

**For discussion on
13 February 2018**

Legislative Council Panel on Food Safety and Environmental Hygiene

**Creation of a directorate post
in the Food and Environmental Hygiene Department
for the regulation of private columbaria**

PURPOSE

This paper seeks Members' support for the proposal to create a supernumerary directorate post of Senior Principal Executive Officer (SPEO) rank (D2), designated as Assistant Director (Private Columbaria) (AD(PC)), in the Food and Environmental Hygiene Department (FEHD), for a period of four years with immediate effect upon the approval of the Finance Committee, to support the Head, Private Columbaria Affairs Office (H, PCAO), an Administrative Officer Staff Grade B (AOSGB) post (D3), in leading the Private Columbaria Affairs Office (PCAO) under the FEHD to implement the regulatory regime under the Private Columbaria Ordinance (Cap. 630) (the Ordinance).

BACKGROUND

2. The Ordinance, which introduces a licensing scheme to regulate the operation of private columbaria, came into effect on 30 June 2017. Our policy objectives include ensuring compliance with the statutory and Government requirements, enhancing protection of consumer interests and fostering the adoption of a sustainable mode of operation by private columbaria.

JUSTIFICATIONS

3. Over the past several decades, a considerable number of private columbaria have emerged and many of them have been in breach of various

statutory and Government requirements, including planning, land, building, fire safety and environmental protection requirements. There have been complaints from various stakeholders including instances of descendants complaining about the difficulties in enforcing an agreement after the purchaser had passed away, or in getting back the money and the ancestors' ashes after cessation of a columbarium's operation. Some residents living near some columbaria are dissatisfied with their presence and the environmental nuisances / inconvenience caused by them.

4. The Ordinance introduces for the first time a regulatory regime on private columbaria. Tackling the historical legacy of private columbaria is daunting tasks not only because of the sensitivity of involving the ashes of deceased persons who are related to hundreds of thousands of families, but also because of the conflicting interests of different stakeholders, including operators, consumers, nearby residents, family members of the deceased persons, etc. To implement the Ordinance, a dedicated office, the PCAO, has been set up under the FEHD. The PCAO is headed by the H, PCAO which is a 5-year supernumerary post created on 30 June 2017 following the enactment of the Ordinance. The H, PCAO also assumes the role of serving as the Chairperson of the Private Columbaria Licensing Board (PCLB) set up under the Ordinance to deliberate applications for licences and other specified instruments (SIs), taking into account all relevant circumstances including views regarding compliance with regulations relating to fire safety, building etc. as well as measures to safeguard consumers' interest and mitigate environmental nuisances, if any.

Major Responsibilities of the PCAO

5. The PCAO comprises a PCLB Secretariat, a Licensing Team, an Enforcement Team, and a Branch Administration Unit.

(a) *PCLB Secretariat*

6. A statutory PCLB has been set up under the Ordinance to consider and determine applications for licence, exemption or temporary suspension of liability (TSOL), to formulate relevant guidelines, procedures and mechanisms, and to impose terms and conditions on the SIs as it thinks appropriate. The H, PCAO chairs the PCLB and supervises the work of the PCLB Secretariat which provides secretariat support to the PCLB. The Secretariat also assists the PCLB in formulating its rules and

procedures, guidelines and declaration of interest arrangements; preparing meeting papers and minutes; making arrangements for conducting Board meetings; and public communication of PCLB's work such as information on applications received, decisions on SI applications and key information about the SIs granted.

(b) *Branch Administration Unit (BAU)*

7. The BAU in the PCAO provides administrative support to the PCLB Secretariat, the Licensing Team and the Enforcement Team.

