

立法會
Legislative Council

LC Paper No. CB(1) 1812/00-01
(These minutes have been seen
by the Administration and cleared
by the Chairman)

Ref: CB1/PL/EA/1

LegCo Panel on Environmental Affairs

**Minutes of meeting held on
Tuesday, 8 May 2001, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Prof Hon NG Ching-fai (Chairman)
Hon Cyd HO Sau-lan (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Non-panel members : Hon NG Leung-sing
attending Hon CHAN Kwok-keung

Members absent : Hon Bernard CHAN
Hon WONG Yung-kan
Hon Mrs Miriam LAU Kin-yee, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LAU Ping-cheung

Public officers attending : For items IV & V

Environment and Food Bureau

Mr Thomas CHOW
Deputy Secretary (C)

Mr Howard CHAN
Principal Assistant Secretary (C)

Environmental Protection Department

Mr Elvis W K AU
Assistant Director
(Environmental Assessment & Noise)

Mr K S CHAN
Principal Environmental Protection Officer
(Noise Management and Policy Group)

For item VI

Environment and Food Bureau

Mr Kim SALKELD
Deputy Secretary (B)

Drainage Services Department

Mr W H KO
Assistant Director/Projects & Development

Mr W T YEUNG
Chief Engineer/Consultants Management

Mr David CHEUNG
Senior Engineer/Consultants Management

Mr Marc TIU
Engineer/Consultants Management

For item VII

Environment and Food Bureau

Mr Kim SALKELD

Deputy Secretary (B)

Environmental Protection Department

Dr Ellen CHAN
Assistant Director (Waste Facilities)

Clerk in attendance : Miss Becky YU, Chief Assistant Secretary (1)1

Staff in attendance : Mrs Mary TANG, Senior Assistant Secretary (1)2

I Confirmation of minutes of previous meetings

- LC Paper No. CB(1) 1017/00-01 -- Minutes of the joint meeting with Panel on Transport held on 27 February 2001
- LC Paper No. CB(1) 1089/00-01 -- Minutes of the joint meeting with Panel on Planning, Lands and Works held on 9 February 2001
- LC Paper No. CB(1) 1146/00-01 -- Minutes of the meeting held on 6 February 2001)

The minutes of the meetings held on 6, 9 and 27 February 2001 were confirmed.

II Information papers issued since last meeting

2. Members noted the following information papers which had been issued since the last meeting -

LC Paper No. CB(1) 997/00-01 -- Annual review of the Waste Reduction Framework Plan and Waste Reduction Committee's newsletter;

LC Paper No. CB(1) 1009/00-01 -- Circular regarding a book entitled "Building Sustainable Communities: the Wanchai Experiment" provided by the Centre of Urban Planning and Environmental Management; and

LC Paper No. CB(1) 1147/00-01 -- Information paper on "Proposed amendment to Air Pollution Control (Vehicle Design Standards) (Emission) Regulations, Cap. 311, Sub. leg, Euro III

emission standards for newly registered motor vehicles” provided by the Administration

III Date of next meeting and items for discussion

(LC Paper No. CB(1) 1148/00-01(01) -- List of follow-up actions arising from discussion; and
LC Paper No. CB(1) 1148/00-01(02) -- List of issues to be considered)

3. Members agreed to discuss the following items at the next Panel meeting scheduled for 5 June 2001 -

- (a) Management of construction and demolition materials;
- (b) Appointment of members of the Advisory Council on the Environment; and
- (c) Impact of dredging and reclamation on the marine environment.

4. Ms Cyd HO suggested and members agreed that a special meeting be held to discuss the report of the delegation of the Panel on its overseas duty visit to Europe in April 2001.

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.

V Addition of Noise Control Designated Area
(LC Paper No. CB(1) 1148/00-01(04))

18. Referring to paragraph 6 of the paper, Mr NG Leung-sing sought clarification on the duration of the grace period and the circumstances under which an ad hoc review would be conducted on the establishment of "Designated Areas". DSEF(C) said that with the Panel's approval, the Administration would submit the proposal to the Legislative Council in May 2001. The establishment of "Designated Areas" would take effect on 1 December 2001 to allow a grace period of about six months to the construction industry to make necessary arrangements. The new "Designated Areas" would exclude locations where intake of residential blocks would not start for at least three years. While the need for establishing more "Designated Areas" would be reviewed once every three years, ad hoc reviews would be conducted during the interim where the situation so warranted. ADEP(EAN) added that ad hoc reviews would be conducted when there were proposals for major projects or applications for changes in land use.

