

Submission to Bills Committee

On

Private Columbaria Bill

by

Francis Neoton Cheung

Convenor of Doctoral Exchange

Doctoral Exchange

T: +852 8211 2288

F: +852 2626 9616

E: francisneoton@doctoralexchange.hk

W: www.doctoralexchange.hk

Preamble

1. On behalf of Doctoral Exchange, I would like to thank the Bills Committee for the opportunity to comment on the Private Columbaria Bill (the “Bill”) and share our perspective on the broader issues in connection with honouring the memories of ancestors and loved ones.
2. Due to my professional experience as an urban planning, architectural design and development consultant who has successfully guided the development of several private columbaria, including securing all necessary statutory approvals, I have a deep appreciation of the urgent need for industry regulation and the challenges such regulation may pose to both operators and the community. My experience in overcoming diverse obstacles by pioneering an innovative and contemporary approach to designing columbaria has also taught me about the need for society to completely re-think columbaria as communal spaces.
3. According to the Legislative Council Brief for the Bill, the Government is committed to meeting the community’s needs concerning the interment of cremated human remains through a three-pronged strategy: (1) promoting green burials, (2) providing a robust supply of public niches and (3) regulation of private columbaria. Our analyses and recommendations will thus be structured accordingly.

Green Burials

4. In light of the limited availability of land and space, the promotion of green burials is the key to a sustainable future for the interment of ashes in the long run. Nevertheless, given deeply entrenched societal customs and values, the Government must on the one hand initiate sustained educational campaigns, and on the other hand put more thought into developing the best showcases of green burial facilities so that the public can better appreciate the vision and principle behind the approach.
5. By this standard, the Government’s effort at the Wo Hop Shek Kiu Tau Road Columbarium Phase V has clearly fallen short. The public would not find a charming natural setting in the Garden of Remembrance at that facility; instead, there are only a few inches of soil on the rooftop of a building. In order to inspire the public to embrace

green burials, the Government must urgently come with up better designs of large-scale memorial parks that offer a lush, natural setting that properly reflects the spirit of sustainable burials.

Public Niches

6. The public is often torn between wanting niche spaces to be affordable and accessible while preferring columbaria to be located “not in my backyard”. To solve this dilemma, the Government needs to work more closely with district councils and community stakeholders to win local support. With a view to strengthening the appeal of proposed columbarium projects, the Government would need to make the necessary investments to improve road networks and transport facilities, add complementary community infrastructure and introduce district-wide beautification schemes.

7. The design of columbaria is equally important to community acceptance. In this respect, the Government would do well to follow the lead of innovative designers of private columbaria in sweeping away the grim and gloomy ambience of traditional facilities. In recent years, the market has seen the emergence of modern columbarium designs featuring elegant facades and ancillary indoor facilities such as libraries, museums, lecture halls and other multi-function rooms, which together transform the columbarium building into a welcoming community infrastructure that can be used throughout the year, rather than on specific festival days only.

Private Columbaria

(1) The Necessity of Regulation

8. Not having been systematically regulated, the private columbaria industry remained highly fragmented, without any major players that can set standards or mobilise self-regulation. As a result, consumers have become extremely vulnerable to questionable sales practices and tactics.

9. The Bill represents an important step in the right direction in building consumer confidence in the safe and sustainable operations of private columbaria. The establishment of a Licensing Board for the purpose of ensuring compliance with statutory and Government requirements would go a long way towards improving the standards and image of the private columbaria industry as a whole.

10. While the Bill provides for extensive details about the application process and requirements, it lacks an explicit “licensee system” that would assign legal responsibility and potential criminal liability to a specific human person. Incorporating this type of licensee system into the ordinance would further strengthen protection for consumers as it can prevent unscrupulous operators from hiding behind elaborate corporate structures.

(2) The Scope of Regulation

11. The Bill in its current form has already addressed a broad spectrum of issues pertaining to the private columbaria. However, there remain a number of critical areas that need to be regulated before the industry can become a properly functioning and sustainable part of the solution. These areas can be grouped as follows.

