



Review of Columbarium Policy Public Consultation Document

Food and Health Bureau

July 2010

Public Consultation on Review of Columbarium Policy

I. Introduction

Losing a loved one is difficult enough, but in paying our last respect, we need to ensure that funeral and burial arrangements would be handled with sensitivity and dignity. Furthermore, burial arrangement should also ensure that family, relatives and friends can continue to pay respect thereafter. It is an important matter for both the departed and the living.

2. Since the 1970s the Government has been encouraging cremations instead of the traditional burials. Hence, the number and percentage of cremations have risen substantially in the past 30 years from about 7 300 cremations (35%) in 1975 to 36 500 cremations (89%) in 2009. Currently, the prevailing practice after cremations is to store cremains in columbarium facilities. It is very likely that this trend will continue and we, as a community, need to consider how in the medium and long term we can provide a sustainable method of handling cremains. In late 2009, the Food and Health Bureau (FHB) set up a Working Group within Government to review and study the way forward for public and private columbarium facilities due to the rising demand. Based on the study conducted by the Working Group and in view of the urgent need for providing a sustainable resolution to the issue as well as the rising concerns over the increasing number of private columbaria (some unauthorised), the Government decided to consult the community on this important matter which concerns social customs and personal emotion.

3. The challenges for us are geographically Hong Kong is small; population is large; very limited availability of space in the territory for columbarium facilities and local community resistance and reluctance to have facilities in their district. We also have to consider technical feasibilities including topographical conditions, land use compatibility, planning, building control, fire safety, religious beliefs, worship, personal choices, infrastructural

support and transport capacity particularly during traditional and annual festivals for paying respect to our ancestors.

4. For columbarium facilities whether managed by the Government or public bodies like the Board of Management of the Chinese Permanent Cemeteries (BMCPC), Tung Wah Group of Hospitals or religious bodies, the public are relatively less concerned about their management aspects. Unfortunately, the same may not be true for some privately owned or managed columbarium facilities. It is in this respect that the Government believes that the solution lies in the introduction of a licensing regime to regulate private columbaria in order to ensure that there will not be a proliferation of unauthorised columbarium facilities. We must proceed to resolve these complicated issues for the good of the community.

5. At the same time, the Government will continue to adopt all feasible measures to increase the supply of columbarium facilities. The Government has initially identified 12 sites with potential for columbarium development. In addition, the Government will encourage the BMCPC and religious bodies to develop more columbarium facilities at suitable sites or expand their existing facilities. Private operators may also consider conversion of industrial buildings for columbarium use.

6. The Working Group considered that for there to be a sustainable long term solution, the community must address the key issues outlined above and come to a consensus as to what is most appropriate and acceptable to the society.

7. Members of the public are welcome to give views, in particular on the following matters –

A. Increasing the supply of columbarium facilities to meet the overall public demand

- (1) Although columbaria are essential facilities for the community, it is not easy to develop columbarium facilities in Hong Kong given our small geographical size and the large population as well as strong local resistance against the development of such facilities in their neighbourhood. Do you agree that all districts should collectively share the responsibility to develop columbaria so as to increase supply to meet the needs of the community? What kinds of measures do you think can be adopted to lessen local resistance to the construction of columbarium facilities? (see paragraphs 16 to 18 for details)
- (2) Do you agree that existing cemeteries, which are already well supported by infrastructural and transport facilities, should be expanded or more columbarium facilities should be built therein to expedite the provision of such facilities? (see paragraph 17 for details)
- (3) The BMCPC and religious bodies also play an important role in the provision of columbarium facilities. To augment the supply of columbarium facilities as soon as possible to meet public demand, do you agree that the BMCPC and religious bodies should be encouraged to expand their existing columbarium facilities or develop such facilities in other places? (see paragraph 20 for details)

B. Encouraging the public to accept a more environmentally friendly and sustainable means for handling cremains

- (4) The concept of sustainable development is generally accepted in the community. To promote the sustainable development of

columbarium facilities, do you agree that the public should be encouraged to accept more environmentally friendly and sustainable means for handling cremains? The Government has been actively promoting scattering of cremains in Gardens of Remembrance (GoRs) or in designated Hong Kong waters. Do you agree that the Government should step up the efforts to further promote these two ways of handling cremains? Do you have any other suggestions on alternative means of handling cremains? (see paragraphs 21 to 25 for details)

- (5) At present, public niches are allocated to bereaved families on a permanent basis. Given the limited supply of suitable land for columbarium development, do you think that it is the best arrangement for the Government to continue this perpetual interment practice? There is suggestion that a time-limited lease / an annual management fee should be introduced for public columbarium facilities (including urn grave facilities) to ensure that they will continue to serve their purpose as places for descendants to pay respect to the deceased. This can also help achieve sustainable development and better utilisation of niches. Do you think that the suggestion is feasible? (see paragraphs 28 to 30 for details)
- (6) The Government may consider introducing an incentive scheme for the return of public niches to the Government for re-use in exchange for an ex-gratia allowance. Do you agree to the introduction of such incentive scheme by the Government? (see paragraph 31 for details)

C. Enhancing consumer protection

- (7) To facilitate members of the public who are considering purchasing / preparing to purchase private columbarium niches to

make an informed choice, the Government will publicise information of private columbaria. Do you have any suggestions on how to further strengthen consumer education? (see paragraphs 41 to 45 for details)

