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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 30 April 2018**

**Policy initiatives relating to land premium and
traffic impact assessment issues of pre-cut-off columbaria**

Purpose

This paper provides background information on the Government's policy initiatives to address issues relating to land premium and traffic impact assessment ("TIA") of pre-cut-off columbaria¹ seeking a licence under the Private Columbaria Ordinance (Cap. 630) ("the Ordinance"), and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the subject.

Background

2. With the enactment of the Ordinance on 30 June 2017, the operation of a private columbarium in Hong Kong must be covered by a specified instrument, including a licence, an exemption or a temporary suspension of liability. Among these specified instruments, only a licence authorizes a columbarium to sell or newly let out niches. An application for the issue of a specified instrument in respect of a pre-cut-off columbarium must be made to the Private Columbaria Licensing Board ("PCLB"). The deadline for pre-cut-off columbaria to submit their applications for specified instruments (i.e. 29 March 2018) has passed.

¹ A pre-cut-off columbarium means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the cut-off time, i.e. 8 am on 18 June 2014.

Issues relating to land premium and TIA of pre-cut-off columbaria

3. According to the Legislative Council ("LegCo") Brief issued by the Food and Health Bureau on 22 November 2017 (File Ref: FH CR 2/3751/07), the Administration considers it necessary to facilitate pre-cut-off columbaria seeking a licence under the Ordinance to address the land premium and TIA issues, with a view to minimizing any social tension and disruption that may arise from massive displacement of interred ashes and frustration of pre-enactment agreements². In this connection, the Administration has approved two policy initiatives.

Initiative relating to land premium

4. The Administration has decided to extend the waiving of relevant payments for regularization in respect of pre-cut-off sold niches³ and pre-cut-off religious ash pagoda fulfilling certain requirements ("the waiving arrangement") from pre-cut-off columbaria eligible for an exemption in all other respects to pre-cut-off columbaria eligible for a licence in all other respects. Specifically, pre-cut-off columbaria confirmed to be eligible for a licence in all other respects may apply for administratively regularizing, in respect of the pre-cut-off sold niches and pre-cut-off religious ash pagoda fulfilling certain requirements, breaches of relevant lease conditions and/or unlawful occupation of unleased land by way of a waiver and/or a short term tenancy ("STT"), and waiving the relevant waiver fees, STT rentals and administrative fees before and during the licence period. PCLB will consider each application on a case by case basis having regard to its circumstances and merits.

5. To ensure that the benefit will accrue to the consumers who have purchased (or rented) the pre-cut-off sold niches, rather than the operators, intermediaries and/or speculators, the Administration will impose safeguards on the pre-cut-off sold niches covered by the waiving arrangement, which include:

- (a) the operators must seek the agreement of the consumers to abide by the restrictions below:
 - (i) for filled niches, where any interred ashes are removed subsequently in the future, such niches are not allowed to be refilled as a matter of policy;

² A pre-enactment agreement means an agreement for the sale of an interment right entered into before the enactment date (i.e. 30 June 2017).

³ Pre-cut-off sold niches mean niches sold before the cut-off time and include (a) filled niches (i.e. with ashes already interred before the cut-off time); and (b) partially-filled or unfilled niches (i.e. with ashes to be interred after the cut-off time).

- (ii) for partially filled or unfilled niches, replacing the name of a dedicated person where his/her ashes have yet to be interred with another person is restricted to the former's relative within the definition of "relative" under the Ordinance; and
- (b) the operators (licensees) are not allowed to impose any additional fees, charges or other sums in respect of an interment right beyond the amounts provided for in the original agreements entered with the consumers concerned in respect of those niches.

6. For post-cut-off sold niches in a pre-cut-off columbarium or a post-cut-off columbarium, the Administration will administratively avail an option for an applicant seeking a licence fulfilling the respective criteria to opt for payment for the regularization exercise in phases or through periodic payments.

Initiative relating to TIA

7. The Administration has also decided to adopt an empirical evidence approach for assessing traffic impacts when processing licence applications from pre-cut-off columbaria whose operation only involves niches sold before 30 June 2017. In other words, the departments concerned will generally not call for a TIA. All private columbaria applying for a licence under the Ordinance will however be required to submit to PCLB a management plan, proposing traffic and pedestrian flow management measures which can be implemented by themselves to minimize any adverse impact of the columbarium operation on the local community.

Members' concerns

8. At the Panel meeting on 12 December 2017, the Administration briefed members on the two policy initiatives as set out in paragraphs 4 to 7 above. The major views and concerns expressed by members are summarized below.