(a) Management and Maintenance Fund

12. Until green burials become widespread, the need for niches will only continue to grow. However, compared to the challenge of housing for the living, the interment of cremated remains poses additional complications. When the management of a residential building goes awry, the residents living there would know about it and can work together to rectify the situation. When the management of a private columbarium goes wrong, the living relatives may not be in a position to find out about it. Therefore, to properly protect the interest of consumers, regulation should cover both the sale of interment rights and the long-term management of the facility.

13. As a first step, the eventual ordinance should require operators to set aside 10-15% of the proceeds from the sale of interment rights in a separate management and maintenance fund. This requirement may not have to be inconsistent with the Government's preference for an “outcome-based approach”. The system can be set up in such a way that operators can apply to the Licensing Board for adjustments to the

fund, with approval based on the merits of each case. This approach will give consumers the peace of mind that the cremated remains of their ancestors and loved ones will be well taken care of while allowing operators to benefit from efficiencies in their operations.

(b) Contracts and Marketing Materials

14. In the same spirit of optimising consumer protection, the Government should require operators to submit to the Licensing Board the contract of sale (of interment right) for approval. Consumers who lack the legal expertise or means to engage a legal professional would thus be assured that they have the proper recourse if the operator fails to live up to the stated obligations. To improve efficiency for operators, the Government could develop standardised contract templates so that operators would only need to fill in details specific to their facility.

15. Regulation must also be complemented by consumer education. The public needs to know the limits to interment rights and learn what questions to ask operators when considering a purchase. Again, the Government can help facilitate this by requiring operators to provide consumers with standardised pricing information and terms of service. Unlike the property development industry, the private columbarium industry is too fragmented for self-regulation to be viable.

16. Regarding the terms of sale, we recommend that the property in which the niche is located should not be included in the sale as an undivided share. Otherwise, the dispersal of ownership that would result could make it difficult to redevelop a private columbarium years later when it becomes run down.

17. Along a similar vein, the sale agreement should contain terms about any previously agreed arrangement in respect of land rents that may need to be paid when the land grant or lease expires on or after 30 June 2047, whichever applies to the columbarium in question. This would offer consumers protection from being forced to remove ashes from a columbarium in case the operator decides to exact huge sums when the land grant or lease expires.

(c) Undertakers of Burials and other Exempted Facilities

18. Undertakers of burials are currently exempted by the FEHD for the “temporary” storage of ashes. However, there are no specified limits on the amount and duration allowed for such storage. This has led to the establishment of “Ash Hotels” in private residential premises and industrial buildings. This loophole is serious and requires urgent attention.

19. According to the Bill, “ashes” excludes “synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes”. This would create a significant loophole in the ordinance for facilities designed to hold such synthetic items in the future. One of the key planning approval requirements for private columbaria is the adequate provision for handling the flow of people paying respects to loved ones. Yet, facilities that house synthetic materials produced from ashes will attract the same increased traffic flow during festival days. Therefore, they should not be excluded from regulation.

20. As the cremation of animals has become increasingly popular among pet owners, the Government should consider regulating columbaria for pets under the same ordinance.

(3) The Path towards Regulation

21. While the Bill rightly provides for a grandfathering arrangement for pre-Bill private columbaria, it has given rise to confusion in the marketplace. With pre-Bill columbaria potentially given up to six years to comply with all the statutory and regulatory requirements after the ordinance goes into effect, operators effectively have up to about seven years to remain in business after the release of the Bill -- assuming they apply for Temporary Suspension of Liability (TSOL) six months after the enactment of the ordinance. There is nothing to stop them from selling as many interment rights as possible in the run-up to their application of TSOL, especially if they have no hope or intention of securing a licence to operate. This situation has left consumers exposed to fraud.

22. Of particular concern is the extent of participation in the notification scheme announced on 18 June 2014. If not enough private columbaria notify the Government of their existence, the grandfathering arrangement would have little significance as the

number of niches eventually covered by the ordinance would represent only a fraction of the actual size of the marketplace.

23. Currently, the Department Bureau would update its website every three months with the latest information on private columbaria listed under part A and part B. For part B columbaria, however, the information only includes various approval status, leaving out simple data such as the number of niches, and whether the operator owns or leases the property. More worrying still is the lack of information on columbaria not participating in the notification scheme.