D. Enhancing regulation of private columbaria

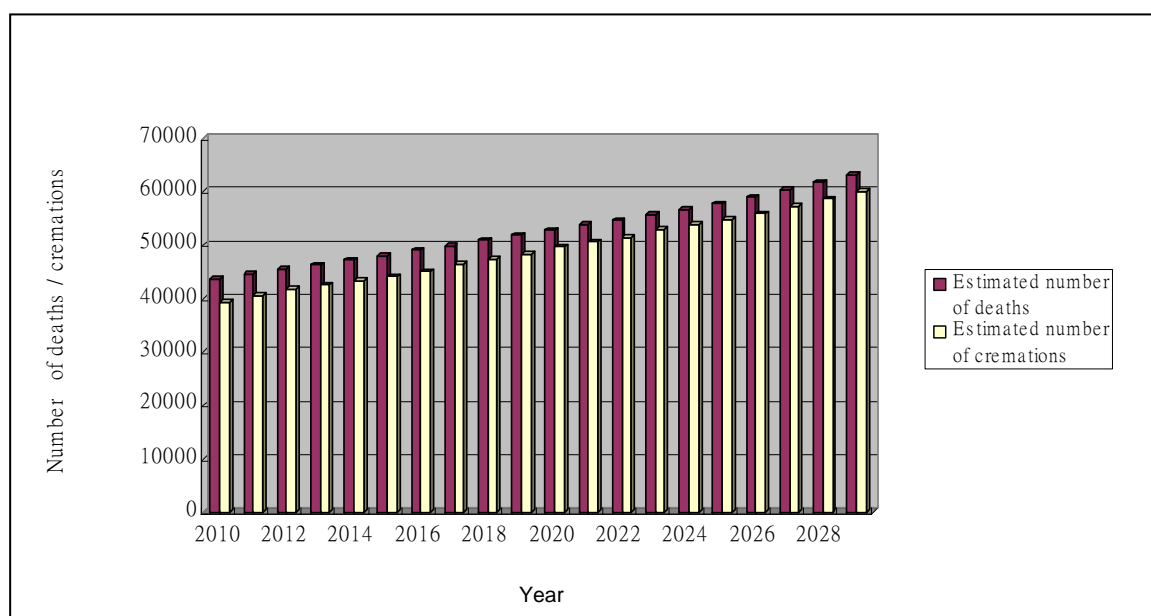
- (8) The Administration considers that in the longer run, a licensing scheme should be introduced for better regulating private columbarium development. A preliminary framework for such a scheme has been worked out and is set out in this public consultation document. Do you think the proposed licensing scheme is appropriate for enhancing regulation of private columbaria? (see paragraphs 46 to 51 for details)
- (9) Some people do not welcome the existing private columbarium facilities in their districts. Meanwhile, those who have purchased niches therein are worried that the columbaria will not be able to continue operation under the new licensing system because they involve unauthorised developments or due to other reasons. In fact, given the inadequate supply of columbarium facilities, it will not be easy to handle the displacement of cremains. When facing such dilemma, how do you think the Government should deal with existing unauthorised private columbaria? (see paragraphs 52 to 58 for details)

8. Please give your views on the above questions. After collecting your views, we will analyse and formulate appropriate measures to increase supply of columbarium facilities, move towards sustainable development, and enhance regulation of private columbaria.

II. Overview of columbarium development

9. With a growing population in Hong Kong, the number of deaths and the number of cremations have been rising gradually every year, resulting in an increasing public demand for columbarium facilities. Based on past data, the average annual numbers of deaths and cremations in the next 20 years (2010 to 2029) are estimated to be about 52 600 and 49 200 respectively.

Estimated numbers of deaths and cremations from 2010 to 2029



10. Currently, there are eight public columbaria managed by the Food and Environmental Hygiene Department (FEHD) providing about 167 900 public niches, all of which have been allotted. Some 300 re-used public niches are available each year for allotment to applicants on the waiting list. The waiting period is normally two years or more, depending on the number of vacated niches available in different columbaria and the number of applicants on the waiting list.

Public niches under the management of the FEHD

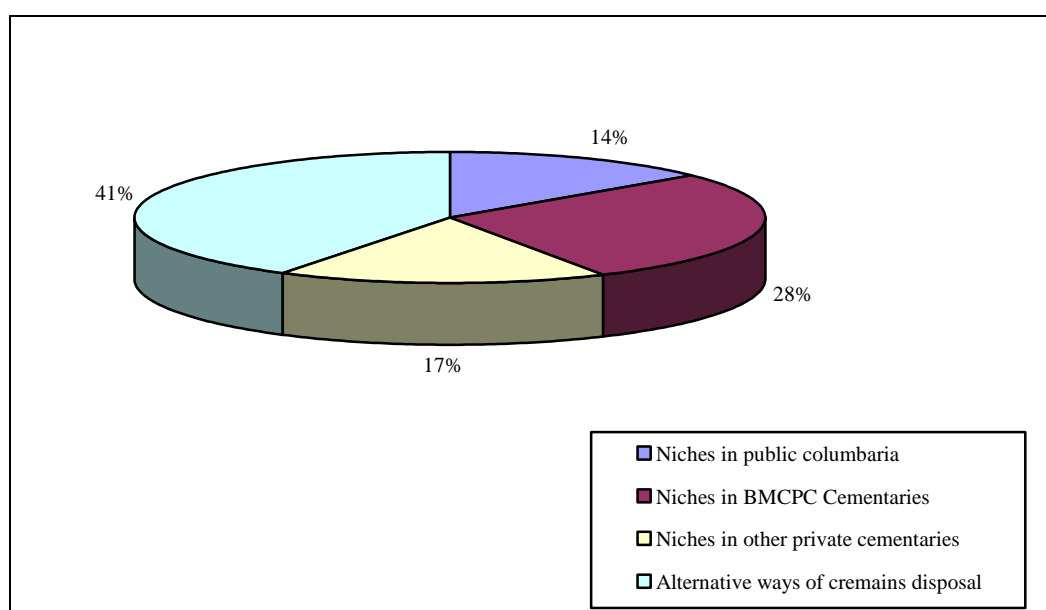
	Public Columbaria	Date of Completion	Year (Provision of Additional Niches)	No. of Niches
1	Cape Collinson	1963-1994	2006(2 088)	61 615
2	Diamond Hill	1979-1992	2009(18 501)	61 811
3	Fu Shan	1985	-	9 625
4	Kwai Chung	1979	2006(2 394) 2008(3 374)	9 276
5	Wo Hop Shek	1975	2006(2 520)	22 290
6	Cheung Chau	1991	2004 (210) 2007(1 026)	2 335
7	Lamma Island	1991		490
8	Ping Chau	1991		490
Total				167 932

