

立法會
Legislative Council

LC Paper No. CB(2)365/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

**Minutes of the second meeting
held on Saturday, 25 October 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP

**Public Officers : Item I
attending**

Mr Christopher WONG, JP
Deputy Secretary for Food and Health (Food)1
Food and Health Bureau

Miss Diane WONG
Principal Assistant Secretary for Food and Health
(Food)2
Food and Health Bureau

Ms Phyllis KO
Senior Assistant Law Draftsman (II)1
Department of Justice

Miss Cindy CHEUK
Government Counsel
Department of Justice

Mr Thomas LEUNG
Assistant Director/Existing Buildings 2
Buildings Department

Ms CHU Lan-ying, JP
Assistant Director (Grade Management &
Development)
Food and Environmental Hygiene Department

Ms Olga LAM, JP
Assistant Director (Estate Management) (Lands
Administration Office/Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning (Special Duties)
Planning Department

Attendance by : Item I
invitation

Session One

Civic Party

Ms Sunshine CHIU Sin-har
Hong Kong Island District Developer

Mr TANG Wing-cheong, Member of Sha Tin District
Council

Mr KWOK Chung-man

Mr WONG Yue-hon, Member of Sha Tin District
Council

Democratic Party

Mr AU Nok-hin
Spokesperson

Po Lam Chan Monastery Co. Ltd.

Mr Ernest KOO
Free Legal Advisor

Session Two

Alliance against to Chung Woo Ching Sai's Columbarium
in Ma Wo

Ms LEUNG Yat-sze
Convenor

新峰大聯盟反對政府縱容違規龕場小組

Mrs LEUNG CHANG Ling-ying
Member

要求立法規管私營骨灰龕大埔聯盟

Ms Eulis LIU
Member

新峰大聯盟立法規管骨灰龕政策倡議組

Mr CHAN Wing-cheong

Member

新峰大聯盟取締違規龕場關注組

Ms NG Suet-fong

Member

Lo Wai Columbarium Concern Group

Ms CHUNG Yuk-ying

Member

關注仁孝宗祠違規龕場行動組

Mr LAU Yuk-yin

Member

友愛之友

Mrs HO FU Chuen-ha

Member

道風之友

Mrs SIN MA Kit-ching

Member

Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy)

Mr Eddie TSE Sai-kit

Convenor

抗議食衛局推卸責任行動組

Mr Larry HUI

Member

上禾輦村民

Ms KO Mei-ying

道風山環境關注組

Mr Paul LAU
Member

Mr TSE Shing-kong

Mr Pius YUM Kwok-tung, Member of Kowloon City
District Council

青山村反對骨灰龕關注組

Mr CHUNG
Member

明月山索償大聯盟

Ms Kitty FUNG
Member

要求即規即管即立法骨灰龕大聯盟

Miss WONG
Member

抗議極樂寺違規骨灰龕行動組

Mr CHANG Wai-hung
Member

Doctoral Exchange

Mr Francis CHEUNG Neoton
Convenor

**Clerk in
attendance**

: Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with deputations and the Administration

[File Ref: FH CR 2/3751/07; LC Paper Nos. CB(3)740/13-14, LS66/13-14, CB(2)2121/13-14(01), CB(2)2141/13-14(01), CB(2)2338/13-14(01) to (08), CB(2)2365/13-14(01), CB(2)12/14-15(01) to (03), CB(2)33/14-15(01), CB(2)75/14-15(01) and CB(2)172/14-15(01) to (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide a written response to the deputations' views on the Bill.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)305/14-15(01) (English version on 21 November 2014; Chinese version on 24 November 2014).)