(c) *Licensing Team*

8. The Licensing Team provides executive support to the PCLB in discharging its statutory functions. The PCLB started accepting applications for licence, exemption and TSOL on 30 December 2017. All pre-cut-off columbaria¹ must submit their applications on or before 29 March 2018. The Licensing Team carries out executive work relating to the handling of applications for licence, exemption and TSOL, including –

- (a) preparing application guidelines, application forms, management plan template, forms of SIs, sales agreement templates, as well as guidelines for maintaining a register of such agreements and a register on interment and disinterment of ashes etc.;
- (b) conducting sessions to brief prospective applicants on the eligibility criteria and procedures for making applications;
- (c) formulating protocol and operation manual with relevant bureaux and departments to put in place elaborate procedures for processing applications received in a coordinated manner;
- (d) vetting huge amounts of particulars contained in the applications and coordinating with more than ten other relevant bureaux and departments in checking compliance with various legislative, Government and other application requirements including town planning, land use, building and fire safety, rights to use the premises, environmental protection, electricity and lift/ escalator safety, crowd and traffic management, plans covering ash interment layout, ash interment capacity, ash interment quantity,

¹ A “pre-cut-off columbarium” means a columbarium that was in operation, and in which ashes were interred in niches, immediately before 8:00am on 18 June 2014.

as well as financial proposal, etc.;

- (e) conducting on-site inspections to check factual accuracy of the information submitted in the applications;
- (f) making recommendations on any conditions to be attached to the SIs to be granted by the PCLB, in consultation with relevant bureaux and departments; and
- (g) handling enquiries and complaints from stakeholders.

(d) *Enforcement Team*

9. The Enforcement Team in the PCAO undertakes enforcement work against the operators of private columbaria who contravene provisions in the Ordinance, particularly in respect of –

- (a) sale of niches or interment rights without a licence after the Ordinance comes into operation;
- (b) improperly disposing of ashes in their columbaria;
- (c) continuing operation without valid SIs after the expiry of the grace period specified in the Ordinance;
- (d) continuing operation after their applications for new issue or renewal of licence, exemption and TSOL (as the case may be) have been rejected and appeals, if lodged, dealt with; and
- (e) failing to comply with the conditions imposed by the PCLB.

10. It is necessary to put in place brand-new procedures, guidelines and mechanisms on the handling of concerned complaints, conducting of investigations, collecting of evidence and taking out of prosecutions against the new offences in the Ordinance. The actual investigation and prosecution work is also complicated and contentious.

11. While the primary responsibility for proper disposal of ashes kept by a private columbarium rests squarely with the columbarium operator concerned, the Enforcement Team will need to be proactive in ensuring that this is done and to keep information on ash disposal by columbaria. Close monitoring of the follow-up actions taken by private columbarium operators is needed to minimise the risks of abrogation of responsibility. In respect of unclaimed ashes after the implementation of the prescribed ash

disposal procedures by columbarium operators, the PCAO of the FEHD has to deal with the aftermath. The PCAO would need to provide temporary storage for the ashes while renewing efforts to contact the relatives of the deceased persons. Work relating to unclaimed ashes involves not only stringent statutory and administrative procedures as well as meticulous and time consuming efforts, but also respect for the deceased and sensitivity for the feelings of the relatives. The Enforcement Team may also be required to resolve disputes among family members in the event of competing claims for ashes and associated articles deposited in the niches. In the event of abscondment of the columbarium operators, the Enforcement Team would have to apply to the court for an occupation order, implement the related onerous procedures and carry out disposal of all the ashes interred in the columbarium. In the case of liquidation / bankruptcy of the operators, the liquidator / trustee in bankruptcy also has the option of inviting the PCAO to carry out ash disposal.

12. In sum, the ash disposal procedures are highly complicated as it involves personal data of claimants, court procedures on occupation orders and claiming of ashes and items displaced from the niches. Also, it could become a sensitive issue when we come to the final disposal of unclaimed ashes. If many columbaria cease operation, it could take a long time (could be in terms of years) for FEHD to handle all the ashes. In view of the sensitive nature of ash disposal and likely significant concerns of the family members of the deceased persons, it is necessary for the management of PCAO to closely supervise and steer the enforcement work and the handling of disputes and complaints from parties concerned.

13. The above duties of the PCAO are complicated, contentious and voluminous for the following reasons –

- (a) they are complicated as the applications for licences have to comply with a wide range of requirements relating to planning, lands, building safety, fire safety, rights to use premises, etc. According to the information gathered by the Development Bureau and under the Notification Scheme² administered by FEHD, the majority of existing private columbaria do not fully comply with these requirements. The relevant regularisation / rectification work is expected to involve complex procedures and disputes;

² In June 2014, FEHD rolled out an administrative Notification Scheme to invite private columbaria operators to provide information about the operation of their columbaria.