11. To provide more public columbarium facilities, the FEHD has put up for allotment a total of 21 875 public niches in Kwai Chung and Diamond Hill in 2009. These niches can accommodate about 47 100 urns. In July 2009, the Finance Committee of the Legislative Council (LegCo) approved funding for construction of a new public columbarium within the Wo Hop Shek Cemetery. The project will provide some 41 000 new niches, which can accommodate approximately 80 000 urns, for use in 2012. In the meantime, the Government will continue to actively identify suitable sites for development of new public columbarium facilities. However, according to experience, whenever the Government conducts local consultation on such development projects, many local residents and the District Councils (DCs) concerned usually raise objection. Over the past few years, a number of columbarium projects involving over 240 000 niches have been shelved as a result.

12. Apart from public columbaria, there are 14 columbaria situated within private cemeteries specified in Schedule 5 to the *Public Health and Municipal Services Ordinance* (Cap. 132), mainly operated by religious or ethnic organisations for non-profit making purposes. Among them, the non-governmental BMCPC is established under the *Chinese Permanent Cemeteries Ordinance* (Cap. 1112) to provide and manage cemeteries for persons of Chinese race permanently residing in Hong Kong. The BMCPC manages four cemeteries with columbaria providing about 208 700 niches, all of which have been allotted apart from a few to be re-used. The BMCPC anticipated that about 50 000 newly-built niches will be provided in the coming two years. Other cemeteries managed by Catholic, Protestant, Buddhist and other religious bodies provide about 119 300 niches in total, of which some 35 400 are not yet allotted. It is projected that about 8 000 newly-built niches will be available in the coming two years.

13. In the last ten years (2000-2009), niches provided by the Government only accounted for about 14% of cremations in the same period, or 40% if BMCPC is to be taken into account.

Ways of handling cremains for 2000-2009



Note: The alternative ways of handling cremains include depositing the cremains in private niches other than those provided in private cemeteries, keeping the cremains at home, and scattering the cremains at GoR or in designated Hong Kong waters, etc.

III. Proposed way forward and measures

14. It is the prevailing practice in the community to deposit the cremains of the deceased in columbaria on a permanent basis. As it takes time to transform our social customs, we consider that at the present moment, columbarium development should be primarily taken forward in the following directions:

- (1) Increasing the supply of columbarium facilities to meet the overall public demand;
- (2) Encouraging public acceptance of more environmentally friendly and sustainable means of handling cremains;
- (3) Enhancing consumer protection in the choice of private columbaria; and
- (4) Enhancing the regulation of private columbaria to ensure better handling of non-compliant cases.

IV. Increasing the supply of columbarium facilities

15. The Government will continue to adopt all feasible measures to increase the supply of columbarium facilities.

District-based columbarium development scheme

16. Columbaria are essential facilities for the community but it is difficult to develop columbarium facilities for the reasons mentioned above. To expedite the provision of niches, different districts (18 districts) and / or regions (five LegCo geographical constituencies) should collectively share the responsibility of developing columbarium facilities. The Government will adopt a multi-pronged approach to actively pursue columbarium development projects.

17. First, the Government will actively explore further the feasibility of building additional columbarium facilities in existing cemeteries. As existing cemeteries are already equipped with infrastructural facilities and transportation support, compared to new sites, expansion can be pursued in a shorter period of time so that the supply of columbarium niches can be increased earlier. We are now identifying vacant plots in existing cemeteries (e.g. Wo Hop Shek Cemetery and Sandy Ridge Cemetery) for developing low-rise columbaria or open-air niches (including “tree burials” ones) and explore how to minimise visual impact through landscape and building design. We will also consider ways to improve the pedestrian and traffic flows around the cemetery area during festive peak times, and priority may be given to constructing a ring road or widening the existing roads.

Different designs of open-air niches



18. Meanwhile, the Government will step up its efforts to identify suitable sites for the development of columbarium facilities across the territory. The Government has tentatively shortlisted 12 sites in seven districts for studying whether it would be feasible and appropriate to develop them for columbarium use (details are at **Annex**). The study will cover the topographical conditions and infrastructural support of the relevant sites as well as their technical feasibility (such as traffic impact assessment and environmental impact assessment). If a site is currently being used for other purpose, relocation of existing use will be studied, too. Once a site is identified to be suitable for columbarium development, the relevant DC will be formally consulted. Flexible arrangements to promote local acceptance of columbarium development plans such as reserving a certain portion of niches for priority allocation to local residents in need could also be considered. The Government will improve the outlook and layout of proposed columbaria through flexible design in order to ease the concern and anxiety of nearby residents. Measures that can be considered include providing landscaping facilities, standardising stone tablet design, abandoning the practice of framing photos and centralising

joss paper burning activities in the columbaria, etc. The Government will continue to identify suitable sites in all districts for columbarium development purpose. Construction of or conversion of multi-storey buildings into columbarium blocks can also be considered. These buildings only occupy a small land area, and will relieve people of the inconvenience of having to travel to remote places for paying tribute to their ancestors. Experience in overseas countries (such as Japan) in using multi-storey buildings as columbarium blocks has been positive. The Government will further its efforts in soliciting support from the DCs and local communities through continuous communication.

