

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1091/14-15

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/9/13

**Bills Committee on Private Columbaria Bill**

**Minutes of the fifth meeting  
held on Friday, 23 January 2015, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

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

**Members absent** : Hon CHEUNG Kwok-che  
Hon WONG Yuk-man  
Hon CHAN Han-pan, JP  
Dr Hon Helena WONG Pik-wan  
Hon Christopher CHUNG Shu-kun, BBS, MH, 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 YU Tak-cheung  
Assistant Director/New Buildings 1  
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

**Clerk in** : Mr Colin CHUI  
**attendance** Chief Council Secretary (2) 4

**Staff in** : Ms Wendy KAN  
**attendance** Assistant Legal Adviser 6

Ms Catherina YU  
Senior Council Secretary (2) 4

Miss Maggie CHIU  
Legislative Assistant (2) 4

Action

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**I. Meeting with 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(07) to (08), CB(2)389/14-15(01) CB(2)431/14-15(01) to (04) and CB(2)630/14-15(01)]

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

2. The Bills Committee requested the Administration to provide –

- (a) a table detailing the types of non-compliance found in private columbaria, the location of non-compliant columbaria and how the Government dealt with such non-compliance;
- (b) information on the implications of the Private Columbaria Ordinance on other Ordinances (with the relevant provisions indicated);
- (c) information on the enforcement actions taken against unauthorized columbaria;
- (d) information on the eligibility criteria for specified instruments (i.e. a licence, an exemption or a temporary suspension of liability) under the Bill to be fulfilled by applicants; and
- (e) written response to the submission from Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy) (LC Paper No. CB(2)714/14-15(02)).

**II. Any other business**

3. There being no other business, the meeting ended at 10:31am.

Council Business Division 2  
Legislative Council Secretariat  
19 March 2015

**Proceedings of the fifth meeting of the  
Bills Committee on Private Columbaria Bill  
on Friday, 23 January 2015, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000621 - 000924	Chairman	Opening remarks	
000925 - 003840	Admin	A powerpoint presentation by the Administration on its responses to members' views on building-related requirements raised at the meeting on 25 November 2014. The presentation materials (LC Paper No. CB(2)714/14-15(01)) were tabled at the meeting.	
003841 - 004503	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's concerns that –</p> <p>(a) as it might be difficult to ascertain whether the ashes in a pre-Bill columbarium were interred before the Bill announcement time (i.e. at 8:00 am on 18 June 2014), it might give rise to a lot of disputes or law suits; and</p> <p>(b) the term "modifications" applicable to building-related requirements under the Bill might cause misunderstanding.</p> <p>The Administration's response that –</p> <p>(a) the onus was on operators of private columbaria to satisfy the future Private Columbaria Licensing Board ("Licensing Board") with evidence that the ashes were interred before the Bill announcement time. A person committed an offence if he/she provided information that was false or misleading in a material particular in, or in connection with, his/her application under the Bill;</p> <p>(b) the Food and Environmental Hygiene Department ("FEHD") had approached the operators who had responded to the administrative notification scheme ("Notification Scheme") soon after the Bill announcement time and collected information on niches (as at the Bill announcement time), including the number of and photos on sold and occupied niches, sold but not yet occupied niches, and niches available for sale. Such information would</p>	

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		<p>be useful for the Licensing Board in considering an application for a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability); and</p> <p>(c) the building-related requirements under the Bill were tightly ring-fenced provisions. Only structures certifiable for a pre-Bill columbarium (i.e. non-compliant structures existing immediately before the Bill announcement time that fell within tightly ring-fenced descriptions, e.g. confined to structures containing niches (with at least a niche so used before the Bill announcement time) and essential ancillary facilities supporting the operation of the columbarium) would be considered and compliance with the requirements of certification by an authorized person ("AP") or registered structural engineer ("RSE") would be required. Also, there were safeguards against aggravation beyond the structures certifiable for a pre-Bill columbarium shown in the plans approved by the Licensing Board.</p> <p>The Administration's response to Mr WONG's enquiry that applications for specified instruments by pre-Bill columbarium operators, who did not respond to the Notification Scheme, would still be considered. They, however, had to prove their pre-Bill columbarium status and provide reasons for not participating in the Notification Scheme.</p> <p><i>(Post-meeting note:</i> The Government advised that under the Bill, the Licensing Board might treat the applicant as having failed to prove to its satisfaction any notifiable particulars, unless he/she proved them by the records compiled under the Notification Scheme. The Licensing Board might, in its sole and absolute discretion, consider other evidence, if the applicant satisfied the Licensing Board that he/she was precluded from participating in the Notification Scheme by circumstances beyond his/her control and produced evidence of probative value comparable to evidence referred to above (records compiled under the Notification Scheme)).</p>	
004504 - 005218	Chairman Mr LEUNG Che-cheung Admin	Mr LEUNG Che-cheung disagreed that structures certifiable for a pre-Bill columbarium fulfilling the requirements of certification by	

