

立法會
Legislative Council

LC Paper No. CB(1) 1692/01-02
(These minutes have been seen
by the Administration)

Ref: CB1/PL/ES/1

Legislative Council
Panel on Economic Services

Minutes of meeting held on
Wednesday, 20 March 2002, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon Miriam LAU Kin-ye, JP
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS
- Non-Panel members attending** : Hon CHAN Yuen-han, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
- Members absent** : Dr Hon LUI Ming-wah, JP (Deputy Chairman)
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon LAU Chin-shek, JP

**Public officers
attending**

: Agenda Item IV

Economic Services Bureau

Ms Sandra LEE
Secretary for Economic Services

Miss Mary CHOW
Deputy Secretary for Economic Services

Agenda Item V

Economic Services Bureau

Ms Sandra LEE
Secretary for Economic Services

Civil Engineering Department

Mr Anthony LOO
Chief Engineer/Technical Services

Mr Paul AU
Senior Engineer/Special Projects

Agenda Item VI

Economic Services Bureau

Ms Sandra LEE
Secretary for Economic Services

Mrs Rebecca LAI
Commissioner for Tourism

Miss Winnie HO
Assistant Commissioner for Tourism

Works Bureau

Mr Albert CHENG
Chief Assistant Secretary (Programme Management)

Civil Engineering Department

Dr C K LAU
Director of Civil Engineering

Mr W K TAM
Deputy Director/Special Duties

Mr P D MORGAN
Chief Engineer/Special Duties (Works)

Lands Department

Mr R D POPE
Director of Lands

Mr John CORRIGALL
Deputy Director/Specialist

Department of Justice

Mr Charles BARR
Deputy Law Officer (Civil Law) (Commercial)

**Attendance by
invitation**

: Agenda Item IV

Airport Authority

Dr David J PANG
Chief Executive Officer, AA

Mr Raymond LAI Wing-chueng
Finance Director, AA

Mr Howard ENG Kiu-chor
Airport Management Director, AA

Mr Alex DERBIE
Legal Director, AA

Agenda Item VI

Maunsell Consultants Asia Limited

Mr Eric MA
Associate, Maunsell Consultants Asia Limited

Maunsell Environmental Management Consultants
Limited

Mr Matthew KO
Associate, Maunsell Environmental Management
Consultants Limited

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Ms Debbie YAU
Senior Assistant Secretary (1)1

Action

I Confirmation of minutes and matters arising
(LC Paper No. CB(1)1298/01-02 - Minutes of meeting held on 21 December 2001)

The minutes of the meeting held on 21 December 2001 were confirmed.

II Information papers issued since last meeting
(LC Paper No. CB(1)1226/01-02(01) - Tables and graphs showing the import and retail prices of major oil products from February 2000 to January 2002 furnished by the Census and Statistics Department)

2. Members noted the above information paper issued since last meeting.

III Items for discussion at the next meeting scheduled for 22 April 2002
(LC Paper No. CB(1)1310/01-02(01) - List of outstanding items for discussion; and
LC Paper No. CB(1)1310/01-02(02) - List of follow-up actions)

3. Members noted that the Administration had proposed to discuss the following items at the forthcoming meeting to be held on 22 April 2002 at 10:45 am:

- (a) Merchant Shipping (Local Vessels) (General) Regulation and Merchant Shipping (Local Vessels) (Safety Survey) Regulation; and

Action

(b) "Flag State Quality Control System": An update.

4. Referring to the list of outstanding items for discussion by the Panel, members agreed to request the Administration to provide an information paper on the item "Review of Travel Agents Ordinance". Members would decide whether it was necessary to follow up on the item at a later meeting. Mr Fred LI suggested to discuss the item on "Regulation of beauty products and services provided by beauticians". The Chairman asked the Clerk to liaise further with the Administration on the items to be discussed at the meeting.