- (b) the work is contentious. We expect significant conflicts in interests among different stakeholders, particularly between the private columbaria operators and residents nearby. Resolving the conflicts would not be easy, given the financial stakes involved and residents' concern about their living environment. Also implicated would be the interests of the consumers affected by the cessation of columbarium operations. In addition, we would not wish to under-estimate the possible reactions of land/premises owners whose properties would be affected by the ash disposal procedures upon cessation of columbarium operations; and

- (c) the work is also voluminous. As far as we are aware of, there are at least about 150 private columbaria in Hong Kong. We envisage that the majority of these existing private columbaria will submit applications to the PCLB for different SIs in order to continue their operation. The bulk of these applications will likely come at around the same time due to the application deadline of 29 March 2018 stipulated in the Ordinance for pre-cut off columbaria. A very intensive period of meticulous work relating to vetting, coordination with other bureaux and departments and other parties, inspections, handling enquiries, complaints, appeals or even judicial reviews would ensue. Some vetting may also necessitate verification of the legality of actions taken/instruments entered into decades ago. There are conflicting interests among different stakeholders in the PCLB's decisions on the applications for SIs and the issues involved are complex and sensitive.

Major Responsibilities of the proposed AD(PC)

14. The PCAO is now at its critical inaugural stage. It has to formulate and put in place numerous systems, mechanisms, guidelines, procedures and operation manuals covering a wide spectrum of aspects including licensing, enforcement, ash disposal, administrative, financial, personnel, complaint handling, information databases and processing systems, public education and publicity, staff training. The proposed AD(PC) will provide important directorate support to the H, PCAO in formulating and closely driving the implementation of these systems, mechanisms, guidelines, procedures and operation manuals as well as taking care of staff management.

15. Moreover, in view of the sensitive and complex nature of columbarium operation and the application requirements for SIs, it is necessary to provide close management attention to and guidance and supervision over the handling of each application for SI to ensure that the applications are processed most expeditiously with close coordination with a huge number of relevant bureaux and departments to identify problems as early as possible and work out solutions efficiently. This is important particularly as it is in the public interest to have these applications determined as early as possible so as to resume the supply of private niches, allow the interment of ashes in niches already sold and give comfort to the family members of the deceased persons about the continued operation of those columbaria they are concerned with. The proposed AD(PC) will provide important management support to the H, PCAO in helping to expedite and closely supervise the processing of the applications for SI, especially in this critical period in which a huge number of applications for various types of SIs will come at around the same time.

16. On the enforcement side, it is expected that a considerable number of existing private columbaria may be closed down in the coming years either because the operators choose not to apply for SIs under the new Ordinance in view of the high compliance costs or difficulties in meeting the application requirements or their applications are eventually rejected by the PCLB as they are unable to meet the application requirements. The PCAO is also required to handle complaints against operators of the private columbaria (e.g. about cases of illegal columbarium operation or abandoned columbaria, etc.) and conduct investigations. Besides, the PCAO also has to carry out disposal of ashes displaced from the abandoned private columbaria and deal with lots of controversies and arguments raised by the claimants of ashes and related items in the urns. Taking enforcement actions against illegal columbaria and ash disposal operations against those private columbaria which cease operation require tact, sensitivity and judgment. In view of the high complexity and great sensitivity of the issues, the proposed creation of the AD(PC) post to support the H, PCAO is crucial. We consider that an SPEO with rich executive experience in different parts of the Government and a rich management horizon is considered necessary to take up such work given the complexity and intricacy of the matters straddling planning, coordination, implementation and stakeholder engagement issues.

17. We propose to create a supernumerary post of the AD(PC) at the SPEO rank for four years to support H, PCAO in leading PCAO to implement the regulatory regime under the Ordinance. The four-year tenure is proposed to tie in with that of the H, PCAO post. The proposed duty list of the post and organization chart of the PCAO are at **Annexes A and B**.

Non-directorate support

18. The proposed AD(PC) post will be supported by a team of about 50 non-directorate staff, comprising those in the Administrative Officer, Executive Officer, Health Inspector, secretarial and clerical grades.

