

立法會
Legislative Council

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Finance Committee of the Legislative Council

**Minutes of the 7th meeting
held at the Legislative Council Chamber
on Friday, 19 January 2001, at 2:30 pm**

Members present:

Dr Hon Philip WONG Yu-hong (Chairman)
Hon NG Leung-sing (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP

Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent:

Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Prof Hon NG Ching-fai
Hon CHAN Kwok-keung
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip

Public officers attending:

Miss Denise YUE, JP
Mr Stanley YING, JP
Mr K K LAM

Mr Kim SALKELD, JP
Mr Donald TONG

Secretary for the Treasury
Deputy Secretary for the Treasury
Principal Executive Officer (General),
Finance Bureau
Deputy Secretary for the Environment and Food
Principal Assistant Secretary for the
Environment and Food

Clerk in attendance:

Ms Pauline NG

Assistant Secretary General 1

Staff in attendance:

Miss Polly YEUNG

Chief Assistant Secretary (1)3

Ms Sarah YUEN

Senior Assistant Secretary (1)4

Item No. 1 - FCR(2000-01)66

HEAD 154 - GOVERNMENT SECRETARIAT: ENVIRONMENT AND FOOD BUREAU

◆ **Subhead 149 General departmental expenses**

The Chairman advised members that this item was a resubmission of a proposal withdrawn by the Administration at the meeting on 5 January 2001. Mr Martin LEE enquired about the precedents for non-permanent members of the Court of Final Appeal (CFA) being appointed as arbitrators or enquiry panel chairmen. In reply, the Deputy Secretary for the Environment and Food (DS(EF)) referred to the recent appointment by the University of Hong Kong of Sir Noel Power, a retired member of the CFA, to chair the Independent Investigation Panel to inquire into the "opinion poll incident". Mr Martin LEE considered that the case quoted was not an appropriate precedent as the decision of the said Panel was not subject to appeal.

2. Regarding the availability of serving judges, DS(EF) confirmed that the Judiciary had advised that having regard to its present heavy workload, it would not be in a position to release a serving judge at the level of District Court or above to sit as chairman of the Environmental Impact Assessment (EIA) Appeal Board (the Appeal Board). As regards the 11 Recorders, the Administration had been advised that all Recorders with judicial experience in civil matters had been approached but none could be available.

3. In response to Mr LEE's enquiry on the consultation with the Hong Kong Bar Association and the Law Society of Hong Kong, DS(EF) reported that the Chairman of the Bar Association was consulted by phone through the Department of Justice. The Chairman was given the full background of the case and the Administration's concerns. The Chairman also confirmed that it would be unlikely to find a person who would be available for the duration of the appeal hearing in question. DS(EF) advised that the Law Society of Hong Kong had not been approached in connection with this appeal case.

4. Mr Martin LEE reiterated the concern raised by Mr Albert HO at the meeting held on 5 January 2001 that it would be inappropriate to appoint a CFA Judge to chair the EIA Appeal Board as appeals against the Board's decisions on points of law would

be heard by the High Court which was a lower court than the CFA. He also cast doubt on the Administration's report that no serving High Court or District Court Judge was available for appointment as Chairman of the EIA Appeal Board. Mr LEE considered that the Administration could approach the Bar Association and Law Society for qualified candidates to serve as temporary replacements for High Court or District Court Judges so that some of them could be released for appointment.

5. In response, DS(EF) referred to the long-standing arrangement whereby Judges of the Court of Appeal of the High Court could serve as Judges in cases heard in the Court of First Instance of the High Court. Any appeal against rulings made in such cases would be heard by the Court of Appeal of the High Court. He further pointed out that although the Chairman of the EIA Appeal Board should be a person qualified for appointment as a District Court Judge, there was no restriction on appointing a more qualified judge for the purpose.

6. In view of the difficulties encountered in the present case, Miss Margaret NG requested that the legislative provisions and the appointment process for dealing with appeals under environment-related ordinances should be reviewed. In response, DS(EF) advised that the Administration was in the course of reviewing the membership of the EIA Appeal Board panel in the light of the experience gained in the Spur Line case. In this connection, the Chairman advised that the subject might be further pursued at the relevant Panel if members so wished.

7. Miss Margaret NG asked whether the estimated 60-day duration of the appeal hearing had posed difficulty in appointing the Chairman. DS(EF) responded that the estimated duration, the weight of the case and the need for early hearings had to be taken into account when making the appointment. On the normal duration of hearings, DS(EF) advised that there was no precedent case under the EIA Ordinance. In one appeal case under the Air Pollution Control Ordinance, the hearing took place outside normal court hours and lasted for about one year.

8. Mr Martin LEE stated that Members of the Democratic Party would not support the present proposal. They did not subscribe to the Administration's explanation that no serving judge at the High Court or District Court level would be available, given that arrangements could be made to provide replacements for the judges.

9. The Committee approved the proposal.

10. The Committee was adjourned at 2:50 pm.