II. Date of next meeting

3. Members noted that the next meeting of the Bills Committee would be held on Tuesday, 25 November 2014 at 2:30 pm.

III. Any other business

4. There being no other business, the meeting ended at 5:33pm.

Council Business Division 2
Legislative Council Secretariat
28 November 2014

**Proceedings of the second meeting of the
Bills Committee on Private Columbaria Bill
on Saturday, 25 October 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

| Time marker | Speaker(s) | Subject(s) | Action required |
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| <i>Agenda item I – Meeting with deputations and the Administration</i> | | | |
| Session One | | | |
| 000611 - 001211 | Chairman | Opening remarks | |
| 001212 - 001510 | Civic Party | Presentation of views [LC Paper No. CB(2)2365/13-14(01)] | |
| 001511 - 001840 | Mr TANG Wing-cheong, Member of Sha Tin District Council | Presentation of views [LC Paper No. CB(2)172/14-15(01)] | |
| 001841 - 002155 | Mr KWOK Chung-man | Presentation of views [LC Paper No. CB(2)12/14-15(03)] | |
| 002156 - 002504 | Mr WONG Yue-hon, Member of Sha Tin District Council | Presentation of views | |
| 002505 - 002802 | Democratic Party | Presentation of views [LC Paper No. CB(2)172/14-15(02)] | |
| 002803 - 003156 | Po Lam Chan Monastery Co. Ltd. | Presentation of views [LC Paper No. CB(2)2338/13-14(02)] | |
| 003157 - 003346 | Mr TANG Wing-cheong, Member of Sha Tin District Council | Presentation of views | |
| 003347 - 003644 | Miss CHAN Yuen-han Po Lam Chan Monastery Co. Ltd. Admin | At the request of Miss CHAN Yuen-han, the representative of Po Lam Chan Monastery Co. Ltd. elaborated the views of Po Lam Chan Monastery Co. Ltd. on the Bill. Miss CHAN Yuen-han's view that the Administration should consider exempting storage of ashes of monks from the licensing scheme, subject to prescribed criteria and conditions. The Administration responded that issues relating to granting exemption should be carefully handled. It would consider the view on granting exemption to columbarium facilities run by religious bodies. | |
| 003645 - 004221 | Mr Tony TSE Civic Party Admin | The response of the representative of the Civic Party to Mr Tony TSE's enquiry about its proposal to conduct public consultation on the | |

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| | | <p>Bill.</p> <p>The Administration explained that –</p> <p>(a) the Town Planning Board ("TPB") would take into account public views when considering planning applications. If the proposed Private Columbaria Licensing Board ("the Licensing Board") considered it appropriate, it might publish a notice of a licence application and consider public views; and</p> <p>(b) exemption for pre-Bill columbaria would be subject to the fulfilment of stringent criteria as set out in the Bill. When granting a licence, exemption or temporary suspension of liability ("TSOL"), the Licensing Board might impose conditions on measures for minimizing nuisance caused by the operation of the columbarium to the neighbourhood.</p> <p>Mr Tony TSE's view that the Administration should provide members with its views regarding granting exemption to columbarium facilities run by religious bodies when the Bills Committee scrutinized the Bill.</p> <p>Mr TSE enquired about the enforcement actions to be taken against non-compliant columbarium operators during the period of exemption.</p> | |
| 004222 - 004849 | Mr WU Chi-wai Mr WONG Yue-hon, Member of Sha Tin District Council Admin | <p>Mr WONG Yue-hon's response to Mr WU Chi-wai's enquiry about the views of the New People Party and the Civil Force on the provision of a public columbarium in Shek Mun, Shatin.</p> <p>Mr WU Chi-wai enquired about –</p> <p>(a) whether the administrative notification scheme ("notification scheme") covered niches already sold but ashes yet to be interred as at the Bill announcement time (長生祿位), the number of operators who had responded to the notification scheme and the number of niches involved; and</p> <p>(b) whether the operators who had applied for TSOL could continue to sell or let out unoccupied niches.</p> <p>The Administration responded that –</p> | |