ALTERNATIVES CONSIDERED

19. We have critically examined whether the duties of the proposed directorate post could be absorbed by the existing relevant Assistant Directors (ADs). Having regard to their portfolio and current workload as well as the complexity and huge volume of work envisaged in the implementation of the Ordinance, we consider it not feasible for the existing ADs to absorb any such additional work without compromising the delivery of their existing duties. The existing organization chart of FEHD and the details of the work schedule of the existing relevant ADs are at **Annexes C and D** respectively.

FINANCIAL IMPLICATIONS

20. The proposed creation of the supernumerary SPEO post will incur a notional annual salary cost at mid-point of \$2,094,600. The full annual average staff cost, including salaries and on-costs, is 2,788,440. FEHD will reflect the necessary provision in the draft Estimates of the relevant financial years to meet the costs of the staffing proposal.

ADVICE SOUGHT

21. Members are invited to support the proposed creation of the supernumerary SPEO post for four years as AD(PC) to assist the H, PCAO in leading the PCAO and overseeing the implementation of the Ordinance.

**Food and Health Bureau
Food and Environmental Hygiene Department
February 2018**

**Job Description for the Post of
Assistant Director (Private Columbaria)**

Rank : Senior Principal Executive Officer (D2)
Responsible to : Head, Private Columbaria Affairs Office
(H, PCAO)

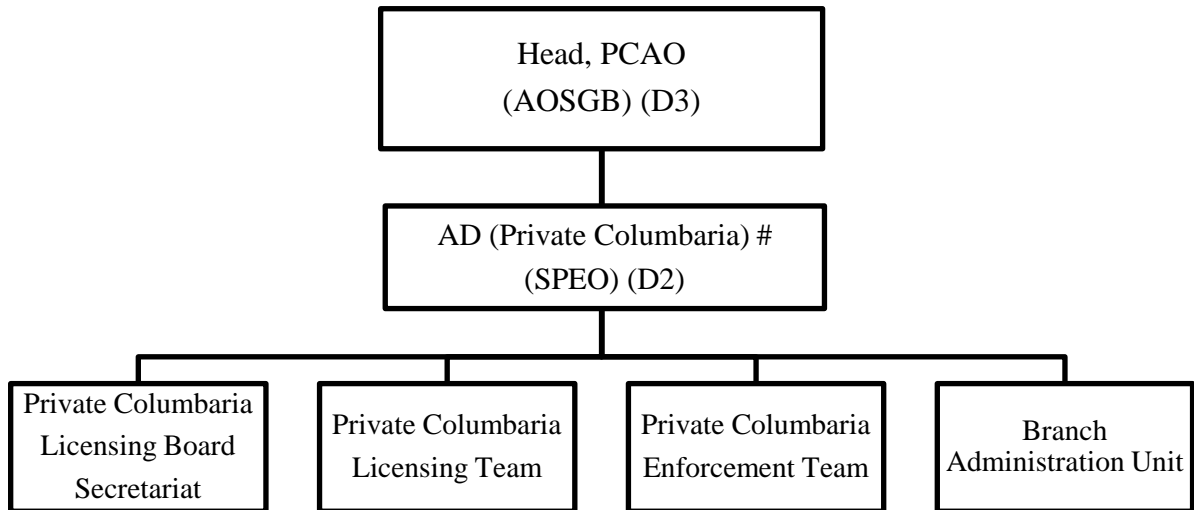
Main Duties and Responsibilities

1. To support H, PCAO to provide strategic direction in the implementation of the Private Columbaria Ordinance (PCO).
2. To support H, PCAO to steer the provision of secretariat support to the Private Columbaria Licensing Board (PCLB) and supervise a multi-disciplinary team of over 50 staff in the PCAO.
3. To support H, PCAO to ensure proper handling of the applications for specified instruments; and to resolve thorny issues concerning the applications for specified instruments in concerted efforts with other relevant bureaux and departments.
4. To support H, PCAO to handle complaints against operators of the private columbaria and investigate into the allegations; and to plan and oversee enforcement actions against illegal private columbaria and other breaches of provisions in the PCO.
5. To support H, PCAO to handle sensitive and complex issues having regard to the interests of different stakeholders; and to handle disputes, appeals, objections and possibly judicial reviews.
6. To support H, PCAO to implement disposal of ashes displaced from closed-down private columbaria and deal with controversies or arguments raised by the claimants of ashes and other parties.

