

立法會
Legislative Council

LC Paper No. CB(1) 917/01-02
(These minutes have been seen
by the Administration)

Ref: CB1/PL/EA/1

LegCo Panel on Environmental Affairs

**Minutes of meeting held on
Thursday, 13 December 2001, at 9:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon CHAN Yuen-han, JP
Hon SIN Chung-kai
Hon WONG Yung-kan
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
- Members absent** : Hon Cyd HO Sau-lan (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon LAW Chi-kwong, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** : Environment and Food Bureau

Mr Thomas CHOW
Deputy Secretary (C)

Ms Jessie WONG
Principal Assistant Secretary (C)2

Environmental Protection Department

Mr Elvis AU
Assistant Director (Environmental Assessment and Noise)

Mr Simon HUI
Principal Environmental Protection Officer
(Assessment and Audit)

Agriculture, Fisheries and Conservation Department

Mr C C LAY
Assistant Director (Conservation)

**Attendance by
invitation**

: The Conservancy Association

Dr Gordon NG
Chief Executive

Dr NG Cho-nam
Director

Friends of the Earth (Hong Kong)

Mrs Mei NG
Director

The World Wide Fund for Nature, Hong Kong

Ms WOO Lai-yan
Conservation Officer

Hong Kong Institute of Environmental Impact Assessment

Mr Glenn FROMMER
Honourable Secretary

Hong Kong Institute of Architects

Mr WONG Wah-sang
Honourable Secretary

Mr K S WONG
Chairman/Environment and Sustainable Development
Committee

Hong Kong Institution of Engineers

Ir Patrick W M NG
Chairman/Public Relations Committee

Ir Dr Gabriel C K LAM
Committee Member/Environmental Division

Hong Kong Institute of Planners

Ms Betty HO Siu-fong
Council Member

Hong Kong Institute of Surveyors

Mr David C LEE
Chairman/Town Planning/Sustainable Development/
Urban Renewal Committee

The Real Estate Developers Association of Hong Kong

Mr Roger NISSIM
Representative

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) 564/01-02 — Minutes of the joint meeting with
the Transport Panel held on
26 November 2001

LC Paper No. CB(1) 513/01-02 — Minutes of the meeting held on
26 November 2001)

The minutes of the joint meeting with the Transport Panel and the regular meeting held on 26 November 2001 were confirmed.

II Information paper issued since last meeting

2. Members noted that no information papers had been issued since last meeting.

III Date of next meeting and items for discussion

(LC Paper No. CB(1) 566/01-02(01) — List of follow-up actions arising from discussion

LC Paper No. CB(1) 566/01-02(02) — List of outstanding items for discussion)

- 3 Members agreed to discuss the proposed amendments to the Technical Memorandum on effluent standards under the Water Pollution Control Ordinance at the next regular meeting scheduled for Monday, 28 January 2002, at 2:30 pm.

IV Mechanism of Environmental Impact Assessment

Meeting with deputations

Conservancy Association

(LC Paper No. CB(1) 566/01-02(03))

4. Dr NG Cho-nam shared with members his experience in the scrutiny of over 150 Environmental Impact Assessment (EIA) reports as follows -

- (a) the independence of EIA report was questionable. It was doubtful whether an EIA study was conducted independently when the consultant had to primarily satisfy the requirement of the project proponent to complete the project in the most cost-effective manner. As a result, there was occasional conflict between the findings and the conclusions of the EIA report;
- (b) the role of the Environmental Protection Department (EPD) was ambiguous. It had to administer the EIA Ordinance (Cap. 499) on the one hand and providing guidance to project proponents on the other. The impartiality of the Director of Environmental Protection (DEP) was also questionable, particularly after he held a joint press conference with a project proponent on a project which had not yet commenced EIA studies;
- (c) there were doubts over the quality of EIA reports given the limited time and resources available for the study;
- (d) there was no mechanism nor provision in the EIA Ordinance through which disputes between project proponents and opponents

could be expeditiously resolved to avoid unnecessary costs for appeal;

- (e) the lack of guidance on the assessment of ecological values and the criteria for compensation was a cause for concern. Compensation for wetland loss should be based on the “like for like” principle; and
- (f) the reliance on the EIA process to protect ecologically sensitive areas was a result of the absence of a conservation policy. Therefore, a clear conservation policy and an independent EIA Commission were required to ensure the quality and impartiality of EIA reports.

Friends of the Earth

(LC Paper No. CB(1) 566/01-02(04))

5. Mrs Mei NG said that the EIA mechanism was meant to protect the environment from unacceptable impacts arising from new developments. She considered it necessary for the public to be consulted in order to have a balance of all views before undertaking major development projects. She said that since an EIA report was a vital tool to assist decision makers to make best-informed decisions, this should be well prepared and should contain all the required information. Efforts should be stepped up to enhance the monitoring and management of the EIA process.