24. As currently drafted, the Bill does not give the Government the mandate to require operators to participate in the notification scheme. As a result, many operators without any hope or intention of securing a licence are now spreading misinformation in a bid to swindle the public as much as possible. Therefore, it is imperative for the Government to not only alert the public about the potential for fraud, but also to proactively identify these hidden private columbaria.

25. We recommend that a task force be formed under the lead of the Food and Environment Department, with officers from the Lands Department, Planning Department, and Home Affairs Department going out into all 18 districts to identify and inspect private columbaria outside the notification scheme. A new category, part C, can be added to include the private columbaria identified through this inspection process.

26. Since only licensed columbaria can offer niches for sale after the enactment of the ordinance, there will be a period during which the market would have zero to minimal supply of private niches as operators await the approval of their applications. The shortage of supply will inevitably push up prices and limit the choices of consumers. In order to ameliorate the situation, the Government should start collecting the necessary information from operators intending to apply for a licence so that the approval process can proceed ahead of the enactment of the ordinance, thereby minimising the impact of the ordinance on the normal functioning of the private niche market.

27. There has been a great deal of confusion among consumers since the release of the Bill as most people find it difficult to comprehend the technical details, especially

the terms concerning the “grandfathering arrangement”. This has left many consumers open to fraudulent sales tactics. Therefore, the Government has the responsibility to ensure that consumers are aware of the risks associated with purchasing interment rights before the enactment of the ordinance. Failure to do so would seriously erode public confidence in private columbaria even after the ordinance eventually goes into effect.

28. To enhance transparency and availability of information, the Government should create a new list, e.g. part A2, to include all those private columbaria that would qualify for the grandfathering arrangement (i.e. having started operations before 1 January 1990) once the ordinance goes into effect. Additional information such as the name of the operator, the number of niches, the starting date of operation, the status of building safety compliance, land/premise ownership/lease documentation should also be made easily accessible by the public. This would go a long way towards protecting the public from fraudulent sales tactics.

29. According to industry estimates, there are about 300,000 “hidden” niches. Assuming all of these hidden niches and about 70% of the 283,000 niches listed under part B are unlikely to meet licencing requirement, the Government would have to come up with a way to handle the contents of some 500,000 niches six years after the enactment of the ordinance. Therefore, a workable plan must be put in place to deal with this eventuality.

(4) Encouraging Development of Private Columbaria

30. The regulation of private columbaria is an important step towards building public confidence in the industry, which in turn would attract investments in new projects. Nevertheless, the Government must also proactively remove obstacles to the tedious and tortuous planning approval process so that potential investors can have a transparent and understandable roadmap of the development process. One approach would be to facilitate approvals by issuing inter-departmental guidelines on policy support in areas such as traffic arrangements and environmental issues.

31. One area that has doomed many development proposals concerns the ability of a given site to handle the additional vehicular and pedestrian traffic during relevant festival periods. The Transportation Department and the Hong Kong Police Force have

consistently shown reluctance in making available the needed resources, from infrastructure investment to manpower deployment, to help turn a proposed project into reality. To encourage investments in quality and responsible private columbaria, all the relevant government departments must make a concerted effort to facilitate the greenlighting of sensible projects.

32. Another challenge faced by columbaria designers is the lack of standards for various aspects of a columbarium, including something as simple and necessary as incinerators. As there are no clear specifications for what type of incinerator are acceptable, designers are always unsure of whether a particular model would be approved. The Government can easily test various proprietary commercial incinerators and produce a list of models that are pre-approved to meet the needs of different types and sizes of columbarium buildings.

33. Equally of great concern to investors is the lack of objective criteria on different urban design aspects of a project, with most decisions seemingly based on subjective evaluations. It would boost investor confidence if the Town Planning Board would institute a dedicated urban design committee, with representation by academics and professionals. In that way, designers can expect to receive objective, concrete and technically relevant feedback on how best to modify their plans to win approval.