19. Mr LAW Chi-kwong opined that instead of relying on regular and ad hoc reviews, a mechanism should be worked out with the Town Planning Board so that changes in land use which required corresponding changes in the delineation of Designated Areas could be dealt with expeditiously. DSEF(C) affirmed that such a mechanism was already in place. He said that as a member of the Town Planning Board, the Director of Environmental Protection was aware of changes in land use. However, there might not be an urgency in establishing new "Designated Areas" for residential developments before intake.

20. Responding to Miss CHOY So-yuk's enquiry on the distribution of "Designated Areas", ADEP(EAN) said that "Designated Areas" were established in all residential districts in Hong Kong. Referring to the map at the Annex to the paper, Mr Henry WU considered that there was a need to review the distribution of "Designated Areas" since some areas which were in close proximity to residential developments were not classified as "Designated Areas". PEPO(NMP) said that the purpose of establishing "Designated Areas" was to strengthen the protection of populated areas from construction noise. Presently, no construction works, regardless whether they were performed within or outside "Designated Areas", would be allowed

after office hours unless permission from the Director of Environmental Protection in the form of construction noise permit was given. The existing distribution of "Designated Areas" was considered adequate for the protection of the general population.

VI Increase in approved project estimate for “Outlying Islands Sewerage, Stage 1, Phase I - Consultants’ fee and investigation”
(LC Paper No. CB(1) 1148/00-01(05))

21. The Senior Engineer/Consultants Management, Drainage Services Department gave a power-point presentation on the Administration’s proposal to increase the approved project estimate for the Public Works Programme item 209DS by \$12.6 million in money-of-the-day prices in order to conduct new impact assessments, investigations and design for the revised Ngong Ping sewerage scheme.

22. Mr LAW Chi-kwong enquired about the 16 Sewerage Master Plans (SMPs), in particular the Outlying Islands SMP, and their implementation. The Assistant Director of Drainage Services /Projects & Development (ADDS/PD) advised that the implementation of the projects recommended under the Outlying Islands SMP was in progress. The upgrading of sewage facilities at Mui Wo sewage treatment plant (STP) had been completed while the works at the Siu Ho Wan STP was at the tender stage. The original design of the Ngong Ping STP was substantially revised to accommodate changes associated with the planning for the proposed cable car system. He agreed to provide supplementary information on the progress of implementation of SMPs.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide LC Paper No. CB(1)1326/00-01.)

23. Instead of conducting piecemeal site investigations and impact assessments on different parts of the Lantau Island, Miss CHOY So-yuk considered that it would be more cost effective to conduct an overall study on the Island as a whole. The Chief Engineer/Consultants Management, Drainage Services Department (CE/CM,DSD) said that funding for the overall site investigation and impact assessment for the whole of Lantau Island was originally included in one package. However, in view of the changes associated with the proposed cable car project, the design of the Ngong Ping STP had to be revised accordingly, hence the need for increasing the approved project estimate.

24. Ms CHOY asked how the Administration would deal with the sewage at Tai O, including that arising from the stilt house areas. CE/CM,DSD advised that the sewerage requirements for the whole of Tai O, including the stilt house areas, were being investigated under the Outlying Islands SMP Stage II Review Study. He added that upon the commissioning of the Ngong Ping STP which would provide for tertiary sewage treatment, the treated effluent would be sufficiently clean. The effluent would be discharged to marine waters through an existing stormwater culvert, thereby bypassing the stilt house areas at Tai O. As to whether the estimated number of 49,000 tourists visiting Ngong Ping had taken into account the future increase in the number of tourists following the opening of Disney Theme Park, ADDS/PD said that the estimate was based on the latest tourist projections up to 2016 released by the Hong Kong Tourist Association in February 2001.

25. The Chairman asked whether the latest Biological Aerated Filter (BAF) technology would be applied in the tertiary sewage treatment process at Ngong Ping STP. CE/CM,DSD said that the consultants would be requested to study all the available options, including BAF. They would also need to consider the means in which sludge arising from sewage treatment could be reduced and disposed of. One of the options was to dispose of the treated sludge at landfills.