Multi-storey columbarium blocks in Japan



Conversion of industrial buildings into columbarium facilities

19. The experience in Japan shows that properly-designed multi-storey columbarium blocks can be part of a densely populated community and have minimal visual impact and nuisance to neighbouring residents. There are established mechanisms in Hong Kong for interested developers to seek planning approval from the Town Planning Board (TPB) and to modify the land lease conditions for this purpose. Hence, owners of potential industrial buildings (such as those located in proximity to existing cemeteries) may consider developing columbarium facilities through these mechanisms.

Encouraging the BMCPC and religious bodies to expand their scale of operation

20. The BMCPC and religious bodies play an important role in augmenting the supply of columbarium facilities. To increase the supply of columbarium facilities in a speedy manner to meet the needs of the community, the BMCPC and religious bodies are encouraged to develop more columbarium facilities at suitable sites or expand their existing facilities. Furthermore, religious bodies are also encouraged to set up GoRs to further promote the scattering of cremains in GoRs as an alternative of handling cremains. In the light of shortage of columbarium facilities, religious bodies may consider opening up their facilities for application by the non-religious community.







Alternative means of handling cremains

21. Apart from developing new public columbaria, the Government has been actively promoting scattering of cremains in GoRs or in designated Hong Kong waters. These two ways of handling cremains are not only solemn but also beneficial to sustainable development. They are also free of charge or of low cost.

Gardens of Remembrance

22. There are eight GoRs under the FEHD for the public to scatter the cremains of the deceased therein. They are located at Cape Collinson, Diamond Hill, Fu Shan, Kwai Chung, Wo Hop Shek, Cheung Chau, Peng Chau and Lamma Island respectively.

Some GoRs under the FEHD

 <p>Cape Collinson Garden of Remembrance</p>	 <p>Diamond Hill Garden of Remembrance</p>
 <p>Fu Shan Garden of Remembrance</p>	 <p>Kwai Chung Garden of Remembrance</p>
 <p>Wo Hop Shek Garden of Remembrance</p>	 <p>Cheung Chau Garden of Remembrance</p>

23. The FEHD processed about 170, 380 and 650 applications for scattering cremains in GoRs in 2007, 2008 and 2009 respectively. Before 2007, there were just less than 30 such applications on average per year. Despite the increasing trend, there is still much room for improvement so as to ease the shortage of permanent niches. The FEHD has just completed beautification works in the Wo Hop Shek GoR and is now planning to build a GoR in the Diamond Hill Cemetery.

Scattering of cremains at sea

24. Apart from scattering cremains in GoRs, the public can also choose to scatter cremains in designated Hong Kong waters. At present, there are three designated areas in the sea, namely east of Tap Mun, east of Tung Lung Chau and south of West Lamma Channel, for the scattering of cremains.

25. The FEHD introduced streamlined procedures for application for scattering of cremains at designated local waters in 2007. As at May 2010, the FEHD has processed nearly 1 000 applications, representing a significant increase compared with a total of 44 such applications before the new application system was put in place. To encourage environmentally friendly burial and to promote scattering of cremains at sea, the FEHD has launched a pilot scheme on the provision of ferry services starting from January 2010 to facilitate the public to scatter cremains at sea. Currently, there are free ferry services every Saturday from the Sai Wan Ho Public Pier to the east of Tung Lung Chau for such purpose. Each ferry trip can accommodate up to ten applicants with each of them bringing at most seven family members / relatives or friends on board. There will be a master of ceremonies on board to assist in holding a simple memorial service. In view of the positive response, the FEHD has provided additional ferry services so as to shorten the waiting time for the service to less than eight weeks. Apart from the FEHD, non-governmental organisations (NGOs) and private enterprises also provide ferry services for such purpose.

Procedures for scattering of cremains at sea



Ferry



Master of Ceremonies



Holding a simple
memorial service



Scattering of cremains



Scattering of cremains



Scattering of flower
petals

Internet memorial service

26. In addition, the FEHD launched an internet memorial service in the second quarter of 2010. Members of the public can upload words, photographs and even video clips to a “Memorial” webpage (<http://www.memorial.gov.hk>) in remembrance of the deceased who have used FEHD’s services in cremation, columbaria, GoRs, scattering of cremains at sea and burial etc. We anticipate that online memorial service should receive some acceptance by the public after a period of development as it is convenient and free from time and location constraints. In some European and American countries, as well as in the Mainland, there are also web pages providing internet memorial service.

V. Sustainable development of columbarium facilities

27. The sustainability of columbarium facilities is a matter of concern. To meet public demand, the Government will continue to make every effort to build more new columbarium facilities. Meanwhile, we will also seek to facilitate transformation of social traditions by encouraging the public to use alternative means of handling cremains, such as scattering cremains in GoRs or in designated Hong Kong waters. Public views on other innovative and sustainable means of handling cremains and paying tribute to the deceased are also welcomed.

28. The following proposals aim to initiate relevant discussions and to encourage more new feasible ideas.

Maximising the use of existing niches

29. We will continue to encourage the public to maximise the use of existing niches through various channels, for example, by reminding the bereaved families that a standard size niche space can indeed store two urns while a family size niche can store four urns from the same family / kinship.