Concluding Remarks

34. The Private Columbaria Bill marks a significant milestone in the development of the private columbarium industry by providing consumers with a transparent licensing system. As the above analysis and discussion show, the Bill can be further strengthened to improve protection for consumers and facilitate the transition for existing operators to minimise disruptions to market conditions. In addition to regulating existing private columbaria, the Government also has a role to play in encourage and supporting the development of private columbaria, in terms not only of the quantity of supply, but also the quality of columbaria as a community infrastructure.

Summary of Recommendations

We summarise below the key recommendations discussed above:

1. Require private columbaria to set up a separate management and maintenance fund so that consumers can be assured of the long-term sustainability of the columbarium's management and maintenance
2. Step up public education about the impact of the Bill before and after the eventual enactment of the ordinance, raising consumer awareness of potential misconduct by columbarium operators
3. Expand the monitoring and tracking of private columbaria to maximise the Government's ability to identify non-compliant facilities and protect consumers
4. Enrich the information on private columbaria currently made available to the public so that they can make better informed decisions when purchasing interment rights
5. Incorporate a licensee system that would assign legal responsibility and potential criminal liability to a human person, thereby further strengthening the protection for consumers
6. Prepare for the enactment of the ordinance by starting to collect relevant information from operators so as to shorten the "zero" supply period immediately after the ordinance goes into effect
7. Strengthen inter-departmental collaboration to remove obstacles to the planning approval process so as to encourage investment in the development of private columbaria
8. Regulate the terms pertaining to the sale of interment rights by standardising sales contracts so that consumers can more easily compare different offers and make their decision accordingly
9. Set rules for the extension of interment rights in 2047 and beyond so that consumers would not be forced to remove ashes when the operator requests unreasonable sums for the extension
10. Clarify the definition of columbarium to include columbaria for pets and facilities that offer the interment of synthetic diamonds and other objects created from cremated remains
11. Encourage operators of private columbaria to raise standards of service, not only improving public perception and confidence, but also transforming columbaria as community spaces

About Doctoral Exchange

Doctoral Exchange is a public policy research collective founded in 2010 by a group of doctoral students and graduates with a shared respect for Hong Kong's heritage of excellence and a common conviction in the city's continuing role on the global stage. Regular meetings are held to discuss the latest hot topics and explore innovative solutions to entrenched challenges. The founding members, with expertise and professional training in disciplines ranging from architecture, urban planning, finance, logistics, education, and creative industries, are committed to conducting research without ideological or political biases in order to identify pragmatic, outside-the-box solutions for complex issues of concern to the community. Such an approach is desperately needed as the current space for public dialogue and deliberation has been dominated by special interest obstructionism, fanned by politicians and a media contingent bent on sensationalism rather than clarifying the issues for the public they serve.

Convenor of Doctoral Exchange

Francis Neoton Cheung is an urban development expert with a proven track record of holding public positions and handling large-scale public infrastructure projects in Hong Kong and different parts of mainland China.

Cheung read architecture and urban design and graduated with distinctions at the University of Hong Kong. Upon graduation, he went into private practice as an architect and property development consultant. Since 1983, he has won numerous international design awards and competitions, including Taiwan Cheng Kung University's Outstanding Architectural Talents Award and the Zhuhai Aerotropolis Urban Design International Competition. As a property developer in his own right, Cheung has developed various commercial and residential projects in Hong Kong, Guangdong Province and northern China.

Between 1992 and 1997, Cheung had been appointed by different airport authorities to oversee the airport projects in Hong Kong, Shenzhen and Zhuhai, with official positions including member of the Consultative Committee on the New Airport and Related Projects which was jointly appointed by the British and Chinese governments.

Among the public bodies Cheung served on over the years include: the first Election Committee of the Hong Kong SAR, Buildings and Lands Advisory Committee, Town Planning Appeal Board and the Housing Authority Building Committee. As the founder and convenor of the Central-Wan Chai Reclamation Study Group, Cheung was also one of the first activists advocating minimizing reclamation within the Victoria Harbour.

Cheung also holds a master's degree in Science in Management Research Studies from The Hong Kong Polytechnic University, where he is currently a Doctor of Business Administration candidate. Between 1985 and 1999, Cheung held different positions at the Hong Kong Institute of Architects, from council member to honorary treasury and honorary secretary to vice president. He is currently a member of the Institute.