Justifications for introducing the two policy initiatives

9. Concern was expressed that the two policy initiatives had attracted controversies within the community. Many members criticized the Administration for failing to assess the situation (e.g. the actual number of private columbaria that might have difficulty in meeting the relevant eligibility requirements) before finalizing the regulatory regime. In some members' view,

following the introduction of the two policy initiatives, it would be much easier for a pre-cut-off columbarium to obtain a licence. They queried the justifications for introducing the initiatives and how the interest of consumers would be protected under such circumstances.

10. According to the Administration, the Ordinance introduced for the first time a licensing regime to regulate the operation of private columbaria. The Administration needed to resolve properly the historical problems accumulated over decades. A lot of people had purchased niches from private columbaria or even interred the ashes of their deceased relatives therein before they knew about the proposed licensing regime announced vide the Private Columbaria Bill on 18 June 2014. Given this, the Administration needed to adopt a pragmatic and sensitive approach towards the consumers who had purchased niches from private columbaria and the dedicated persons, to minimize their losses and any social disruption arising from massive displacement of interred ashes.

11. The Administration stressed that the decision to introduce the two policy initiatives neither contradicted nor altered any provisions of the Ordinance. They were administrative measures without involving funding or legislative amendment. The fundamental principle that only private columbaria which had obtained a licence might sell or newly let out niches had not been and would not be changed. Operators of private columbaria had the responsibility to abide by various licensing requirements as stipulated under the Ordinance.

Initiative relating to land premium

12. Many members expressed grave concern about the Administration's decision to extend the waiving arrangement from pre-cut-off columbaria eligible for an exemption in all other respects to pre-cut-off columbaria eligible for a licence in all other respects. It was pointed out that such decision was not in line with previous deliberations of the Bills Committee on Private Columbaria Bill ("the Bills Committee"). According to the then position of the Administration, pre-cut-off columbaria should comply with the land-related requirements and any such columbarium seeking regularization in respect of breaches of relevant lease conditions and/or unlawful occupation of unleased land should be subject to payment of land premium, waiver fee or STT rental at full market value ("FMV") as well as administrative fee for regularization, in order to be eligible for the issue of a licence. In members' views, the decision to extend the waiving arrangement was a "relaxation" measure for pre-cut-off columbaria at the expense of public coffers. It would also set a bad precedent that the Government could introduce administrative measures to relax certain regulatory requirements.

13. The Administration explained that during previous deliberations at meetings of the Panel and the Bills Committee, some Members urged the Administration to address the land premium issue for regularizing pre-cut-off columbaria in a pragmatic manner so as to avoid "catastrophic" consequences. Information collected from the Notification Scheme in 2014 showed that there might be about 87 private columbaria that had commenced operation before 1990. However, according to the latest information available, there might be only around 28 such private columbaria (as the remaining 59 might not be able to provide any documentary proof). Having regard to the dire consequences of not providing for any special arrangements for pre-cut-off sold niches in pre-cut-off columbaria, the overall interests of the community and the wishes of the descendants not to disturb the interred ashes of the deceased as far as practicable, the Administration announced the two policy initiatives. For waiving of relevant payments for regularization in respect of pre-cut-off sold niches in pre-cut-off columbaria eligible for an exemption in all other respects (originally estimated to be 87 columbaria), if the intention was to continue to cover those 59 columbaria which might turn out to be seeking a licence, the Administration would need to, for parity, extend the same treatment to columbaria in like circumstances, i.e. the 44 pre-cut-off columbaria which had not claimed pre-1990 status seeking a licence.

14. The Administration emphasized that only those pre-cut-off columbaria confirmed to be eligible for a licence in all other respects might be considered for seeking the waiving arrangement. In other words, the pre-requisites were that the columbarium must (a) be a pre-cut-off columbarium; (b) fulfill the licensing criteria for a licence in all other respects, which included more than 10 relevant requirements on planning, building and fire safety, environmental protection, electricity and lift and escalator safety, management plan, financial proposal, right to use premises, deed of mutual covenant, etc. A pre-cut-off columbarium would not automatically get a licence as a result of the two policy initiatives. Each application would be considered on a case by case basis, having regard to its circumstances and merits.

15. Grave concern was raised about the financial implication associated with the waiving arrangement, specifically the estimated amount of revenue forgone associated with extending the waiving of relevant payments for regularization to pre-cut-off columbaria eligible for a licence in all other respects. Information was sought on the calculation method adopted/factors and variables taken into account in the Administration's assessment of land value premium to be paid by operators of the 131 columbaria claiming to be pre-cut-off columbaria. There was a suggestion that to alleviate the financial burden, consideration might be given to requiring operators of pre-cut-off columbaria confirmed to be eligible for a licence to pay FMV land premium at a certain percentage (e.g. 20% to 30%) instead of waiving the relevant fees and rentals in whole.