Time-limited lease

30. Columbarium facilities should serve their purpose as a place to pay respect to the deceased. At present, public niches / urn grave spaces are allocated on a permanent basis. However, given there is a growing shortage of niches, for the purpose of relieving the shortage and increasing the supply, we need to consider whether the existing arrangement of providing permanent niches / urn grave spaces should be changed. In some places, the interment of cremains in newly allocated public niches is limited to say 20 years, subject to renewal by the descendents on a regular basis. Another new measure worth consideration is the introduction of an annual management fee – if the lease is not renewed within a specified period by relatives, or if the family members / relatives and friends of the deceased fail to pay the management fee for a specified number of years (say six years) consecutively and they are out of contact despite attempts by the authorities to get in touch, the niches will be vacated for other users and the cremains therein relocated to a properly-designed communal repository or scattered in a GoR. According to overseas and Mainland experience, the purpose of imposing an annual management fee is not for revenue generation but to ensure effective use of the limited niche resources. However, these new arrangements will apply only to new niches / urn grave spaces. Existing niches / urn grave spaces will not be affected.

Incentive scheme for the return of niches

31. We may also consider the introduction of an incentive scheme for the return of public niches to the Government for further use in exchange for an ex-gratia allowance. In such cases, the cremains of the deceased will be returned to the family members / relatives and friends.

VI. Existing regulation on private columbarium development

32. Private columbaria play an important role in the market, both in terms of supply and, more importantly, choice of niches. Some patrons prefer private columbaria mainly because of their personalised services such as pre-death purchase and daily worship services, etc.

33. The operation of all trades in Hong Kong must be in compliance with the statutory or other requirements of the Government. Although the provision of private columbaria for storage of cremains does not give rise to public health and environmental hygiene concerns, the columbaria still need to comply with the land lease, and the statutory land, town planning and building requirements. The relevant Government departments will handle the enquiries, complaints and matters relating to private columbaria in accordance with their respective mandate and relevant legislation and administrative measures.

34. On the planning aspect, under the *Town Planning Ordinance* (Cap. 131), like any other developments, “columbarium” must conform to the requirements of the relevant statutory plans. In general, if a site is zoned for “Other Specified Uses” with an annotation of “Cemetery” or “Columbarium”, “columbarium” use is permitted as of right and planning permission from the TPB is not required. On a majority of the statutory plans, “columbarium” is a Column 2 use under the Notes for “Government, Institution or Community” and/or “Green Belt” zones. If these sites are to be developed for “columbarium” use, planning permission from the TPB under Section 16 of the *Town Planning Ordinance* should be obtained. For development of “columbarium” facilities on sites other than those covered above, a rezoning application has to be submitted to the TPB under Section 12A of the *Town Planning Ordinance*. In determining such application, the TPB will normally take into account all relevant planning considerations, including location under the application, land use compatibility, traffic and environmental impacts, as well as views from relevant Government departments. The public will also be consulted in accordance with the provisions of the *Town Planning Ordinance*.

Depending on the circumstances of each case, the TPB may impose certain planning conditions when granting the planning permission. Under the *Town Planning Ordinance*, the Planning Authority is only empowered to take enforcement action for non-compliance with the requirements of the statutory plans in areas covered by the Development Permission Area (DPA) Plans.

35. On land administration, land leases are made between the Government and the landowners who, as a party to the lease, are required to ensure that the use of their land is in compliance with all the requirements in the land leases. The formulation of a land lease is targeted at the land use and not for the purpose of imposing regulation on any individual trades. Whether the development and operation of a private columbarium are in breach of a land lease depends on the conditions of individual leases (drawn up at different times), and cannot be generalised. Upon receipt of a complaint about a breach of land use requirements stated in land leases, the Lands Department (LandsD) will deploy its staff to carry out inspection on the site concerned. Legal advice will be sought on the lease conditions which may be involved in the actual circumstances, and follow-up action taken as appropriate. Where landowners apply for regularising a breach of land lease requirements, or intend to apply for modification of lease conditions for the provision of columbarium facilities, the LandsD will deal with the application. LandsD will normally advise applicants to apply for and obtain the planning permission first, and will consider the views of the relevant departments in the process. If the application is approved, the LandsD will include the appropriate conditions for lease modification, and the payment of a land premium may be required.

36. The above mentioned planning and lands controls mainly focus on unauthorised land use. The departments have to ascertain the existence of unauthorised development before corresponding enforcement actions could be taken. The Planning Authority will take enforcement actions in areas covered by DPA Plans in accordance with the procedures under the *Town Planning Ordinance*, mainly through the issue of enforcement notices; and taking prosecution actions in case of non-compliance with the enforcement notices. If

a lot owner in breach of land lease requirements is not taking rectification actions for approval by the Administration, the Administration will further initiate litigations or take other legal actions.

37. On building safety, the construction of the building concerned must comply with the building safety standards required of buildings for use as columbaria. In accordance with the current enforcement policy of the Buildings Department (BD), if there are unauthorised building works (UBW) in the premises where the columbarium is located which pose a hazard or imminent danger to life or property, or new UBW, the BD will take enforcement actions under the *Buildings Ordinance* (Cap. 123). If there is a material change in use which affects the safety of the building structure or the occupants, the BD may also carry out enforcement actions under the *Buildings Ordinance*.