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| | | <p>(a) as at 24 October 2014, 139 operators had responded to the notice served by the Food and Environmental Hygiene Department ("FEHD") under the notification scheme. Over 97.6% of the cases on the Development Bureau ("DEVB")'s List of Private Columbaria known to the Government already joined the notification scheme;</p> <p>(b) to be eligible for exemption, a pre-Bill columbarium must have ceased sale or letting out of new or unoccupied niches as from the Bill announcement time (i.e. 8:00 a.m. on 18 June 2014);</p> <p>(c) upon commencement of the Private Columbaria Ordinance ("the Ordinance"), unless as authorised in a licence, one who sold or let out niches in respect of a columbarium would contravene the relevant provision of the Ordinance; and</p> <p><i>(Post-meeting note: the Administration advised that Section 8(1) of the Ordinance was relevant. Also, the holder of TSOL must ensure that the number of sets of ashes kept in the pre-Bill columbarium was limited to the total number of sets of ashes that were kept in the columbarium as at the material time, i.e. –</i></p> <p>(i) the enactment date, if there was only an accompanying licence application; or</p> <p>(ii) the Bill announcement time, if there was any accompanying exemption application.);</p> <p>(d) a more stringent approach was adopted for handling cases where "niches are already sold but the ashes are yet to be interred as at the Bill announcement time" to guard against abuse. Now that the Administration had a clearer picture about the situation on the ground through information obtained under the notification scheme, and without prejudice to the pre-requisite of guarding against abuse, the Administration stood ready with an open mind to discuss with the Bills Committee a pragmatic way to handle such cases.</p> | |
| 004850 - 005400 | Deputy Chairman | At the request of the Deputy Chairman, Mr | |

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| | Mr KWOK Chung-man | <p>KWOK Chung-man elaborated his views on the Bill.</p> <p>In response to the Deputy Chairman's concern about consumer protection, the Administration advised that, in the past few years, it had been making efforts to enhance consumer education, warn the public of the risks of patronizing private columbaria and advise consumers of the need to protect their interests. The Administration would continue the work in this regard.</p> | |
| 005401 - 010032 | Dr Helena WONG Admin | <p>Dr Helena WONG expressed the support of the Democratic Party for the introduction of a licensing scheme for private columbaria.</p> <p>Dr WONG expressed concern about the effectiveness of the enforcement actions against unauthorized columbaria. She enquired about how the Bill, if passed, would help rectify the problem of unauthorized columbaria and whether conditions under which exemption would not be granted would be specified in the Bill.</p> <p>The Administration explained that –</p> <p>(a) before the commencement of the Ordinance, the relevant government departments would continue to enforce against unauthorized columbaria under the existing legislation; and</p> <p>(b) when the licensing scheme was in force, operators without a licence could not offer niches for sale or letting. FEHD would take necessary enforcement actions against private columbaria which had not applied or were unsuccessful in their applications for TSOL/exemption/licence. As regards other relevant government departments, they could also follow up, as provided for under the relevant legislation prevailing at that time.</p> <p>The Administration reiterated the proposed requirements to be met by pre-Bill columbaria in seeking exemption status, as set out in the Bill.</p> | |
| 010033 - 011458 | Break | | |
| Session Two | | | |
| 011459 - 011800 | Chairman | Introductory remarks | |

