

Policy initiatives related to land premium and traffic impact assessment of pre-cut-off columbaria announced by Government

The Government today (November 22) announced that the Chief Executive in Council has approved two policy initiatives to address the land premium and traffic impact assessment (TIA) issues of pre-cut-off columbaria seeking a licence.

According to the Private Columbaria Ordinance, 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. 8am on June 18, 2014.

Policy initiatives in line with overall interests of the community

A government spokesman said, "We need to resolve properly the historic problems which have accumulated over the years. Quite a number of people had purchased niches from these columbaria or even interred the ashes of their deceased relatives therein before they knew that the Government would introduce a regulatory regime. Given this, we need to adopt a pragmatic and sensitive approach towards the consumers who have purchased these niches, and the dedicated persons, to minimise their losses and any social disruption arising from massive displacement of interred ashes.

"In contemplating these policy initiatives, the Government mainly takes into account the overall interests of the community so as to avoid affecting the descendants, in particular their wish not to disturb the interred ashes of the deceased as far as practicable.

"We must emphasise that all pre-cut-off columbaria will not automatically get a licence as a result of the policy initiatives. The Private Columbaria Licensing Board will still consider each application in accordance with the requirements for applying for a licence as set out in the Ordinance."

Land premium arrangement and safeguards to protect consumers

On land premium, in respect of pre-cut-off sold niches, originally only pre-cut-off columbaria eligible for an exemption in all other respects (in operation before January 1, 1990) were allowed to apply for waiving payment for the regularisation exercise (the waiving arrangement). The Government has now decided to extend the waiving arrangement to allow pre-cut-off columbaria eligible for a licence in all other respects (in operation before 8am on June 18, 2014) to apply.

The Government spokesman added, "Only those pre-cut-off columbaria eligible for a licence in all other respects can apply. In other words, the prerequisites are that the operator: 1) must be a pre-cut-off columbarium; 2) must fulfil the licensing criteria for a licence in all other respects, which include more than 10 relevant requirements on planning, building and fire safety.

Specifically, a pre-cut-off columbarium confirmed to be eligible for a licence in all other respects may apply for administratively regularising, in respect of the pre-cut-off sold niches, 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. However, each application will be considered on a case-by-case basis having regard to its circumstances and merits.

The Government will impose a series of safeguards on pre-cut-off sold niches covered by the waiving arrangement, including that the operators are not allowed to impose extra charges beyond what was provided in the original agreements with the consumers concerned.

At the same time, the operators should seek the agreement of the consumers to abide by the restrictions below: (1) for those 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 only limited to his/her relative (in accordance with the definition of "relative" in the Ordinance); (2) for filled niches, if any interred ashes are removed subsequently in the future, such niches are not

allowed to be "refilled". After the niches referred to in (1) have become the niches referred to in (2) in future, the restriction in (2) would also apply to them. As such, the operators have to provide to the Licensing Board registers for endorsement for the purpose of the restrictions in (1) and (2) above.

For the number of niches without agreement between the operator and the consumers being reached, or in the absence of other equally effective means to ensure compliance with the above safeguards, a full market value (FMV) land premium will be payable. If FMV land premium is paid, such niches could be traded in the market free of the above restrictions. The operators must pay an FMV land premium for all the post-cut-off sold or newly let out niches.

"The above waiving arrangement is aimed at protecting consumers. From the consumer's perspective, whether a pre-cut-off columbarium applies for an exemption or a licence should make no difference to them as they have already purchased or even have been using the relevant niches. If the operators recoup land premium from consumers who have purchased the niches in the past or they pass on the land premium to consumers who will purchase niches in future, various kinds of disputes will arise," said the spokesman.

Initiative relating to TIA

Taking into account the overall interests of the community, the Government has decided to use an empirical evidence approach as the basis for assessing traffic impacts when the Government departments process the licence application from a pre-cut-off columbarium whose operation only involves the number of niches sold before June 30, 2017 (the enactment date of the Ordinance).

The Government has studied this issue in depth and has the following three observations. Firstly, the columbaria concerned are not brand-new planned establishments but have already been in existence and operation in the community for a long time. Secondly, the traffic and pedestrian flow problem mainly surface during the grave-sweeping seasons (Ching Ming Festival and Chung Yeung Festival) and the situation outside the grave-sweeping seasons is usually not a major concern. Thirdly, an applicant for a licence would have to submit a management plan covering the traffic and crowd control measures for prior approval by the Licensing Board, and is required to comply with the

licensing conditions relating to the traffic and pedestrian flow management measures imposed by the Board.

According to on-site observation, traffic and pedestrian flow management arrangements are already implemented by the Government departments in some of the areas where a number of columbaria are located together. The Government departments concerned have prepared contingency plans in areas with needs to cater for ad hoc situations. The Government has also noticed that some columbaria also actively make some traffic arrangements during Ching Ming Festival and Chung Yeung Festival, such as providing dedicated coaches to pick up and drop off gravesweepers. If only niches sold as at June 30, 2017 of pre-cut-off columbaria are counted, the traffic level in those areas during the peak hours is, overall speaking, still at an acceptable level. On the part of individual columbaria, operators have the responsibility to provide practicable mitigation measures within their capability. The Government departments will reflect to the Licensing Board their views on suitable mitigation measures that should be followed up by individual cases. We believe that the Licensing Board will, having regard to the situation, vet the management plan of the operators and impose appropriate licensing conditions.

If a pre-cut-off columbarium would like to sell or newly let out niches after June 30, 2017, or any post-cut-off columbarium would like to submit planning or licence applications for their development, the TIA mechanism is applicable to them.

Responsibilities of private columbarium operators

"The operation of a private columbarium in Hong Kong must be covered by a licence, an exemption or a temporary suspension of liability according to the Ordinance. Only private columbaria that have obtained licences may sell or newly let out niches. This fundamental principle has not been changed and will not be changed," added the spokesman.

"Operators of private columbaria have the responsibility to abide by the various licensing requirements as stipulated under the Ordinance."

According to section 99 of the Ordinance, a person who commits an

offence of providing information that is false or misleading is liable on conviction to a fine of \$500,000 and to imprisonment for two years. In addition, if an operator deceives the Government, thus resulting in prejudice to the Government, that person commits the offence of fraud under the Theft Ordinance, which would render an offender liable on conviction to a maximum penalty of imprisonment for 14 years. Moreover, if a columbarium operator and a consumer conspire to deceive the Government, they commit the offence of conspiracy to defraud. Such an act is contrary to Common Law and punishable under the Crimes Ordinance, which would render an offender liable to a maximum penalty of imprisonment for 14 years.

A Legislative Council brief on the above arrangements can be downloaded from the Food and Health Bureau's website (www.fhb.gov.hk/download/press_and_publications/otherinfo/160700_columbarium/e_legco_brief_on_land_premium_TIA.pdf).

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