38. On fire safety, the existing ordinances such as the *Fire Services Ordinance* (Cap. 95) and its subsidiary legislation, the *Fire Safety (Commercial Premises) Ordinance* (Cap. 502), and the *Fire Safety (Buildings) Ordinance* (Cap. 572) have laid down requirements on fire safety in buildings and stipulated that fire service installations or equipment shall be kept in efficient working order at all times. Where necessary, the Fire Services Department (FSD) will conduct assessments on fire hazard and inspections to ensure that means of escape are clear and unobstructed, and the fire service installations and equipment of the buildings are maintained in proper working order. If contraventions of the *Fire Services Ordinance* are detected, the FSD will take immediate enforcement actions. Besides, the BD will also assess the adequacy of means of escape in the buildings in accordance with the requirements of the Code of Practice for the Provisions of Means of Escape In Case of Fire 1996. When a private columbarium applies to the TPB for planning permission or change of land use, or to the LandsD for lease modification, both the FSD and BD will give advice on the fire safety of the relevant land/building.

39. Some people in the community are concerned about the street management problems which might arise from the operation of columbarium

facilities. Indeed, various departments will take actions in accordance with their respective mandate. For the FEHD, it will tackle those problems which have an impact on environmental hygiene within its purview, such as obstruction to cleansing operations and fouling of streets. Besides, if the burning of paper offerings gives rise to air pollution, the Environmental Protection Department (EPD) may despatch staff to conduct on-site investigation under the *Air Pollution Control Ordinance* (Cap. 311). If air pollutants are found to cause nuisance, the EPD may serve an Air Pollution Abatement Notice to those engaged in the activities to require that relevant measures be taken to eliminate the nuisance. As regards the related problems of noise and obstruction to traffic etc., the Hong Kong Police Force may take appropriate actions within its ambit. In summary, the existing regulatory regimes have already covered the aspects concerning land lease, planning, building and fire safety, etc. Relevant Government departments will continue to take enforcement actions against unauthorised aspects of private columbaria under their respective mandate. Under the existing mechanism, there are established channels and procedures for private columbaria to apply to the departments concerned for regularisation (e.g. applying for the relevant planning permission and/or lease modification).

VII. Enhancing consumer protection

40. We will publicise information on the private columbaria known to the LandsD and the Planning Department (PlanD), and enhance consumer education in this regard.

Publication of Information on private columbaria

41. In April 2010, the Consumer Council published a topic report on private columbaria in its monthly magazine CHOICE, covering a detailed guide to the two-step checkout¹ for consumers' reference. Included in the report were also three tables listing some of the public and private columbaria in compliance with land use zoning requirements. At present, relevant Government departments would release information on individual cases in response to enquiries or complaints received. To help those who are considering purchasing / going to purchase private columbarium facilities to make informed choices, we plan to publicise information on the private columbaria known to the LandsD and PlanD, including information on whether such facilities occupy government land illegally as well as whether they are in compliance with the land leases and statutory planning requirements, so as to provide the public with information about those private columbaria. Upon categorisation, the information will be uploaded onto Government websites for public viewing and will be updated from time to time to remind the public to exercise caution when purchasing columbarium niches.

¹ First and foremost, consumers should check if the operation of the private columbarium concerned is in compliance with the relevant requirements on planning, building design and building standards. Under the existing *Town Planning Ordinance*, a columbarium must conform to the requirements of the land use zoning as specified in the statutory Outline Zoning Plan for the site concerned. Secondly, the owners of the land on which the private columbarium is situated are required to ensure that the use of the land for that purpose is in compliance with all the land lease conditions. Consumers can obtain information on the permitted uses specified in the land lease by conducting a land search at the Land Registry. Consumers may also seek professional advice where necessary.

42. We propose the publication of two lists. Details of the proposed lists are as follows-

List A: Private columbaria compliant with the land lease, and the statutory land and town planning requirements

List A will mainly set out the private columbaria compliant with the land lease, and the statutory land and town planning requirements. In terms of planning, the columbaria in List A should be (1) an always permitted use under the relevant statutory plan; (2) covered by a planning permission issued by the TPB; or (3) confirmed to be an existing use (i.e. a use which existed before the gazettal of the Interim DPA Plan, DPA Plan or Outline Zoning Plan, whichever is applicable). In terms of land requirements, the columbaria in this list are those the land use of which do not contravene the land lease and do not occupy government land illegally. List A will also set out the planning and land information of the columbaria, including the number of niches permitted if applicable.

List B: Other private columbaria not on List A

Private columbaria that do not fall under List A will be included in List B. It will be difficult for the Administration to have a complete list of private columbaria at the initial stage. List B will not be exhaustive. In addition to basic planning and land lease information of the individual private columbarium, the status of applications to LandsD and TPB for regularisation as well as past TPB decisions on the relevant use of the land will also be included in this list, where applicable. Private columbaria, pending checking for compliance with the relevant requirements to be included in List A, will also be included in List B. Private columbaria confirmed to meet the relevant requirements will be moved to List A.

Consumer education

43. Apart from publishing the lists, we will also strengthen consumer education on the choice of private columbaria and on the risks of patronising operators of private columbaria in List B. We will work with the Consumer Council and other interested NGOs in such public education efforts.

44. Members of the public can now call the PlanD hotline at 2231 5000, or visit the website of the TPB (www.ozp.tpb.gov.hk), to check if a private columbarium facility is in compliance with the *Town Planning Ordinance* before buying private niches. Copies of the land lease can be obtained from the Land Registry. Members of the public are also advised to ask the sellers of columbarium niches to provide them with full and complete information so as to check whether a specific columbarium facility is in compliance with the statutory land administration and planning requirements, and the land lease requirements. Legal advice should be sought where necessary. Besides, they should also contact the operators of private columbaria direct to find out how they would, in the event that there is a breach of the relevant legislation or land lease requirements, deal with the interests of consumers and relevant issues, such as whether they would refund the fees to the consumers. Under normal circumstances, members of the public can pursue their claims under the law of contract if they consider that providers of columbarium niches are in breach of the sale and purchase contracts.

