as a cemetery and should therefore be deleted from the Fifth Schedule.

(B) The GoR at Cape Collinson: Duplicated Listing in Parts I and VII of the Fifth Schedule

5. The GoR at Cape Collinson was built in 1962, before the enactment of the Cremation and Gardens of Remembrance Regulation (Cap. 132 sub. leg. M) (CGRR) in 1974. Hence, this GoR was included in Part I of the Fifth Schedule initially as a public cemetery. With the enactment of the CGRR in 1974, it would have been proper to (i) include the GoR at Cape Collinson under Part VII of the Fifth Schedule; and (ii) correspondingly delete the same GoR from Part I. The latter consequential amendment was however overlooked then. Except Cape Collinson, all the seven other GoRs were built after the enactment of CGRR.

6. The inclusion of the GoR at Cape Collinson in both Part I “Public Cemeteries” and Part VII “Gardens of Remembrance” of the Fifth Schedule is confusing. GoRs and public cemeteries are at present subject to provisions in two different pieces of subsidiary legislation, namely, the CGRR and the Public Cemeteries Regulation (Cap. 132 sub. leg. BI). We propose to remove the duplication by deleting the GoR at Cape Collinson from Part I of the Fifth Schedule.

OTHER OPTIONS

7. Short of amending the Fifth Schedule, there is no other alternative for delivering the updating and tidying-up exercise described in this brief.

THE AMENDMENT ORDER

8. The Amendment Order seeks to delete -

- (a) the New Kowloon Cemetery No. 2 (Little Sisters of the Poor Cemetery) at Clear Water Bay Road from Part II of the Fifth Schedule; and
- (b) the GoR at Cape Collinson from Part I of the Fifth Schedule.

9. Under section 113(3) of the PHMSO, the Chief Executive in Council may by order amend, or add any cemetery to or delete any cemetery from, the Fifth Schedule.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows -

Publication in the Gazette	9 November 2012
Tabling at Legislative Council for negative vetting	14 November 2012
Commencement of the Amendment Order	11 January 2013

IMPLICATIONS OF THE PROPOSAL

11. The proposal has no economic, financial or civil service implications. The proposal will facilitate land exchange at a future date. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. In February 2006, the TPB approved the redevelopment proposal pertaining to the site hitherto occupied by the New Kowloon Cemetery No. 2. The approval was further renewed in February 2010.

PUBLICITY

13. A press release has been published . A spokesman will be made available.

ENQUIRIES

14. Any enquiries on this brief may be addressed to Ms Joan Hung, Assistant Secretary for Food and Health (Food)3, on 3509 8702.

Food and Health Bureau
7 November 2012

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(Chapter 132)

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Annex - Public Health and Municipal Services Ordinance
(Cemeteries) (Amendment of Fifth Schedule)
Order 2012

**Public Health and Municipal Services Ordinance
(Cemeteries) (Amendment of Fifth Schedule) Order
2012**

(Made by the Chief Executive in Council under section 113(3) of the Public Health and Municipal Services Ordinance (Cap. 132))

1. **Commencement**
This Order comes into operation on 11 January 2013.
2. **Public Health and Municipal Services Ordinance amended**
The Public Health and Municipal Services Ordinance (Cap. 132) is amended as set out in section 3.
3. **Fifth Schedule amended (cemeteries, crematoria and gardens of remembrance)**
 - (1) Fifth Schedule, Part I—
Repeal
“Garden of Remembrance Cape Collinson”.
 - (2) Fifth Schedule, Part II—
Repeal
“New Kowloon Cemetery No. 2 Clear Water Bay
 (Little Sisters of the Poor Road, Kowloon”.
 Cemetery)

Clerk to the Executive Council

COUNCIL CHAMBER

2012

Explanatory Note

This Order amends the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) to—

- (a) delete the Garden of Remembrance at Cape Collinson from the list of public cemeteries; and
- (b) delete New Kowloon Cemetery No. 2 (Little Sisters of the Poor Cemetery) from the list of private cemeteries.