16. According to the Administration, the Lands Department normally assessed the land premium for a private columbarium at FMV based on the estimated proceeds from disposal of all its niches (unsold as well as sold niches) at present-day value. However, from the operators' perspective, some niches were sold over a long period of time by pre-cut-off columbaria in the past few decades at different prevailing prices, with some sold long time ago at prices far below the current prices. Most had not factored into account the land premium element. As the transaction had been consummated, it would not be possible for the columbaria to afford the FMV land premium or to recoup such FMV land premium from consumers. Having considered the above, it was decided that the waiving arrangement be extended to cover pre-cut-off sold niches in pre-cut-off columbaria eligible for a licence in all other respects. The Administration believed that the waiving arrangement would help prevent operators from clawing back the amounts from concerned consumers or using revenues from new licensed niches to cross-subsidize pre-cut-off sold niches, resulting in a substantial increase in the prices of new supply.

17. The Administration advised that at this stage, it was difficult to assess the actual number of columbaria and niches that could benefit from the waiving arrangement and hence the financial implications, as the number of columbaria making applications was not known until 29 March 2018 (i.e. the deadline for pre-cut-off columbaria to submit their applications). Besides, only those pre-cut-off columbaria confirmed to be eligible for a licence in all other respects could apply for waiving payments for the regularization exercise and the amount of relevant payments that might be waived depended on circumstances of individual sites (e.g. the location of the columbaria and the number of niches involved).

18. Some members were of the view that the decision to extend the waiving arrangement to cover pre-cut-off columbaria eligible for a licence in all other respects would give rise to a non-level playing field and provide double benefit for some licensees. The Administration responded that the safeguards as set out in paragraph 5 above would be put in place to prevent abuse of the waiving arrangement. The restriction would not apply to pre-cut-off niches for which FMV premia were paid. It was expected that private columbaria fulfilling all statutory requirements would have a higher chance of getting a licence and therefore be able to resume the supply of niches earlier than its competitors. To prevent abuse of the waiving arrangement, operators of private columbaria were required to provide PCLB with registers on pre-cut-off sold niches.

Initiative relating to TIA

19. Pointing out that in some districts where private columbaria were situated, the traffic and pedestrian flow during the grave sweeping seasons (Ching Ming Festival and Chung Yeung Festival) had caused serious nuisance to residents living nearby, members expressed concern about the traffic impact brought by the new policy initiative relating to TIA. Enquiry was raised about the measures for resolving the traffic and pedestrian flow problem.

20. According to the Administration, the TIA mechanism was normally adopted for newly planned establishments/facilities or large-scale activities that were expected to bring about additional traffic and pedestrian flow problem. The Administration had three observations after its study. Firstly, the columbaria concerned were not newly planned establishments but had already been in existence and operation for a long time. Their traffic impact could therefore be ascertained on an empirical rather than an assumed basis. Secondly, the traffic and pedestrian flow problem mainly surfaced during the grave sweeping seasons and the situation outside the grave sweeping seasons was usually not of a major concern. Thirdly, an applicant for a licence would have to submit a management plan covering the traffic and pedestrian flow management measures for prior approval by PCLB and was required to comply with the licensing conditions relating to the traffic and pedestrian flow management measures imposed by PCLB. If a pre-cut-off columbarium would like to sell or let out niches after 30 June 2017, or any post-cut-off columbarium would like to pursue their columbarium developments, the TIA mechanism was applicable to them in the context of the planning and licence applications.

21. The Administration further advised that during the grave sweeping seasons, traffic and pedestrian flow management arrangements tailored to the needs of the neighborhood were already implemented by relevant departments and/or the operators in certain districts. According to on-site observation, with traffic and pedestrian flow management arrangements as well as contingency plans, the traffic and pedestrian flow level in those areas during the peak periods was still at an acceptable level.

Latest developments

22. According to information available on PCLB's website, by the closing date of 29 March 2018, PCLB has received applications for specified instruments from 144 private columbaria. The Panel will receive deputations' views on the two policy initiatives relating to land premium and TIA issues of pre-cut-off columbaria seeking a licence at the special meeting on 30 April 2018.

Relevant papers

23. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on policy initiatives relating to land premium and traffic impact assessment issues of pre-cut-off columbaria

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	12.12.2017 (Item IV)	<u>Agenda</u> <u>Minutes</u> Administration's follow-up paper on the implementation of the Private Columbaria Ordinance (LC Paper No. <u>CB(2)645/17-18(01)</u>)

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