VII Review of Government waste management contracts (LC Paper No. CB(1) 1148/00-01(06))

26. The Assistant Director of Environmental Protection (Waste Facilities) (ADEP(WF)) briefly explained the existing contractual arrangements for waste management facilities under the purview of EPD by highlighting the salient points of the information paper.

27. Miss CHOY So-yuk said that she had raised a question on the changes of ownership of parent companies of contracting companies for waste management facilities at a LegCo meeting. According to the Secretary for the Environment and Food, approval had been given by the Administration for the Waste Management, Inc (WMI) to transfer its shares in the contracting company to Vivendi Environment S.A. (Vivendi) in December 2000. However, Vivendi had announced in November 2000 that it had successfully taken over the ownership of the contracting company. Ms CHOY questioned if the transaction referred to had complied with the established guidelines on processing of applications for change of ownership. She also sought explanation on the sequence of events, the authority as well as the conditions for approval of such a change.

28. In reply, ADEP(WF) noted that Vivendi had disclosed through its website the transaction with WMI on the transfer of shares of the contracting company of the waste management facility. The wording as appeared in the website seemed to suggest that the transaction had been successfully completed but in actual case, formal approval from the Government had yet to be obtained. The disclosure of the transaction was a commercial decision in which the Government had no part to play. After examining the technical and financial capabilities of Vivendi, written approval was subsequently given by EPD in December 2000 on condition that Vivendi had to provide the necessary guarantees for the due performance of the contracting company and the undertaking to the effect that it would not sell its ownership of its shares in the contracting company without the written consent of the Government. In addition, Vivendi had to undertake that it would retain the technical expertise of the contracting company to ensure the standard of performance.

29. On the sequence of events, ADEP(WF) explained as follows-

- (a) In August 2000, WMI informed the Administration of the proposed assignment of its waste services operations in Hong Kong to Vivendi;

- (b) Between August to December 2000, an evaluation on the technical and financial capabilities of Vivendi was performed by EPD;
- (c) By December 2000, the evaluation was completed and written approval for the proposed change of ownership was granted to Vivendi on condition that it had to provide the necessary undertaking and guarantee;
- (d) A signed undertaking and guarantee were provided by Vivendi on 3 May 2001 and EPD was in the process of examining these documents;
- (e) As of now, Vivendi had yet to take over the operation of the contracting company pending the formal approval from EPD.

30. Miss CHOY requested the Administration to provide the terms of contract in relation to the transfer of ownership of the waste management facilities as well as the relevant exchange of correspondence between the Administration and the companies concerned from August to December 2000. Mr LAW Chi-kwong reminded members of the need for caution in requesting the disclosure of the terms of contract between the Government and a private party. ADEP(WF) said that the terms of the contracts were set out in general terms and would apply to other waste management contracts. DSEF(B) added that the Administration would seek legal advice before divulging any information regarding commercial contracts.

31. The Chairman enquired whether there had been previous cases involving changes of ownership and if so, whether the performance of the new companies were up to standard. ADEP(WF) affirmed that there had been two earlier applications for changes in ownership. The applications were approved after thorough examination of the technical and financial capabilities of the new parent companies and receipt of their undertakings and guarantees. The Administration was satisfied with the performance of the new companies. So far, there had not been any application for change of ownership which had been rejected by the Administration.

32. The Chairman expressed concern that there might be circumstances where a company with established technical and financial capabilities purposely won a contract in an attempt to impede the contract being given to its rival company. He asked how the Administration could prevent the subsequent transfer of ownership to a third company, which might be less competent in terms of performance. Miss CHOY shared the Chairman's view and considered that cases of such nature should require careful examination. While acknowledging the members' concerns, ADEP(WF) advised that upon receipt of an application for change of ownership, the Administration would assess the capabilities of the new company based on established criteria to see if it could perform up to the standard required. A change of ownership would not be allowed if the new company did not meet the standard.

33. As to whether changes in ownership of waste management companies would have implications on charges, DSEF(B) answered in the negative as charges were entirely based on the tendered prices of the contracts, which were determined at the time when the contracts were signed. The Chairman enquired about the party responsible for the payment of costs associated with the application for change in ownership. ADEP(WF) advised that the cost would be borne by the applicants concerned.

VIII Any other business

34. There being no other business, the meeting ended at 6:45 pm.

Legislative Council Secretariat
18 July 2001