

Environmental Affairs Panel
Extract of the minutes of meeting on 8 May 2001

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IV Proposed amendment to Noise Control Ordinance
(LC Paper No. CB(1) 1148/00-01(03))

5. The Deputy Secretary for the Environment and Food (DSEF(C)) briefly explained the proposal to amend the Noise Control Ordinance (Cap. 400) (NCO) to hold the management of a body corporate explicitly liable for an offence by the body corporate under NCO by highlighting the salient points of the information paper.

6. As noise pollution, like air pollution, was affecting the general public, Ms Emily LAU said that she was in full support of proposals to control noise pollution. She expressed regret that the proposed amendments set out under the Noise Control (Amendment) Bill had lapsed in the end of the 1999/2000 legislative session. While supporting the proposal of issuing written warnings to the management of the body corporate, subject to the agreement of the construction industry, Ms LAU asked if there was a need to increase the penalty for noise offences to achieve sufficient deterrent.

7. DSEF(C) advised that under the existing NCO, the maximum penalty for noise offences was a fine of \$100,000 for the first conviction and \$200,000 for the second and subsequent convictions. Conviction records for the year 2000 indicated that despite the imposition of the maximum penalty of \$200,000 on some of the noise offences related to construction activities, this had not been able to deter bodies corporate from second and subsequent offences. In view of the large number of repeated offences, Ms LAU held the view that the penalty for repeated offences should be raised as a deterrent. DSEF(C) said that due to the lack of personal liability for noise offences, bodies corporate tended to give less regard to compliance with NCO. Some of them might even include the fines as part of the project cost. To this end, the Administration considered that increasing the maximum fine levels for noise offences could not achieve sufficient deterrent effect, and that there was a need to make the management of a body corporate explicitly liable for an offence by the body corporate under NCO. Given the dire consequence associated with the conviction, the management of a body corporate would take steps to ensure proper control of its construction sites. This also accounted for the low number of subsequent convictions for noise offences by individual proprietors. Ms LAU said that she would support the early introduction of the proposed amendments.

8. On the number of families that would be affected by construction noise, the Assistant Director of Environmental Protection (Environmental Assessment and Noise) (ADEP(EAN)) said that according to a study conducted in 1999, it was estimated that about 100,000 people would be affected by noise generated from industrial and construction activities, particularly those related to violations of noise permits. In

other words, an average of about 100 households would be affected by each case of noise violation. Ms LAU expressed concern that the Administration might have underestimated the number of households affected by noise. She opined that consideration should be given to forfeiting construction noise permits of repeated offenders.

9. Mr LAW Chi-kwong said that Members of the Democratic Party would support the proposed direction in controlling noise generated from construction and industrial activities. He was however concerned about the scope of the proposed amendments and their impact on the construction industry. For instance, whether developers would be affected and whether the Urban Renewal Authority and the heads of Government departments would be held liable for noise offences. ADEP(EAN) explained that since the proposed amendments aimed at holding the management of the body corporate liable, the Environmental Protection Department (EPD) would initiate prosecution against the owners of industrial premises in the case of industrial noise, or the main contractors or the subcontractors as appropriate in the case of construction noise. Developers would unlikely be held liable for the noise offences. As regards the applicability of NCO to Government departments, ADEP(EAN) advised that except for the penalty provisions, all other provisions of NCO applied to Government departments. In the event of violations by Government departments which were not properly dealt with, the Chief Secretary for Administration would be notified. He added that the management of non-government organizations (NGO) involved in the supervision of construction works was also liable for noise offences. For the purposes of the proposed amendments, owners corporations registered under the Building Management Ordinance (Cap. 344) were not regarded as bodies corporate in view of the voluntary nature of office bearers. Besides, it might deter owners from participating in the management committee of an owners corporation if they were held personally liable for environmental offences.

10. Mr Abraham SHEK declared interest as the representative of the real estate and construction constituency. He pointed out that most contractors would abide by the law and few of them would commit repeated offences. The penalty charges, be they for the first or subsequent offence, were very high and sometimes more than a contractor could earn. Some contractors chose to violate conditions of noise permits because they had to ensure timely delivery of the works, failing of which would incur much financial loss. He added that the construction industry had had a number of meetings with EPD on the proposed amendments and was in support of measures to control construction noise. Nevertheless, as the amendments would make the management of a body corporate explicitly liable for noise offences committed by the body corporate, the construction industry considered it necessary to have in place provisions for the issue of written warning to the directors and officers of the bodies corporate concerned. To avoid situations where workers deliberately turned on the construction machines at night in an attempt to make the management liable for noise offences, the construction industry hoped that a suitable Code of Practice (CoP) would be worked out by the industry and the Administration.