45. Through publicising the lists of private columbaria and enhancing consumer education, we believe consumers can be suitably protected. We look forward to hearing from the public other feasible suggestions to better protect consumers.

VIII. Enhancing regulation of private columbaria

46. In the longer term, we consider that a licensing scheme should be introduced to enhance regulation of private columbaria. It should be noted that a licensing scheme which is excessively stringent will impede the healthy development of the trade, reduce the overall supply of columbarium facilities and lengthen the waiting time for niches. On the other hand, a lax licensing scheme may not effectively curb the proliferation of unauthorised private columbaria. It is important to strike the right balance between the two. The Government must ensure that the scope and level of regulation under the licensing scheme would be appropriate. We welcome views from the public in this regard.

47. Our preliminary view is that all private columbaria (proposed to be defined as premises / sites which store human cremains at a charge and which are not built and / or operated / maintained by the FEHD) would be subject to the licensing scheme. They include those in existence before the enactment date of the new legislation. Operators of private columbaria subject to the licensing scheme should be required to obtain a licence or temporary exemption (see paragraphs 52 to 58 below for details of the arrangements for existing private columbaria). Storage of cremains at home or ancestral hall (where no charge is involved) should not be covered. However, funeral parlours, undertakers of burials, religious institutions (e.g. temples and monasteries) and columbaria run by charitable organisations providing services involving a charge either on a commercial or not-for-profit basis should be covered by the new legislation. In the drafting process of the legislation, we will study how to define private columbaria in a more comprehensive manner.

48. We propose that the *Public Health and Municipal Services Ordinance* (Cap. 132) be amended to provide for the scheme to license private columbaria. Cap. 132 currently provides for the licensing of, among other things, funeral parlours and undertakers of burials. Private cemeteries are also regulated under Cap. 132. Pertinent to these and other regulatory regimes, Cap. 132 provides

for a range of enforcement powers such as those of inspection and entry, as well as an appeal mechanism which in our view should equally be applicable to the licensing of private columbaria.

Conditions for Issuing / Renewing a Licence

49. We propose that the Director of Food and Environmental Hygiene (DFEH) should be the licensing authority empowered to grant and renew (proposed to be renewed every five years) a licence if he is satisfied that –

- (a) the applicant possesses the title to the premises / site where the private columbarium is / will be situated;
- (b) such premises / site comply / complies with all statutory requirements relating to planning, design, structure, fire precautions, environmental hygiene and safety, and any Code of Practice that may be published by the licensing authority under this new legislation;
- (c) the premises / site to which the application relates are / is suitable for columbarium development in terms of land use and that such development is permitted under the lease conditions; and
- (d) in all the circumstances the grant of the licence is not contrary to public interest. Such public interest considerations may include the overall supply of columbarium niches in the territory, views from residents or bodies in the district, as well as the interest of patrons of columbaria which came into existence before introduction of the licensing scheme.

50. The licensing authority should have reasonable powers to take all necessary actions, for example –

- (a) suspend or revoke a licence, as well as to permit the transfer of a licence;
- (b) impose and vary conditions in a licence which may include requirements to keep an updated record of information and contact in respect of buyers and / or descendents for niches, display licence at a prominent place, minimise nuisance (e.g. air and noise) to neighbouring residents, disclose information pertinent to consumer protection, and make regulations under the Code of Practice to ensure proper operation and management of private columbaria. Such regulations include requiring the private columbarium to liaise with the descendents concerned on proper handling of interred cremains if the columbarium is to cease business in future;
- (c) direct the licensees to take effective remedial actions to ensure that the columbarium is operated and managed satisfactorily; the safety of persons visiting the columbarium is ensured; and provisions of the relevant legislation and conditions of licence are complied with;
- (d) close an unauthorised private columbarium, handle appropriately unclaimed human cremains collected from any enforcement actions undertaken by itself or other Government departments, including those against unlicensed operation, breaches to land lease conditions, and illegal occupation of government land. Before depositing the unclaimed cremains at a public facility, the licensing authority will attempt to contact and allow descendents sufficient time (say, two years from date of first notification) to claim the interred cremains; and
- (e) enter and inspect any private columbaria including those premises suspected to be such.

51. It will be an offence to operate a private columbarium without a licence. The operator will be liable to a fine and / or imprisonment. The Administration will consider pitching the penalty at a relatively heavy level for deterrent effect. It should also be noted that the licensing system should not preclude other enforcement authorities (e.g. the Planning Authority, LandsD, BD, FSD) from taking enforcement actions against any private columbarium that has breached the legislation and requirements under their respective mandate.

Arrangements for Pre-existing Private Columbaria

52. Members of the public may have different views on how to deal with the pre-existing private columbaria. Local residents may oppose the continued operation of certain private columbarium facilities in the district, whereas those who have purchased niches therein will be concerned about the possible relocation of cremains in case of confirmed non-compliance.

53. We propose that under the new licensing system, all pre-existing private columbaria would need to produce documentary evidence to the licensing authority to apply for a licence. Applications meeting the licensing conditions will be issued with a licence. Private columbaria which cannot satisfy the requirements of the licensing system should apply for temporary exemption which would allow them to continue their operation without a full licence on a temporary basis.