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		<p>AP/RSE would be considered. He was concerned that many New Territories ("NT") small buildings, which could be captured as structures certifiable for a pre-Bill columbarium under the Bill, would be used for columbarium operation. Local residents would have strong opposition if these columbaria were located near residential areas and caused nuisance to the neighbourhood.</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) structures certifiable for a pre-Bill columbarium were confined to those existing immediately before the Bill announcement time. These had to satisfy the tightly ring-fenced provisions under Schedule 2 to the Bill;</li> <li>(b) the Bill empowered the Licensing Board to refuse a licence application on failure to comply with the building-related requirements. However, the Licensing Board might decide not to refuse a licence application for a pre-Bill columbarium, if certain conditions were met, including: (i) the non-compliant structures necessary for, or ancillary to, the operation of the columbarium were structures certifiable for a pre-Bill columbarium; and (ii) the requirements of certification of such structures by AP/RSE were complied with;</li> <li>(c) NT small buildings were clearly defined in the Bill as buildings meeting the descriptions on dimensional specifications in Schedule 2 to the Bill, which were similar to those under the relevant provisions under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121);</li> <li>(d) the Administration sought to contain the problem, through a cut-off time (the Bill announcement time). According to the Notification Scheme, returns were received from most of the cases on the Information on Private Columbaria maintained by the Development Bureau (DEVB's List) and some cases outside DEVB's List; and</li> <li>(e) the Licensing Board would consider each application according to the circumstances of the individual private columbarium concerned. Should the Licensing Board consider it appropriate, the views of residents in the community would be considered.</li> </ul>	

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		<p>The Licensing Board could impose conditions stipulating measures to minimize nuisance caused by the operation of the columbarium to the neighbourhood as appropriate.</p> <p>The Administration's response to Mr LEUNG's enquiry that it would separately brief the Bills Committee on the regulation of undertakers of burials, as set out in the Administration's paper (LC Paper No. CB(2)431/14-15(02)).</p>	
005219 - 010000	Chairman Mr Tony TSE Admin	<p>Mr Tony TSE's enquiries and concern that –</p> <ul style="list-style-type: none"> <li>(a) whether the Administration had made assessments on the number of private columbaria which might be unsuccessful in applying for specified instruments;</li> <li>(b) whether amendments to the building-related and planning-related legislation were required to complement the system of certification by AP/RSE for certifiable structures for pre-Bill columbaria; and</li> <li>(c) the Licensing Board might be influenced by political considerations when considering applications for specified instruments, and be lax in setting certain approval criteria.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) it was for the Licensing Board to decide whether a private columbarium was eligible for a particular type of specified instrument, in the light of the circumstances of the individual private columbarium concerned. The Administration would not know at this stage the number of private columbaria which would not apply or be unsuccessful in applying for specified instruments. The Administration had plans to increase the capacity of its temporary storage facilities for ashes. Those in need of facilities for the temporary storage of interred ashes displaced from closed-down private columbaria could apply;</li> <li>(b) non-compliant structures would remain unauthorized building works. They were tolerated during the term of the relevant specified instrument under the licensing scheme, provided that they were in compliance with the relevant requirements for the purposes of applications for specified instruments. The Bill had set out the implications of the Private Columbaria</li> </ul>	