IV Proposed Airport Authority (Permitted Airport-Related Activities) Order
(LC Paper No. CB(1)1310/01-02(03) - Information paper provided by the Administration)

5. At the invitation of the Chairman, the Secretary for Economic Services (SES) briefed members on a proposal by the Airport Authority (AA) for the Chief Executive to make an order under section 5(3) of the Airport Authority Ordinance (Cap. 483) (AA Ordinance) to permit AA to undertake certain airport-related activities. She stated that competition in the airport business was getting keener and keener. At the neighbouring Pearl River Delta (PRD), there were five airports including the Hong Kong International Airport (HKIA). In order to enhance the competitiveness and status of the HKIA as a passenger and cargo hub having regard to the importance of the PRD, measures had been identified to extend the airport's connectivity to the region.

6. The Deputy Secretary for Economic Services said that the permitted airport-related activities being proposed were limited and specific. They included entering into alliance and other cooperation arrangements with other airports, investing in other airport governing bodies and other airports outside Hong Kong, providing facilities or services (whether in Hong Kong or elsewhere) for land and sea transport between the airport and other places, and developing logistics facilities to enhance the traffic flow through the HKIA. The proposed airport-related activities which AA was permitted to engage in or carry on outside the Chek Lap Kok Island (CLK Island) was set out in the draft Schedule attached to Annex 2 of the paper (LC Paper No. CB(1)1310/01-02(03)).

7. SES further said that under the AA Ordinance, AA should carry on activities in accordance with the objective of maintaining Hong Kong's status as a centre of international and regional aviation. AA was also required to conduct business in accordance with prudent commercial principles. Its Board of Directors comprised three Government officials and other members were appointed by the Chief Executive of the Hong Kong Special Administrative Region. Given the challenges ahead and in order to remove the geographical limitation as imposed by the current legislation, there was a need to make an Order to permit AA to engage in or carry on the proposed

Action

permitted airport-related activities outside the CLK Island. She appealed to members to favourably consider the proposal.

8. On the scope of the permitted airport-related activities in which AA might carry on or engage in as provided for in the proposed Order, Legal Director/AA (LD/AA) advised that the purposes of AA were to provide, operate, develop and maintain the HKIA for civil aviation in accordance with the objective of maintaining Hong Kong's status as a centre of international and regional aviation. It might provide facilities, amenities or services that were requisite or expedient in relation to the HKIA. The AA Ordinance also extended AA's functions to cover any airport-related activity in trade, commerce or industry carried on at or from the land leased to AA under the Airport Land Grant. The proposed Order only sought to enable AA to carry on the related activities outside the geographical limitation of the CLK Island.

9. Mrs Selina CHOW declared her interest as a Board member of AA.

10. Referring to the original legislative intent of imposing a geographical limitation viz at or in the vicinity of the HKIA, Mr TSANG Yok-sing queried whether it was appropriate to relax the geographical limitation from a single point to cover any airport outside Hong Kong. He considered it necessary to examine the then legislative intent before a decision was made on the present proposal.

11. SES replied that the concept of "airport-related" activities underwent rapid evolution from simply airplane landing and taking off to the present complex economic activities involving the development of hubbing activities to facilitate the efficient movement of people and goods and the development of the logistics sector. Faced with these challenges, there was a need to work closely with other neighbouring airports to maintain the competitiveness of the HKIA. Indeed, provision had been made in the AA Ordinance to allow for the Chief Executive to specify in an order any other airport-related activity which AA might engage in. This explained why the Administration had prepared the present proposal for members' consideration.

12. Mr CHAN Kam-lam queried the need for empowering AA to engage in or carry on the new airport-related activities outside the geographical limitation of the HKIA. He was worried that AA would eventually monopolize the logistics services, given its competitive edge over other market players. In his opinion, the Administration should formulate an appropriate policy and improve the business environment so as to facilitate the development of passenger/cargo transport and logistics operations by the private sector.

13. SES replied that whilst the HKIA currently had a competitive edge, it could not be complacent if it wanted to maintain and strengthen its aviation centre status. To this end, there was a need to promote the development of inter-modal transport services and strengthen cooperation with other airports in the PRD to enhance the flow of goods and passengers through the HKIA. She clarified that the Administration

Action

would not favour any party when taking forward the “Logistics Hong Kong” initiatives. In fact, there were many service providers in the logistics industry and there was no question of monopolization by AA. SES further said that whilst AA was considering an off-airport logistics park at North Lantau, it had yet to submit a proposal to the Administration for consideration. Besides, no decision had yet been made on the proposed development of a logistics park. A number of factors had to be further examined. These include economic benefits of such a proposal, site availability and further studies had to be done.