54. Specifically, the legislation will provide that operators of the pre-existing private columbaria may, within a stipulated timeframe from the effective date of the licensing scheme, apply for a licence or temporary exemption. In the case of unauthorised private columbaria which have submitted application for regularisation of their unauthorised aspects to the respective authorities and are awaiting the outcome, or those who are unsure if they can meet all the licensing requirements, they should apply for temporary exemption so that the operator will be able to continue with the operation in the absence of a licence on a temporary basis. An application for temporary

exemption in respect of a private columbarium with unauthorised aspects will not be granted unless the applicant can satisfy the authorities that he has a reasonable chance of regularising his operation within a reasonable time, and that his operation would not pose immediate safety hazard. The legislation will empower the licensing authority to grant temporary exemption with stringent conditions which include –

- (a) measures must be taken to ensure that the facilities comply with legislative requirements and that the facilities are effectively managed. Nuisance to the neighbouring community should be minimised and measures should be taken to address any noise, light, air pollution and any possible safety concerns (e.g. crowd management). In addition, if a columbarium is to cease business, it must liaise with the descendants concerned on the proper handling of interred cremains;
- (b) those not compliant with such conditions would be subject to a fine and may even risk revocation of the temporary exemption in case of serious breach;
- (c) the temporary exemption should be time-limited, say with a validity period of two and a half years;
- (d) extension of a temporary exemption is at the discretion of the licensing authority having regard to individual circumstances; and
- (e) the licensing authority should have the power to revoke the temporary exemption for emergency cases, for instance temporary exemption would be revoked if it is found that a columbarium poses immediate safety hazards (e.g. fire and building safety).

55. For private columbaria which have applied for / been granted / rejected temporary exemption, if they are aggrieved by a decision of the licensing

authority, the appeal mechanism for licences under Cap. 132 should be applicable. Private columbaria with temporary exemption should, during the validity period of the temporary exemption, work towards applying for a proper licence as soon as possible. Those with unauthorised aspects who are pursuing regularisation under the existing planning and / or land control regime will also be required to apply for temporary exemption. However, it should be noted that a private columbarium with temporary exemption is only exempted from the requirement to operate with a licence on a temporary basis. It is not however exempted from compliance with other relevant legislative requirements. As such, other enforcement authorities may still take enforcement actions against any private columbarium that has breached the legislation and requirements under their respective mandate. This arrangement would ensure that private columbaria with temporary exemption would make genuine effort to acquire a proper licence in a speedy manner. The legislation should also stipulate that a private columbarium that has been granted temporary exemption must freeze the number of niches and stop further sale of niches before a proper licence is issued.

56. In respect of an application for licence which does not meet all the licensing requirements, the licensing authority will reject the application. The failed applicant may choose to cease the business (before which he should liaise with the descendents concerned to ensure proper handling of the interred cremains) or apply for temporary exemption in order to apply for regularisation in preparation for licence re-application in future. The licensing authority may consider such application within the framework set out in paragraphs 53 to 55 above.

57. Temporary exemption will only be issued to pre-existing private columbaria, but not new developments found after commencement of the licensing scheme. After enactment of the legislation, it would be an offence to operate a private columbarium without a licence or temporary exemption. The licensing authority will take enforcement action against such unlawfully operating columbaria.

58. Eventually, all private columbaria in operation in the territory should be regulated by way of a licence. However, pre-existing unauthorised private columbaria need to be allowed reasonable time for regularisation before they can be licensed. This would necessitate the granting of temporary exemption. The scheme of temporary exemption is therefore intended only to be a transitional measure to be phased out at an appropriate time. The Government will work out the details carefully so that this new measure will be able to curb the proliferation of unauthorised columbaria, and at the same time minimise any unnecessary disruption to patrons of columbarium niches. In any case, the issue of unauthorised columbaria has been in existence for some time, any enforcement action against existing columbaria needs to take into account the shortage of such facilities in the market. We would like to seek public's views on the proposed transitional arrangement above.

IX. Public consultation

59. The purpose of this consultation exercise is to gauge the public's views and engage them in discussions relating to traditional customs and community facilities so as to foster a consensus in the community and rally public support for policy formulation by the Government. We welcome views from all quarters of the community on the issues raised in this consultation paper.

60. Please forward your views and comments to the Food and Health Bureau on or before 30 September 2010 by mail, electronic mail or facsimile:

Address: Food Division, Food and Health Bureau, 20/F,
Murray Building, Garden Road, Hong Kong
E-mail address: ccc@fhb.gov.hk
Fax No.: (852) 2136 3281

Potential Sites for Columbarium Development

District		Potential Site
1	Eastern	A site on Cape Collinson Road, opposite Chai Wan Chinese Permanent Cemetery Columbarium and, next to Wan Tsui Estate Park
2	Wong Tai Sin	Diamond Hill columbarium extension
3	Sha Tin	A site on On Hing Lane, Shek Mun, next to Shatin Refuse Transfer Station
4	Sha Tin	Fu Shan columbarium extension
5	North	Surplus coffin burial grounds and other land within the Wo Hop Shek Cemetery
6	North	Undeveloped areas within the Sandy Ridge Cemetery
7	Tuen Mun	Part of the Tsang Tsui ash lagoon next to Black Point Power Station
8	Kwai Tsing	Ex-Kwai Chung Incineration Plant on Kwai Yu Street
9	Kwai Tsing	A site on Kwai Tai Road, southeast of ex-Kwai Chung Incineration Plant
10	Kwai Tsing	A site on Tsing Tsuen Road near Tsuen Wan Chinese Permanent Cemetery
11	Islands	Cheung Chau Cemetery extension
12	Islands	Mui Wo Lai Chi Yuen extension

Note: Development at these sites is subject to the topographical conditions and infrastructural support of the relevant sites, as well as their technical feasibility (such as traffic impact assessment and environmental impact assessment). If a site is currently being used for other purpose, relocation of existing use will be studied, too. Once a site is identified to be suitable for columbarium development, the relevant DC will be formally consulted.