| Time marker | Speaker(s) | Subject(s) | Action required |
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| 011801 - 011806 | Lo Wai Columbarium Concern Group | Presentation of views | |
| 011807 - 013050 | Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy) Deputy Chairman Dr Helena WONG Miss CHAN Yuen-han | Views on the display of messages at the meeting venue by deputations. | |
| 013051 - 013425 | 關注仁孝宗祠違規龕場行動組 | Presentation of views | |
| 013426 - 013625 | 友愛之友 | Presentation of views | |
| 013626 - 013935 | 道風之友 | Presentation of views | |
| 013936 - 014308 | Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy) | Presentation of views | |
| 014309 - 014618 | 抗議食衛局推卸責任行動組 | Presentation of views | |
| 014619 - 014924 | 上禾輦村民 | Presentation of views | |
| 014925 - 015439 | 道風山環境關注組 | Presentation of views | |
| 015440 - 015528 | Mr TSE Shing-kong | Presentation of views | |
| 015529 - 015921 | Mr Pius YUM Kwok-tung, Member of Kowloon City District Council | Presentation of views | |
| 015922 - 020257 | 明月山索償大聯盟 | Presentation of views | |
| 020258 - 020345 | 要求即規即管即立法 骨灰龕大聯盟 | Presentation of views | |
| 020346 - 020604 | 抗議極樂寺違規骨灰龕行動組 | Presentation of views | |
| 020605 - 021913 | Doctoral Exchange | Presentation of views [LC Paper Nos. CB(2)2338/13-14(01) and CB(2)12/14-15(02)] | |
| 021914 -021200 | Alliance against to Chung Woo Ching Sai's Columbarium in Ma Wo | Presentation of views | |
| 021201 -021344 | 新峰大聯盟反對政府 | Presentation of views | |

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| | 縱容違規龕場小組 | | |
| 021345 - 021655 | 要求立法規管私營骨灰龕大埔聯盟 | Presentation of views | |
| 021656 - 021815 | 新峰大聯盟取締違規龕場關注組 | Presentation of views | |
| 021816 - 022312 | Mr Tony TSE Admin | <p>Mr Tony TSE's enquiries and concern about –</p> <p>(a) whether the Administration would withhold enforcement actions against unauthorized columbaria during the processing of their applications for a licence;</p> <p>(b) whether the operators of such columbaria could increase the number of niches when their applications for licence were being processed; and</p> <p>(c) the steps the Administration would take to address the concerns of some deputations that some operators of unauthorized columbaria might take advantage of the exemption mechanism to increase the number of niches.</p> <p>The Administration responded that –</p> <p>(a) operators applying for exemption could not sell or let out niches from the Bill announcement time onwards, or else they would lose their eligibility to apply for exemption. No sale or letting out of niches would be allowed unless or until the operator had obtained a licence;</p> <p>(b) on town planning, land and building-related requirements, the relevant government departments would continue to take the necessary enforcement actions under their purview against columbaria, as provided for under the relevant legislation. After commencement of the Ordinance, FEHD would be the enforcement agency for the Ordinance, and would, in accordance with the relevant provisions in the Ordinance, take necessary actions against columbaria which had not applied or were unsuccessful in their applications for TSOL/exemption/licence; and</p> <p>(c) consumers who chose to purchase or rent private niches before the commencement of</p> | |

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| | | <p>the Ordinance should pay attention and ascertain if contract terms were in place to protect their interests. They should refrain from making rash decisions. Prior to obtaining sufficient information, members of the public might consider renting a niche on a short-term basis. They should seek independent legal advice where necessary.</p> | |
| 022313 - 022606 | <p>Mr Tony TSE 要求立法規管私營骨 灰龕大埔聯盟 Admin</p> | <p>At the request of Mr Tony TSE, the representative of 要求立法規管私營骨灰龕大埔聯盟 provided information on a non-compliant columbarium in Tai Po.</p> | |
| 022607 - 022836 | <p>Dr Helena WONG Chairman Admin</p> | <p>Referring to some deputations' view that members of the Bills Committee should declare whether they were operating private columbaria, Dr Helena WONG enquired about how the Chairman would handle the matter. Dr WONG declared that she did not operate any columbarium.</p> <p>The Chairman responded that –</p> <p>(a) members should comply with Rule 83A of the Rules of Procedure which set out requirements for disclosure of Members' personal pecuniary interest and declared interest, if any, in the matter under discussion; and</p> <p>(b) he had declared at the first meeting of the Bills Committee that he was a consultant of the board of governors of a religious body which had run a columbarium but would no longer sell niches. He had also declared at that meeting that he was not involved in the management of the columbarium concerned and had no direct or indirect pecuniary interest in the religious body concerned.</p> | |
| 022837 - 023807 | <p>Dr Helena WONG Mr LEUNG Kwok-hung Admin</p> | <p>Dr Helena WONG expressed concern about whether the Bill could address the problem of unauthorized columbaria. She enquired about the actions the Administration would take to deal with unauthorized structures on private columbaria and how it would handle the problem of some unauthorized columbaria applying for both exemption and a licence.</p> <p>The Administration responded that –</p> <p>(a) an operator must ensure that his/her columbarium fulfilled the requirements</p> | |