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		<p>Ordinance ("the Ordinance") on other Ordinances (Part 10 of the Bill). These would be elaborated in detail at subsequent meetings of the Bills Committee; and</p> <p>(c) the Licensing Board was a statutory licensing authority and would consider each and every application in accordance with the Ordinance. Members could give views on the eligibility criteria for specified instruments during the clause-by-clause examination of the Bill.</p>	
010001 - 010843	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's view that it was unacceptable for the Administration to tolerate private columbaria which were not in compliance with building-related, planning-related or land-related requirements. The Administration should not condone these columbaria and should take enforcement actions against them.</p> <p>The Administration's response that –</p> <p>(a) the feedback received during the past two public consultation exercises suggested that the Administration should consider a pragmatic approach for resolving the problems inherited from the past;</p> <p>(b) the relevant government departments would continue to take the necessary enforcement actions under their purview against unauthorized columbaria, as provided for under the relevant legislation before receipt of an application for a specified instrument;</p> <p>(c) the proposed licensing regime would provide for more effective enforcement. After commencement of the Ordinance, a columbarium would not be allowed to sell or let out new or unoccupied niches unless its operation was covered by a licence. FEHD would be the enforcement agency for the Ordinance and would, in accordance with the relevant provisions of the Ordinance, take necessary actions against private columbaria which had not applied or were unsuccessful in their applications for specified instruments. Other relevant government departments could also follow up as provided for under the relevant legislation prevailing at that time. The introduction of the Bill represented a big step forward as compared to the current situation; and</p>	



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		<p>(d) a licence for operating a columbarium would be revoked or would not be renewed if an operator failed to fulfil the requirements and conditions in all respects throughout the licence term.</p> <p>The Chairman's view that while allowance was provided for structures certifiable for a pre-Bill columbarium under the Bill, these structures were still unauthorized building works in nature. They were tolerated, as opposed to being legalized.</p> <p>The Administration further advised that as part of the requirements of certification by AP/RSE, the Licensing Board could require works in respect of structures certifiable for a pre-Bill columbarium to be carried out in accordance with the requirements that it thought fit to impose. In granting a licence or an exemption, the Licensing Board might impose conditions on measures relating to building safety, e.g. requiring the submission of certificates or reports by AP/RSE to the Licensing Board at regular intervals.</p>	
010844 - 011818	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN's views that –</p> <p>(a) the Administration should have zero tolerance for unlawful occupation of government land and breaches of Deeds of Mutual Covenant ("DMC"). Private columbaria which were illegally occupying government land or were in breach of DMC should not be granted exemption; and</p> <p>(b) a pre-Bill columbarium, even if it was allowed to continue its operation, should be required to rectify structural and managerial non-compliance within a stipulated timeframe.</p> <p>Mr CHAN requested the Administration to provide a table detailing the types of non-compliance found in private columbaria, the location of non-compliant columbaria and how the Administration dealt with such non-compliance.</p> <p>The Administration's response that –</p> <p>(a) there was no room for compromise on matters related to building safety. This had been strictly adhered to in formulating provisions in the Bill;</p>	Admin

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		<p>(b) the land use specified as a condition in a land lease could not be changed during its term, unless with the agreement of both the Government and the lessee. The lessee was required to apply to the Lands Department ("LandsD") for lease modification. A premium would be incurred by a lessee seeking lease modification. Without doing so, he would not be able to meet the land requirements for the purpose of seeking a licence;</p> <p>(c) on DMC, clause 17 of the Bill stipulated that the Licensing Board must have regard to public interest in determining an application for a specified instrument. Under the experience of another licensing regime with a similar provision, the licensing authority would decide on a case by case basis having regard to, inter alia, the following (if any was raised): (i) public's views about the relevant DMC provisions and (ii) the operator's representations in response to such points;</p> <p>(d) under clause 13 of the Bill, the Licensing Board might refuse an application for the issue of a licence in respect of a columbarium if the applicant failed to comply with all the land-related, planning-related and building-related requirements. These requirements were set out in Schedule 2 to the Bill. Clause 14 of the Bill provided for modifications of clause 13 for pre-Bill columbaria under certain strictly-defined criteria; and</p> <p>(e) under the Bill, the Licensing Board might impose conditions on a licence or an exemption in respect of a pre-Bill columbarium, stipulating measures for minimizing the environmental nuisance caused to the neighbourhood by the columbarium operation as appropriate.</p> <p>Mr CHAN said that the provisions on modifications under the Bill should be dealt with thoroughly by the Bills Committee during the clause-by-clause examination of the Bill.</p>	
011819 - 012735	Chairman Mr Tony TSE Admin Assistant Legal Adviser 6 ("ALA6")	<p>Mr Tony TSE's concern and view that –</p> <p>(a) exemption for pre-Bill columbaria which were not in compliance with the statutory and government requirements would affect</p>	