World Wide Fund for Nature Hong Kong

(LC Paper No. CB(1) 566/01-02(05))

6. Ms WOO Lai-yan said that the EIA process was an effective and efficient planning tool to avoid, minimize and control adverse impacts on the environment from Designated Projects (DPs). However, the following measures should be taken to improve the EIA process -

- (a) the scope of DPs under the EIA Ordinance should be expanded to cover small scale projects that could impose significant ecological impacts on sensitive and vulnerable areas with high conservation interest;
- (b) sustainability assessment of development plans at the inception stage should be instituted and implemented to ensure the need for the project;
- (c) the Administration should clarify the authority to determine the nature of alternatives to be studied in the EIA process and how such an authority could ensure project proponents had fulfilled their obligations to consider all possible alternatives;

- (d) a system should be set up to assess the professional standards of environmental consultants so that only qualified consultants would be eligible for conducting EIA studies. In the long term, additional resources should be allocated to local tertiary institutions to support more ecology-related research projects and to train local ecological/conservation planning and management personnel;
- (e) the Agriculture, Fisheries and Conservation Department should be made responsible for monitoring the implementation of ecological mitigation measures, particularly the management and monitoring of mitigation habitats; and
- (f) the Technical Memorandum under the Ordinance should include clear guidelines on the effectiveness of mitigation measures, the need to adhere to the goal of “no net loss” in habitat size and function as well as mitigation ratio based on the functional value of habitat loss.

Hong Kong Institute of Environmental Impact Assessment (HKIEIA)
(LC Paper No CB(1)604/01-02(01))

7. Mr Glenn FROMMER said that the HKIEIA believed that the EIA Ordinance was the appropriate framework to undertake and implement EIA studies in Hong Kong. The Technical Memorandum had also provided clear guidance on the assessment criteria. Much of the criticism on the EIA Ordinance was relating to the manner in which project proponents and their consultants undertook EIA studies and relegated the risk to their contractors. HKIEIA’s views could be summarized as follows-

- (a) EIA was frequently conducted as part of an overall engineering design consultancy in which the assessment lacked independence and was given a low priority;
- (b) EIA studies were awarded to the lowest bidder who might not have appreciated the difficulties involved in the conduct of the assessment;
- (c) project proponents did not manage their consultants well and did not appear to be knowledgeable about the content or implications of the EIA reports;
- (d) there was a general lack of understanding on how the Ordinance worked in practice and little appreciation of the spirit of partnership; and
- (e) the Administration should consider the need for accreditation for professionals involved in EIA to ensure their competency.

Hong Kong Institute of Architects (HKIA)
(LC Paper No CB(1)604/01-02(02))

8. Mr WONG Wah-sang said that HKIA recognized the contribution of EIA to the betterment of planning and building the environment of Hong Kong. To improve the existing EIA mechanism, HKIA had the following suggestions-

- (a) development should be based on an “integrative and holistic” approach so that appropriate and balancing designs could be identified towards sustainability;
- (b) the Administration should take into account the importance of aesthetic control for EIA to the built environment;
- (c) the scope of EIA should include human comfort and preservation of cultural heritage so that the most appropriate design towards urban sustainability could be assessed at an early stage; and
- (d) architectural design professionals should take a coordinating role in the EIA studies, particularly for projects relating to the design of the built environment.

Hong Kong Institution of Engineers (HKIE)
(LC Paper No. CB(1) 566/01-02(06))

9. Ir Patrick NG declared interest as a staff of the Kowloon Canton Railway Corporation. However, he was not involved in the Spur Line project. He said that while HKIE supported the genuine intent of the EIA Ordinance to ensure that infrastructure were implemented in an environmentally sustainable manner, it was concerned about the conflict between the EIA process and the project plan and how this could be resolved in an efficient and effective manner. He pointed out that any request for alternative options should be made at an early feasibility/investigation stage in the form of a strategic EIA before the detailed planning and design were completed. He then highlighted the following points in the submission from HKIE -

- (a) the requirement under the Technical Memorandum for in-depth engineering details to be furnished in the EIA report when the project was still at the feasibility/investigation stage had sometimes led to pre-emptive measures being proposed. It often proved to be very time consuming to make revisions later when many “material changes” were found necessary upon commencement of detailed engineering design;
- (b) a clear and unambiguous EIA brief was instrumental to quality EIA reporting and hence the analysis and processing of effective mitigation measures to sustain projects. However, the current EIA brief was broad in scope while too meticulous in the study areas in

respect of air, noise, water and waste etc, rendering it impracticable for project proponents to complete the EIA report within the time and resource constraints of the project;

- (c) there was a need for the Administration to strengthen the control of the Applicant's Authorized Professional Representative who were the key persons contributing to the avoidance of undue delay of major infrastructure projects. They should also be required to ensure compliance with the recommendations and conditions in the Environmental Permit. Similar control should be applied to other personnel responsible for certifying Environmental Monitoring and Audit reports under the Ordinance; and
- (d) efforts should be made to improve coordination among Government departments and consultation with public bodies on related environmental issues. The Administration should announce the minimum qualifications and experience which a person should possess to undertake EIA studies and should clarify the areas in the Ordinance which might be subject to interpretation by individual EPD officers.