14. Mr CHAN Kam-lam was not convinced of the Administration’s reply. He pointed out that as an empowering provision was already included in the draft Schedule to permit AA to engage in or carry on logistics-related activities outside the CLK Island, the Administration must have some ideas in mind as to how the initiative would be taken forward. He therefore found it difficult to accept that there was no concrete plan in this regard.

15. SES explained that in taking forward the initiative for cooperation with other airports in the PRD, it was possible that logistics services might feature. In order to provide flexibility for AA to explore different kinds of cooperation activities with other airports, she saw the need for including suitable provisions in the proposed Order so as to avoid going through the legislative process again within a very short period of time.

16. Mr SIN Chung-kai and Mr CHEUNG Man-kwong stated that the Democratic Party (DP) supported AA’s initiative to enhance the competitiveness of the HKIA and work towards the aim of becoming the logistics service centre of the region in principle. However, it had reservation about the drafting of the Schedule attached to the proposed Order. In this regard, Mr CHEUNG pointed out that the combined effect of the repeated use of the terms "any" and "outside Hong Kong" would give AA too much flexibility to undertake its future business activities both within and outside Hong Kong, bearing in mind there was no clear definition of the reference to "airport-related activities". With such extensive coverage, Mr SIN was worried that AA might become an "independent empire", particularly when concern had already been raised in the past over the lack of control over statutory bodies. DP therefore considered it necessary for the Administration to review the drafting of the Schedule and clearly define the scope of the permitted airport-related activities in which AA might engage in, taking into account the intent of AA to enhance the competitiveness of the HKIA. Mr CHEUNG further said that the Administration should serve as a gatekeeper in regulating the extent of AA's authority. The Order should not be drafted in such a way that they were of a much wider scope than intended.

17. Whilst the intent behind the present proposal was beyond doubt, Miss CHOY So-yuk was concerned about the drafting of the Schedule which gave AA too much flexibility in undertaking its future business activities. In her opinion, the power granted to AA was much more than necessary for the purpose of taking forward its

Action

announced development strategies. If the intent of the present proposal was to enable AA to strengthen cooperation with other airports in the PRD, consideration could be given to confining the scope of the permitted airport-related activities in which AA might engage in to that extent.

18. Mr HUI Cheung-ching remarked that the Hong Kong Progressive Alliance was generally in support of AA's proposal to strengthen alliance with the airports in the PRD. He enquired about the progress in this regard. He was also concerned about the power granted to AA under point 4 of the draft Schedule, viz "To provide and operate, on its own or in conjunction with any other person, facilities or services (whether in Hong Kong or elsewhere) for the carriage of persons or goods, but excluding carriage by air, between the Airport and other places". He was worried that AA would eventually compete for profit with the private sector. He asked if the related activities could be taken up by the private sector. He also queried whether and how the Administration could ensure that the investment placed by AA would be value for money.

19. Chief Executive Officer of AA (CEO/AA) explained that in order to sustain the competitive edge of the HKIA, there was a need to enhance its cargo and logistics capabilities with a view to attracting more value-added activities. Recognizing the importance of the PRD, there was a need to explore cooperation with other airports and improving multi-modal connections with the PRD to facilitate passenger/cargo transport and logistics operations. The reach out strategy was also in line with the international practice.

20. SES advised that initial discussions with the airport authorities in the PRD over the possibility of enhancing cooperation between the two sides had commenced. However, in view of the constraints imposed by the existing legislation, AA could not proceed much further at this stage. This explained why the Administration and AA would like to see the early passage of the proposed Order by the Legislative Council (LegCo) so as to enable AA to take forward the initiative as soon as practicable.