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		<p>other relevant government departments/authorities in exercising their powers to enforce the relevant legislation under their purview. He cast doubt on whether it was appropriate from the legal point of view; and</p> <p>(b) the Administration should take enforcement actions against the seven private columbaria listed on Part B of DEVB's List which were not covered by land leases (as mentioned in the Administration's paper (LC Paper No. CB(2)431/14-15(01)). Otherwise, it would give an impression that the Administration was prepared to tolerate violations of fundamental principles.</p> <p>The Administration's response that –</p> <p>(a) it would provide information on Part 10 of the Bill, setting out the implications of the Ordinance on other Ordinances. For instance, it stipulated the circumstances under which a few provisions on enforcement under other Ordinances did not apply;</p> <p>(b) under the Bill, cross-references were made to the relevant provisions under the Town Planning Ordinance (Cap. 131), the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and the Buildings Ordinance (Cap. 123); and</p> <p>(c) for the seven private columbaria mentioned in the Administration's paper, whilst they were not covered by land leases, they were covered by other instruments, e.g. government land licences or short term tenancies. They were hence not unlawful occupation of government land per se.</p> <p>Mr TSE's enquiry about whether it was necessary to make related and consequential amendments to Cap. 123 having regard to the building-related exemptions provided in the Bill.</p> <p>ALA6 responded that Part 10 and Part 11 of the Bill provided for implications on, and related and consequential amendments to other Ordinances. Given the complexity of the issues, members might have a better understanding of the subject matter when examining the relevant clauses of the Bill.</p> <p>The Administration's response to the Chairman's enquiry that private columbaria with unlawful</p>	Admin

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		<p>occupation of government land would not be considered as having fulfilled the land-related requirements specified in the Bill. If relevant operators wished to apply for a licence or an exemption, they would have to apply to LandsD for regularizing the occupation of such land.</p>	
012736 - 013603	<p>Chairman Mr LEUNG Kwok-hung Admin</p>	<p>Mr LEUNG Kwok-hung enquired about the protection of consumers before commencement of the Ordinance. His views that –</p> <ul style="list-style-type: none"> <li>(a) to protect consumers, marketing activities and operation of private columbaria which were not in compliance with the statutory and government requirements should be forbidden; and</li> <li>(b) the Administration did not plug the loopholes in the operation of unauthorized private columbaria in drafting the Bill. It should take enforcement actions against these private columbaria and consider applying for injunction orders to restrain the unlawful use of government land for columbarium operation when other enforcement actions could not resolve the problem.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) upon commencement of the Ordinance, all operators of private columbaria must obtain a licence before they could sell or let out niches, and enforcement actions would be taken against unlicensed columbaria;</li> <li>(b) whilst the Ordinance could not resolve all the problems inherited from the past, it would serve to contain the problem and prevent aggravation as well as lay the foundation for progressive improvements in the course of time;</li> <li>(c) operators of pre-Bill columbaria were required to complete regularization/rectification in order to obtain a licence. Their applications would be subject to the scrutiny of the Licensing Board;</li> <li>(d) the relevant government departments would continue to take necessary enforcement actions under their purview against unauthorized columbaria, as provided for under the relevant legislation before receipt of an application for a specified instrument; and</li> </ul>	