10. Ir NG added that since development projects would have serious impact on the livelihood of people in Hong Kong, there was a need for a balance of all views, which should not be focused on the environment alone. As such, there might be a need to review the EIA mechanism, particularly in respect of the extensive power of DEP to issue Environmental Permits, without which projects could not proceed, under the EIA Ordinance. He made reference to major railway projects which were also subject to a statutory process under the Railways Ordinance (Cap. 519). However, it was the Chief Executive in Council rather than the head of a policy bureau or department to approve these projects.

Hong Kong Institute of Surveyors
(LC Paper No. CB(1) 566/01-02(07))

11. Mr David LEE said that although the concept of EIA was good, it had created many practical problems and caused delay to many projects. The EIA process which ran parallel but did not replace nor correlate with the planning study had created a lot of problems in the implementation of projects. The problem was compounded since the EIA mechanism required very comprehensive and detailed analysis on the future design of the project as well as the potential nuisance that might be created during construction. It was unrealistic and a waste of resources to carry out EIA studies on noise, air quality, visual impact, traffic at an early stage before the detailed layout had been completed. The need to carry out EIA studies again after the design of the project had been finalized would further delay the project. Furthermore, there was no clear guidelines as to whether a project profile was considered acceptable for direct application for an Environmental Permit. The data used in EIA studies, which could be carried out substantially before the construction work, might not accurately reflect

the real situation and hence some of the conditions in the Environmental Permits might not be applicable anymore. The Administration should clarify the relationship between a phased development and a continuous project and consider putting EPD under the Planning and Lands Bureau instead of the Environment and Food Bureau given its close relationship with planning and development rather than food and hygiene.

Hong Kong Institute of Planners (HKIP)
(LC Paper No. CB(1) 566/01-02(08))

12. Ms Betty HO said that HKIP fully supported the EIA Ordinance as an effective mechanism in the pursuance of sustainable development in Hong Kong. She pointed out that the delay of projects was not caused by the Ordinance but by the lack of good coordination among all players and the non-availability of sufficient information. As the current legislative framework was not effective to protect and conserve the natural and built heritage, a comprehensive and clear conservation policy should be established. EPD should take a proactive role in the early stage of the EIA process, particularly for public works projects, by advising the Government on the calculated risk that might arise at both strategic and project assessment levels in different development scenarios. It should also keep an open mind in implementing the EIA process and streamlining the procedures. She stressed that early consultation with the stakeholders and the public on the environmental impacts of various projects would help reach a consensus for future development.

Real Estate Developers Association of Hong Kong (REDA)

13. Mr Roger NISSIM said that REDA was of the view that the current EIA mechanism lacked a degree of certainty, particularly in respect of timing, for the development industry and repeated requests for additional information had extended the preparation time and affected the entire development process. He drew members' attention to some of the comments of the judgement of the EIA Appeal Board, emphasizing that the key to success was good communication.

14. Members noted the submission from the Advisory Council on the Environment circulated vide LC Paper No. CB(1) 566/01-02(09).

Meeting with the Administration

(LC Paper No. CB(1) 566/01-02(10) -- Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1) 566/01-02(11) -- Information paper provided by the Administration)

15. Mr LAU Kong-wah said that apart from the contentious Spur Line project, the recent decision of DEP regarding the road construction project at Lantau Island had also aroused much concern from the residents. He agreed to the views of the professional institutes that there were many aspects that need to be considered in implementing DPs and environmental concerns were only part of them. However, it

appeared that under the EIA process, environmental considerations had become the prime determining factor in the approval of Environmental Permits. He also shared the concern about the conflicting roles of EPD as the administrator and umpire in the EIA process. He further pointed out that early communication between the works departments/agencies and EPD might not be useful in resolving conflicts since the ultimate authority for the issuance of Environmental Permits still rested with DEP. He invited views from the deputations and the Administration in this respect.

16. Ir Dr Raymond HO enquired about the measures to ensure the independence of EIA reports; strengthen the coordination and operation of the EIA process to ensure objectivity; and improve the EIA brief to achieve better results.

17. Ms Emily LAU enquired whether enhanced communication among all parties concerned could resolve all the problems arising from the EIA process. She also requested the Administration to clarify the allegation that DEP had held a joint press conference with a project proponent on the project before the commencement of EIA studies.

18. Miss CHAN Yuen-han said that sustainable development should not be compromised as a result of expedition of public works projects to create job opportunities. She also questioned the rationale for the Administration to withhold information from interested parties in the course of EIA studies and whether statutory requirements were in place to require the release of the requisite information by the Administration.

19. Mr WONG Yung-kan asked who should be held responsible for failures in implementing the required mitigation measures in the Environmental Permits. He considered it necessary for the Administration to consult residents or business operators affected by DPs on the EIA studies.

20. Owing to time constraints, members agreed to re-address the issues at the next regular meeting on 28 January 2002. To facilitate discussion, the Clerk was requested to prepare a summary of views expressed at the current meeting for response by the Administration before the next meeting. It was also agreed that deputations should be invited to attend the next meeting for a further exchange of views.

Clerk

Admin

V Any other business

21. There being no other business, the meeting ended at 10:45 am.