7. To support H, PCAO to co-ordinate matters at a senior level that cut across bureaux and departments for the speedy resolution of issues related to the handling of applications and enforcement, etc.

8. To support H, PCAO in overseeing the implementation of public education and publicity programmes and measures.

Organisation Chart of the Private Columbaria Affairs Office (PCAO)



Legend:

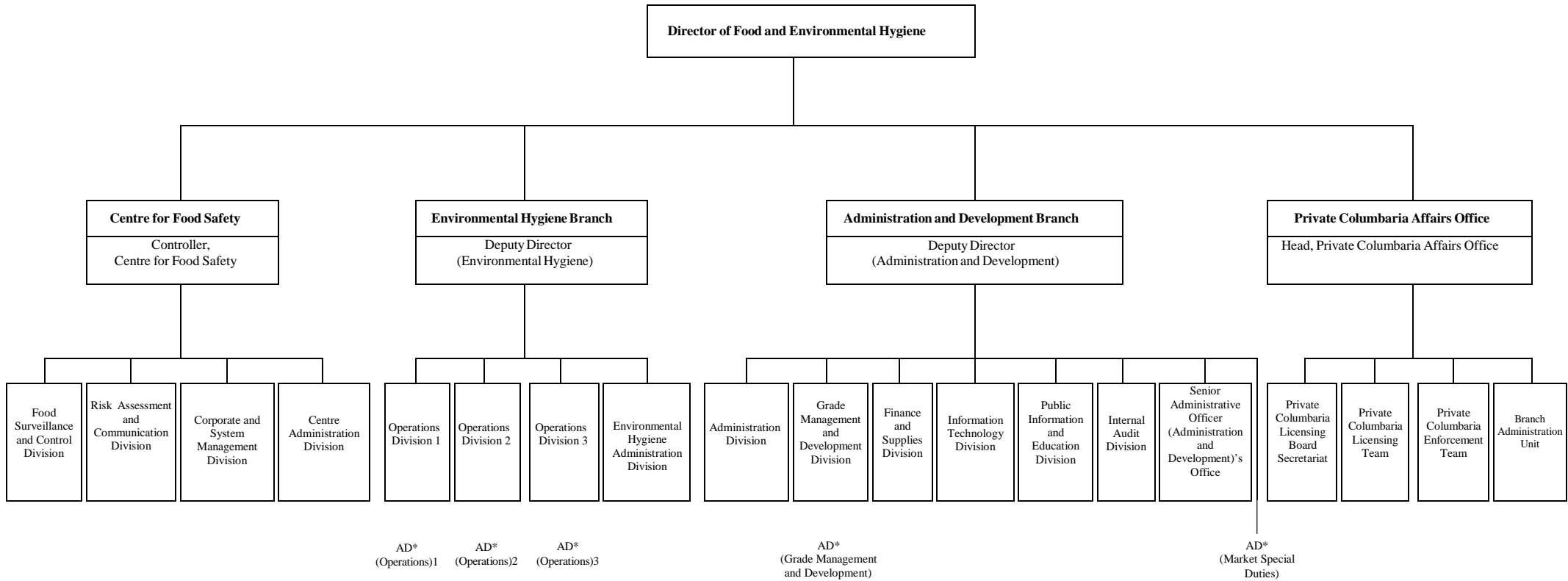
AD Assistant Director

AOSGB Administrative Officer Staff Grade B

SPEO Senior Principal Executive Officer

Proposed new post

Organisation Chart of the Food and Environmental Hygiene Department



* AD : Assistant Director

**Major Duties and Responsibilities of
The Existing Relevant Assistant Directors of FEHD**

Assistant Director (Operations)1

- Overall command of district environmental hygiene operations and facilities in the Central/Western, Eastern, Islands, Southern and Wan Chai Districts, including market management, refuse collection, street cleansing, public toilets, hawker control, inspection of licensed premises and law enforcement
- Management of centralized functions for the five districts including the Prosecution and Licensing Office, Duty Room and Hawker Control Task Force
- Regular review and planning of the provision of environmental hygiene services and facilities for the five districts
- Formulation, promulgation and review of procedures, standards and strategies on licensing, prosecution, environmental hygiene and licensing enforcement matters
- Overseeing the provision of support services to Liquor Licensing Board on liquor licensing matters
- Processing of applications for review to the Licensing Appeals Board (LIAB) and the Municipal Services Appeals Board (MSAB) as appropriate in respect of licensing matters of food and non-food premises