11. Expressing similar concern, Miss CHOY So-yuk asked if there were

measures to guard against deliberate violations of noise permit conditions by workers. DSEF(C) said that written warnings would be issued to the bodies corporate concerned so that they could take preventive steps. Where deliberate violations were made on malice, the bodies corporate should inform EPD and if such was substantiated, prosecution would not be taken against the bodies corporate.

12. Miss CHOY considered it necessary to provide a validity period for the written warning so that bodies corporate could be given a second chance of warning on subsequent offence committed after the expiry of the specified period. This would ensure that bodies corporate would not be prosecuted for inadvertent violations made over an extended construction period which might last for years. Since the written warning was meant to deter subsequent offences, DSEF(C) said that it would not serve the purpose if it was only valid for a certain length of time. As controllers of the construction project, the bodies corporate had the responsibility to ensure effective operation of the site and compliance with legislative requirements. The construction industry had been consulted on the proposed system of written warning and close liaison would be maintained to address their concerns about the said administrative arrangement. Miss CHOY however pointed out that it would not be easy for bodies corporate to effectively control the operation on site. She reiterated that the Administration should give further thoughts to specifying a validity period for the written warning. Mr Abraham SHEK agreed with Miss CHOY's view and hoped that there would be further consultation with the construction industry on the provision of a validity period for written warning.

13. Mr Martin LEE recalled that the proposed amendments were met with opposition when it was first brought up for discussion at the Panel two years ago. Members of the Democratic Party had since requested the Administration to consult the industries with a view to enlisting their support, and to provide proper warning before taking enforcement actions. He was pleased that with the Administration's effort, a consensus had been reached with the industries. As regards CoP, Mr LEE agreed that compliance with CoP should constitute valid grounds for due diligence defence. However, it was also necessary to stipulate explicitly in the Bill that non-compliance with CoP should constitute valid grounds for offence. He said that such two-way provision was found in some legislation and would facilitate the prosecution of offenders who chose not to comply with CoP.

14. ADEP(EAN) said that if a body corporate in violation of NCO was unable to demonstrate the availability of a proper system that was in effective operation, the due diligence defence would not apply and the body corporate would be liable to prosecution. The proposed provisions were considered adequate for enforcement purpose. The Principal Assistant Secretary for Environment and Food (PAS/EF(C)) added that the two-way provision for CoP had been examined. CoP was aimed at establishing a proper mechanism to prevent and control construction and industrial noise. It would not provide details on compliance procedures which were subject to constant refinements. Consensus had been reached with the industries that CoP was intended to provide a set of agreed principles rather than procedures. In the absence of the latter, it would be difficult to hold a body corporate liable for non-compliance of

CoP. The onus of proof on due diligence would rest with the body corporate concerned which would have to demonstrate that it had set up an effective system to comply with CoP in the prevention of noise.

15. Mr LAU Ping-cheung enquired if there were other abatement measures for noise control apart from punitive measures. DSEF(C) said that the Administration had been promoting a partnering approach, with reliance on education and publicity rather than enforcement control. For the past years, the Administration had held a series of briefing sessions with affected industries on measures to reduce noise. It would continue to maintain close liaison with the industries and keep them abreast of the latest technology in noise reduction. ADEP(EAN) added that EPD had held over 40 briefing sessions with the industries over the past two years and these had been attended by over 3,000 representatives from the industries. Seven sets of noise abatement guidelines had been formulated for the different industries. The Administration also held a number of meetings with the Hong Kong Construction Association on the proposed amendments to NCO.

16. In response to Mr LAU's proposal of introducing incentives to encourage the use of equipment which produced less noise, the Principal Environmental Protection Officer (Noise Management and Policy Group) (PEO(NMP)) said that construction companies were well aware that the equipment to be used in construction activities had to abide by the prevailing noise standards. Very often, contractors applying for construction noise permit would specify that quieter equipment was to be used in an attempt to improve their chances of success in the application. Construction noise permit would not be issued unless overall noise of the equipment to be used for night works complied with the noise limit.

17. Mr LAU suggested that as a precautionary measure, consideration should be given to specifying the type of construction equipment to be used in the tender documents. PEO(NMP) said that construction companies would need to be given a choice in the use of equipment, which might vary depending on site conditions. The Housing Department was trying out a new building demolition technique using hydraulic equipment which generated much less noise as compared to conventional methods. The Administration would try to promote this technique if it was found to be suitable. On the feasibility of specifying in the tender documents the acceptable level of noise, ADEP(EAN) said that the level had already been provided in the guidelines issued to the industries. He assured members that more efforts would be made to encourage the use of equipment that produced less noise.

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