21. On the need to empower AA to provide and operate facilities or services for the carriage of persons or goods between the Airport and other places, SES explained that this provided the legal basis to enable AA to strengthen the links between the HKIA and the Mainland, in particular the PRD with a view to enhancing the airport's connectivity. One initiative under consideration was the proposed cross-boundary high-speed ferry service between the HKIA and the PRD. However, at present, it was not certain whether the private sector was interested in providing and operating such a service. As such, the relevant section of the Order was drafted in such a way so as to cater for all possible scenarios including one in which AA might be involved in the provision of the service. SES stressed that it would not be desirable if AA were required to seek permission from the LegCo on individual business deals before conclusion, taking into account the legislative lead time, the keen competitive environment faced by AA, and the commercial nature of AA's operation. She also

Action

highlighted the dilemma faced by the Administration. On one hand, the Administration would like to give some flexibility to AA to cater for different scenarios. On the other hand, there were suggestion that a piece-meal approach should be adopted. The latter would have implications on AA's ability to compete in a highly competitive environment.

22. Referring to the remark made by SES that AA should operate in accordance with commercial principle and that it would be difficult for AA to seek the LegCo's approval before concluding a business deal, Mr Albert CHAN remarked that the framework for the accountability system must be clearly sorted out before approval could be given to empower AA to engage in or carry on the airport-related activities outside the CLK Island as AA was a statutory body funded by public monies. He was worried that the Schedule, as presently drafted, would empower AA to carry out whatever activities they considered appropriate and profitable but not the general public. In the absence of a transparent and effective control mechanism for monitoring AA's investments, the interest of tax payers would also be put at risk. Referring to the control mechanism adopted by the Ministry of Transport in Singapore where the Civil Aviation Authority of Singapore (CAAS) was required to seek prior approval from the Ministry before it could enter into agreement with other airports, Mr CHAN called on the Administration to consider its applicability to AA and to narrow down the scope of AA's permitted airport-related activities in the legislation.

23. On AA's investment, SES said that AA was required to operate in accordance with prudent commercial principles and it should aim to achieve a targeted internal rate of return.

24. Referring to the terms of reference of AA, LD/AA pointed out that Section 5(1)(b) of the AA Ordinance provided that "The Authority may provide, at, as regards or in relation to the Airport (or any part thereof), such facilities, amenities or services as are, in its opinion, requisite or expedient", which was drafted in a similar way as that of the provisions for CAAS.

25. As regards Mr Albert CHAN's question about the flexibility granted to AA under point 4 of the draft Schedule, LD/AA clarified that the provision would enable AA to provide and operate a cross-boundary passenger ferry service and to provide parking facilities and services for cross-boundary coaches. AA had no intention to compete with the private sector. Rather, the provision permitted the private sector to join hands with AA to explore business opportunities. With regard to the definition of "Any other person", he confirmed that this was meant to be a legal entity.

26. Mr Albert CHAN remarked that the permitted activities as provided for in point 4 of the draft Schedule was of a wider scope than intended. Indeed, it did not preclude AA from operating cross-boundary passenger ferry or cargo services. As a result, AA might monopolize the market and compete for profit with the private sector.

Action

27. LD/AA clarified that it was not the intention of the AA to obtain the Order so as to operate the service on its own. However, there might be cases where the private sector was not interested in providing the related services, and hence, AA might need to consider providing such services on its own, having regard to prudent commercial principles. The Chairman remarked that as the scope of the permitted activities in which AA might engage in was not clearly defined in the Order, there was no restriction to prohibit AA from providing and operating such services if they wished.

28. On competition with the private sector, CEO/AA pointed out that among the current 45 000 jobs in the HKIA, only 950 were undertaken by AA staff and the rest by the private sector. LD/AA added that the Marine Cargo Terminal of the HKIA was providing facilities for the carriage of goods. These facilities were provided by the private sector. In fact, AA was creating instead of competing for business opportunities with the private sector.

29. Mrs Selina CHOW also said that AA shared a lot of business opportunities with many of its partners when operating in Chek Lap Kok. Yet, there were activities in which the private sector was not interested at, in particular at the initial stage of such development. As such, AA had to undertake the projects itself.

30. Mr Abraham SHEK indicated his support for the initiatives to promote and enhance the competitiveness of the HKIA. He however expressed concern that AA, being a terminal operator, was empowered to act as a cargo operator and compete for profit with the private sector. He opined that cargo and passenger transport services should be taken up by the private sector. To attract passenger and cargo flow, AA could consider lowering the related airport charges for the HKIA. Given the effect of the 911 incident in the United States, the profitability of the airport business would be adversely affected. He also pointed out that should a major accident happen at an airport of which AA was a key shareholder that involved substantial insurance claims, the Government would have to share the liability. Comparing the liability to the limited number of cargo and people that other airports might bring to Hong Kong, he doubted if it was justified to invest into other airports.