Assistant Director (Operations)2

- Overall command of district environmental hygiene operations and facilities in the Kowloon City, Kwun Tong, Mong Kok, Sham Shui Po, Wong Tai Sin and Yau Tsim Districts, including market management, refuse collection, street cleansing, public toilets, hawker control, inspection of licensed premises and law enforcement
- Management of centralized functions for the six districts including the Prosecution and Licensing Office, Duty Room and Hawker Control Task Force
- Regular review and planning of the provision of environmental hygiene services and facilities for the six districts
- Formulation, promulgation and review of procedures, standards and strategies on hawker and market management
- Processing of applications for review to the LIAB and the MSAB as appropriate in respect of hawker and market matters

Assistant Director (Operations)3

- Overall command of district environmental hygiene operations and facilities in the Kwai Tsing, North, Sai Kung, Sha Tin, Tai Po, Tsuen Wan, Tuen Mun and Yuen Long Districts, including market management, refuse collection, street cleansing, public toilets, hawker control, inspection of licensed premises and law enforcement
- Management of centralized functions for the eight districts including Prosecution and Licensing Office, Duty Room, Mechanized Cleansing Services Unit and Hawker Control Task Force
- Regular review and planning of the provision of environmental hygiene services and facilities for the eight districts
- Formulation, promulgation and review of procedures, standards and strategies on public cleansing, waste collection (including planning and supporting work to tie in with the implementation of the Municipal Solid Waste Charging Scheme) and pest control services
- Management and operation of the Intelligence Unit
- Branch Safety Officer and contribution in bringing about improvement to health and safety at work of staff
- Formulation and review of procedures and standards on slaughtering activities and overseeing of slaughterhouses operations including meat inspection services
- Coordination of influenza/coronavirus disease related matters including coordination of cross division operations

Assistant Director (Grade Management and Development)

- Development of a comprehensive Human Resources Management strategy for Environmental Hygiene grades (e.g. Health Inspector, Hawker Control Officer and Foreman etc.)
- Grade management and development for Environmental Hygiene grades
- Outsourcing
- Training programmes for Environmental Hygiene grades
- Management services / Value for money studies
- Surveys and statistics
- Quality Assurance
- Formulation and review of procedures and standards on cemeteries, columbaria and crematoria services and management of public cemeteries, columbaria and crematoria

Assistant Director (Market Special Duties)

- Taking forward a fundamental review of the facilities and management of public markets
- Putting in place a mechanism for more effective and efficient implementation of major improvement works projects for existing markets, cooked food centres and cooked food markets and overseeing the implementation of such major improvement works projects
- Formulating overall strategies, identifying markets for priority actions and working out implementation plans for revitalisation and consolidation of under-utilized markets
- Taking forward air-conditioning projects and related issues with a view to improving the operating environment of the Food and Environmental Hygiene Department (FEHD) markets, ensuring the sustainability of the improvements and tackling any ancillary issue
- Reviewing and enhancing the mode of operation and management of public markets, including reviewing the market management consultation mechanism; and enhancing the engagement with relevant stakeholders
- Conducting a comprehensive review of the adjustment mechanisms for rents and rates, taking into account the role of FEHD markets
- Reviewing and formulating enhanced enforcement strategies and related matters
- Formulating enhanced strategies and implementation plans for strengthening marketing and promotion of public markets
- Reviewing and enhancing the design standards for stalls for selling different types of fresh food products and ancillary facilities in new public markets to better serve the needs of the public and to achieve business viability; assessing the merits of any proposals for new markets; and overseeing the implementation of new public market projects