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| | | <p>relating to building safety and other safety matters as set out in the Bill. Relevant guidelines would be promulgated for the qualified professionals engaged by the operators;</p> <p>(b) in granting exemption, the Licensing Board would state clearly in the approved plan the ash interment layout (paraphrased as “exempted area” in layman term). Such exempted area would not be too extensive and would be confined to those premises with ashes interred in the niches before the Bill was announced;</p> <p>(c) in theory, an operator could submit an application for a licence for places outside the exempted area in the columbarium if the premises concerned were stand-alone and separated premises. A licence applicant needed to satisfy the Licensing Board that the premises must comply with the requirements in respect of land, town planning, building safety and that he/she had the right to use the premises. The licence applicant was also required to submit a management plan. Where applicable, planning applications would be required for licence applications. The traffic impact assessment on the cumulative traffic flow and the public's views would be taken into account at the stage of processing the planning applications. If the Licensing Board considered it appropriate, it would also consider the public's views at the stage of processing the licence applications. It would not be easy for the aforesaid columbaria to meet such stringent requirements; and</p> <p>(d) the Buildings Department had taken enforcement actions according to its extant enforcement policy against Unauthorized Building Works ("UBWs") found in private columbaria, including prosecution against owners of relevant premises for non-compliance with orders served under the Buildings Ordinance (Cap. 123) for the removal of UBWs.</p> <p>Mr LEUNG Kwok-hung's enquiry and view that –</p> <p>(a) whether the Administration would provide additional manpower to take enforcement</p> | |

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| | | <p>actions against unauthorized columbaria;</p> <p>(b) the Administration should make a pledge on taking enforcement actions against unauthorized columbaria after the passage of the Bill; and</p> <p>(c) the Administration should seek funding, if necessary, for stepping up enforcement actions against unauthorized columbaria.</p> <p>The Administration responded that after the commencement of the Ordinance, FEHD would be equipped with the necessary manpower for processing applications and taking enforcement actions under the licensing regime.</p> | |
| 023808 - 024336 | Deputy Chairman Admin | <p>The Deputy Chairman's views that –</p> <p>(a) the Administration should meet the expectation of some deputations that the licensing scheme would put an end to the nuisances caused by unauthorized columbaria; and</p> <p>(b) to protect consumers' interests, the agents of operators and the operation of private columbaria including the sale of interment rights should also be regulated.</p> <p>The Administration responded that –</p> <p>(a) Part 5 and Schedule 4 of the Bill set out requirements about agreement for sale of interment rights and prescribed information, recommendations and essential terms in agreement for sale of interment rights. The Administration would consider drawing up sample templates for such agreements for the easy reference of consumers and operators; and</p> <p>(b) the introduction of the Bill was already a big step forward. It would be more appropriate for the Administration to focus on the licensing scheme, rather than diverting attention at this stage to explore the suggestion of regulating agents of operators.</p> | |
| 024337 - 024713 | Chairman Admin | <p>In response to the deputations' major views, the Administration explained the policy objectives of the licensing scheme and advised that –</p> <p>(a) upon the commencement of the Ordinance,</p> | |

