

(Translation)

Discussion Paper
on 24 October 2016

Islands District Council

Paper No. IDC 113/2016

**Matters relating to the arrangement of condolence and ritual
for the deceased at Hoi Bun Pavilion**

Purpose

This paper aims to consult the Islands District Council on the arrangements for holding memorial ceremonies for the deceased by Cheung Chau residents in future, which are worked out consequent upon the judgement delivered by the Court of Appeal on 15 March 2016 concerning the Cheung Chau Hoi Bun Pavilion judicial review case, with a view to meeting the prevailing statutory requirements while respecting the traditional custom of the villagers.

Background

2. In the early 1970s, Cheung Chau residents handled funeral matters in a hall (Sung Lai Tong) at Treasure Bay, Tai Shek Hau. Management work was undertaken by the Cheung Chau Rural Committee. Subsequently the piece of land where the hall was situated was required for a development project and was thus resumed by the government. Since then, the “Hoi Bun Pavilion”, a temporary structure situated at Tai San Praya Road, has been used by Cheung Chau residents as a venue for holding traditional memorial services for the deceased. The temporary structure is a registered single-storey squatter hut with an area of about 75 square metres. An outdoor area with an area of about 75 square metres in front of the squatter hut is used for conducting condolence or farewell ceremonies.

3. About eight to ten memorial rituals took place at the Hoi Bun Pavilion each month on average. On the day of the memorial service, the hermetically sealed coffin carrying the dead body was placed inside the Pavilion. Bamboo scaffolding was erected and wreaths were placed in the outdoor area in front of the Pavilion for holding the condolence service by the

family of the deceased. After the service, the coffin carrying the dead body was temporarily kept at the Pavilion. The funeral ceremony was held in the morning on the following day, after which the coffin was transported by funeral workers to Cheung Chau Cemetery/Cheung Chau Crematorium for burial or cremation.

4. With a growing population in Cheung Chau, repeated complaints from residents about the Hoi Bun Pavilion have been received by the District Lands Office, Islands, the Planning Department, the Islands District Office, the Environmental Protection Department and the Food and Environmental Hygiene Department (“the Department”). In the light of this, a number of consultation exercises have been conducted by the departments concerned to identify suitable sites for relocation of the Pavilion. In August 1992, the Planning Department put forward seven sites for consideration by Cheung Chau residents. However, since the residents were unable to reach a consensus, relocation of the Pavilion could not be pursued further. In March 2006, the Islands District Office proposed 11 sites for relocation. It wrote to community organisations/owners' committees/mutual aid committees/local voluntary organisations, etc. in Cheung Chau inviting them to make recommendations on sites for relocation of the Pavilion for consideration by the government. Nevertheless, no consensus was achieved because of divided opinion and opposition from Cheung Chau residents. As such, the departments concerned were unable to take further action.

5. In March 2014, a Cheung Chau resident applied to the Court of First Instance of the High Court for judicial review, claiming that the Cheung Chau Rural Committee was carrying on the business of a funeral parlour (i.e. Hoi Pun Pavilion) without a licence on Cheung Chau Island and that the Department had failed to enforce the law under the Funeral Parlours Regulation (Cap. 132AD). The case was heard on 15 July 2014. Eventually, the High Court found in favour of the Cheung Chau resident on 27 February 2015, and directed that the Director of Food and Environmental Hygiene to reconsider whether the Hoi Bun Pavilion had been used as a funeral parlour under the Regulation and whether any follow-up actions under the Regulation needed to be carried out.

6. The Department, having sought legal advice, appealed to the Court of Appeal on 27 March 2015. The appeal was heard on 4 March 2016. The Court of Appeal handed down judgement on 15 March 2016, dismissing the appeal of the Department and upholding the Court of First Instance's original decision.

7. The Department applied to the Court of Appeal for leave to appeal to the Court of Final Appeal on 12 April 2016. Nevertheless, having further sought legal advice, the Department withdrew this application on 30 June 2016.

Proposals

8. The Department respects the traditional custom of Cheung Chau residents of conducting condolence and farewell ceremonies for the deceased. At the same time, the Department is obliged to handle the issue and take follow-up actions according to the law, taking into account the judgements of the Court of First Instance and the Court of Appeal. The Hoi Bun Pavilion is not a holder of a funeral parlour licence issued by the Department. Given its existing facilities, it cannot meet the licensing requirements and conditions for such a licence. Therefore, the current mode of operation of the Hoi Bun Pavilion is not in compliance with the statutory requirements and has to be ceased. Since the issue has an impact on the residents of Cheung Chau, the Department has worked out the following preliminary feasible solutions for Members' consideration:

Option 1

Cheung Chau residents are advised to hold mourning rituals at a licenced funeral parlour, instead of Hoi Bun Pavilion. The coffins will be transported back to Cheung Chau Cemetery or Crematorium for burial or cremation when all condolence and worshipping rituals have been completed. At present, there are seven licensed funeral parlours in Hong Kong.

Option 2

If necessary, the Department will consider allowing the family of a deceased Cheung Chau resident to place the coffin in the hall of the Cheung Chau Crematorium and to hold a simple farewell service before burial or cremation on the following day. Details about the use of the hall will need to be discussed further in due course.

9. In the long run, the Department will review the current legislation in the light of the unique geographical location of Cheung Chau and the views of the residents, in order to decide if amendment to the Funeral Parlours Regulation is necessary for regulating the Hoi Bun Pavilion, whose facilities are different from those in an ordinary licensed funeral parlour.

Advice Sought

10. Members are invited to note the content of this paper and put forward feasible proposals in order to work out a solution that is acceptable to both the government and the majority of Cheung Chau residents.

Food and Environmental Hygiene Department

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