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		<p>(b) for the benefit of consumers and the columbarium trade, the Bills Committee should commence clause-by-clause examination of the Bill as soon as practicable.</p> <p>The Administration explained that temporary suspension of liability ("TSOL") allowed a pre-Bill columbarium to continue operation (without selling interment rights) whilst action was being taken by the operator to apply to relevant government departments for regularization/rectification (as applicable) in order to obtain a licence or exemption (as the case may be). The Licensing Board would decide on the period of TSOL in respect of a columbarium after considering the relevant application, but it would be set at no more than three years for the first time, and might be extended for no more than three years if warranted.</p> <p>To facilitate the Bills Committee's work and on the premise that the work of the Licensing Board would not be affected, the Deputy Chairman requested the Administration to provide the Bills Committee with information on the eligibility criteria for specified instruments under the Bill to be fulfilled by applicants.</p> <p>The Administration responded that it would give some thoughts to the Deputy Chairman's request and consider how to provide the information requested.</p> <p>The Chairman's view that the Bills Committee should move on to clause-by-clause examination as soon as practicable but it was also important to first sort out matters of principle.</p>	Admin
015012 - 015748	Chairman Mr Albert CHAN Mr WONG Kwok-hing Admin	<p>Mr Albert CHAN's reiteration that the Administration should have zero tolerance for breaches of DMC, and applications for specified instruments from private columbarium operators who were in breach of DMC should not be considered by the Licensing Board. Otherwise, public power would be abused and the rights of flat owners would be deprived of. Legal advice should be provided in this regard.</p> <p>Mr CHAN's view that requiring a private columbarium operator to have a share of ownership of the land lot where the private columbarium was located should be a condition of granting a licence.</p>	

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		<p>The Administration's response that –</p> <p>(a) a DMC was a private covenant among the flat owners, the property manager and the developer of a building. Flat owners could resolve disputes on breaches of DMC through private law. There was a case where an operator was unsuccessful in his/her applications for an undertaker of burial's licence. Separately, private owners in the same building successfully challenged in court that his/her business/operation at the premises constituted a breach of DMC. The operator subsequently closed down his/her business/operation; and</p> <p>(b) in applying for a licence, a columbarium operator was required to hold the columbarium premises directly from the Government ("self-owned premises"), except for a pre-Bill columbarium, a columbarium operator not holding the columbarium premises from the Government could apply, if he/she had the right to continue to use the columbarium premises for at least five years (counting from when the licence was to take effect).</p> <p><i>(Post-meeting note: Referring to the latter (i.e. columbarium premises that were not "self-owned premises"), the Administration supplemented that an agreement was not enforceable by the seller against the purchaser, if the seller purported to sell under the agreement an interment right that the seller was not entitled to sell. For columbarium premises occupied under a tenancy or lease, the seller was not entitled to sell an interment right in respect of the premises for a term that extended beyond the term of the tenancy or lease.)</i></p> <p>The Chairman's view that matters relating to DMC should be further discussed during the clause-by-clause examination of the Bill.</p> <p>Mr WONG Kwok-hing's views that there should not be any grey area about the legal requirements concerning private columbarium premises. The expression "條例草案已就「草案前骨灰安置所」作出有限度的變通" used in the Administration's powerpoint presentation (LC Paper No. CB(2)714/14-15(01)) should be avoided. He did not want operators of unauthorized columbaria to mislead consumers by conveying any false hope.</p>	

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		The Administration's response that it would step up publicity regarding modifications for pre-Bill columbaria provided under the Bill to counter misleading publicity on the part of operators.	
015749 - 020219	Chairman Mr Tony TSE Mr LEE Cheuk-yan Miss CHAN Yuen-han Admin	<p>Mr Tony TSE maintained his views that –</p> <p>(a) assessments on the number of private columbaria which might not be conferred with specified instruments should be made for drawing up ash disposal plans; and</p> <p>(b) the Administration should closely monitor the situation of unauthorized private columbaria before commencement of the Ordinance.</p> <p>The Administration's response that –</p> <p>(a) it had assessed the situation and had plans to increase the capacity of temporary storage facilities for ashes; and</p> <p>(b) it would continue its public education efforts with emphasis on countering unscrupulous sales tactics of operators of unauthorized columbaria.</p> <p>At the request of Mr LEE Cheuk-yan, the Administration would provide a written response to the submission from Illegal Columbarium Concern Group (Alliance for the Concern Over Columbarium Policy) (LC Paper No. CB(2)714/14-15(02)), which was tabled at the meeting.</p> <p>Miss CHAN Yuen-han's view that the Bills Committee should strive to complete the scrutiny of the Bill within the 2014-2015 Legislative Council session as far as practicable.</p>	Admin