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| | | <p>FEHD could take enforcement actions against columbaria which had not applied or were unsuccessful in their applications for TSOL/exemption/licence;</p> <p>(b) whether it was appropriate to expand the scope of regulation over private columbaria in the medium to longer term would depend on how well the three-pronged strategy (i.e. promoting green burials, a robust supply of public niches and regulation of private columbaria) was serving the overall interest of the community in the course of time; and</p> <p>(c) the Administration would provide a written response to deputations' views after the meeting.</p> | Admin |
| 024714 - 025046 | 道風之友 | Presentation of views | |
| 025047 - 025223 | Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy) | Presentation of views | |
| 025224 - 025324 | 抗議食衛局推卸責任行動組 | Presentation of views | |
| 025325 - 025436 | Mr Pius YUM Kwok-tung, Member of Kowloon City District Council | Presentation of views | |
| 025537 - 025527 | 抗議極樂寺違規骨灰龕行動組 | Presentation of views | |
| 025528 - 025630 | Doctoral Exchange | Presentation of views | |
| 025631 - 030335 | Chairman Admin | <p>The Administration responded to the deputations' views that –</p> <p>(a) through the notification scheme, the Administration had a grasp of the number of sold and occupied niches, sold but not yet occupied niches and niches available for sale. The Administration would endeavor to come up with more accurate figures of such niches, through verifying the information collected from the operators;</p> <p>(b) the Administration had explained to the public the provisions of the Trade Descriptions Ordinance (Cap. 362) and the</p> | |

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| | | <p>sanction against violation of Cap. 362 on a number of occasions. Upon receiving reports of suspected contraventions, the Customs and Excise Department would take appropriate actions, including instituting prosecution, against anyone found violating Cap. 362;</p> <p>(c) undertakers were already regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and the Undertakers of Burials Regulation (Cap. 132CB). As regards applications for an undertaker's licence received since December 2008, even if granted, temporary storage of ashes would not be allowed. At present, there remained 81 undertakers whose licences did not debar temporary storage of ashes within their premises. Part 7 and Schedule 5 of the Bill (which dealt with the ash disposal procedures) applied to undertakers, while other parts of the Bill did not apply to them. The Administration was following up proposals to impose more stringent conditions under the undertakers' licences through Cap. 132 and Cap. 132CB so as to tighten up the regulation over temporary storage of ashes;</p> <p>(d) the public consultation on private columbaria licensing scheme had touched on the setting up of maintenance fund by operators. The business impact assessment consultants proposed to use an "outcome-based approach" as an alternative to the maintenance fund, namely requiring operators to submit regular maintenance reports that were certified by professionals. Operators could opt for setting up a maintenance fund although there was no statutory requirement. This might well be in their interests to do so, as consumers would likely have greater confidence in patronizing their columbaria and be more willing to pay a higher price for their niches. To facilitate consumers to make informed decisions, it was proposed under the Bill that operators should alert consumers on the financial risks involved. Information about the availability of such an optional maintenance fund or otherwise might be provided in that context;</p> <p>(e) while the Town Planning Ordinance (Cap.</p> | |

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| | | <p>131) did not restrict the number of planning applications submitted by the same applicant, TPB would seek the relevant government departments' views and examine each and every application prudently. In areas where there was enforcement power under Cap. 131, the Planning Authority would take enforcement action against unauthorized development when there was sufficient evidence. In a number of previous cases, the Planning Authority was successful in taking prosecution action against unauthorized columbarium development; and</p> <p>(f) the Lands Department ("LandsD") would take enforcement action against unauthorized columbarium according to applicable practices and procedures. In the case of Gig Lok Monastery ("GLM"), LandsD had taken prosecution actions against unlawful occupation of government land for columbarium use several times. Recent inspection showed that the number of niches on government land had substantially decreased. LandsD would recover the land in question after GLM had made arrangements with the consumers concerned on the handling of interred ashes on government land.</p> | |
| 030335 - 030349 | Chairman | Date of next meeting | |