31. CEO/AA reiterated that the proposed Order aimed at promoting the flow of people and goods through the HKIA. There was a need to extract more value for each passenger and each unit of cargo. However, AA was not intended to become a cargo or passenger operator itself. Rather, it would work with its business partners to take the HKIA forward with a view to strengthening Hong Kong as a centre of international and regional hub. He said that cross-investment in airports was not unusual nowadays and it was also a strategic decision to maintain the competitive edge of the HKIA. AA needed to maximize its resources, generate flow and retain maximum value in Hong Kong. Should AA be able to make some propositions which were also beneficial to other airports in the PRD, there would be room for the HKIA to expand. LD/AA added that point 6 of the draft Schedule was intended to empower AA to provide any facilities or services in relation to the planning,

Action

implementation and control of the flow and storage of goods but it was not the intention of the AA to operate the related services.

32. On the issue of liability, CEO/AA said that there were many ways to manage the liability. One way was to create a subsidiary company to run the new business.

33. Whilst agreeing that it was impracticable to amend the Schedule every time AA entered into alliance with other airports, the Chairman pointed out that specifying airports in Guangdong province provided sufficient leeway for AA to manoeuvre for the next few years. Within this period, he foresaw that it was unlikely for AA to acquire or hold shares of other airports, say, in Shanghai or Frankfurt. He also remarked that he had reservation on granting AA power to undertake the airport-related activities as specified in the Schedule, which was too broad and too general. He also cast doubt on whether the AA Board was in a position to examine investment proposals on a global basis, given that it was fundamentally different from the existing operation of the HKIA.

34. CEO/AA replied that whilst at present, it was important to strengthen cooperation with the PRD, airport businesses were more globally connected nowadays. Indeed, many airports in Europe and North America had indicated their intentions of cooperating with AA and AA would yield benefits from these specific partnership opportunities. CEO/AA clarified that the existing AA Ordinance did not permit AA to enter into joint venture agreement with other airport authorities outside Hong Kong even though there was no resource implications.

35. In response to Mr SIN Chung-kai, LD/AA advised that a casino built inside the HKIA fell outside the permitted scope of airport-related activities in which AA might engage in as a casino was not conducive to the primary objective of AA as provided for in the AA Ordinance. Furthermore, additional safeguards were provided for in the law with regard to this type of ancillary activity which was subject to licensing requirement. Likewise, other commercial activities within the CLK Island should be consistent with the conditions of the Airport Land Grant.

36. Mr SIN Chung-kai was not convinced of the reply. As the reference to “airport-related activities” was not clearly defined in the existing legislation or the proposed Order, it would be subject to challenge whether the provision and operation of a casino inside the HKIA for airport passengers would fall within the permitted scope of the activities in which AA might engage in. Mr SIN said that he would seek a legal advice from the Legal Adviser of the Secretariat. Mr TSANG Yok-shing also remarked that under the proposed Order, AA was empowered “to enter into any alliance, cooperative, joint venture or partnership arrangements with any airport governing body”. As such, it seemed that it was permissible for AA to enter into an agreement with the governing body of the Macau Airport to operate jointly a casino at the latter's airport. The Chairman remarked that there was a need to set out clearly the list of intended business activities in which AA might engage in. Any subsequent

Action

amendments should be subject to negative vetting of the Legislative Council.

37. Mr Howard YOUNG supported the initiative to promote efficient movement of goods and people, and to enhance the competitiveness and status of the HKIA as a passenger and cargo hub. He remarked that the Board of Airline Representatives also supported the new initiatives as set out in the paper provided that no cross-subsidy of non-CLK activities and no dilution of current management resources to the HKIA would be resulted.

38. CEO/AA replied that AA had been operating in prudent commercial principles with tight controls. Any investment project would first be evaluated by the senior management before it was put to the Business Development Committee of the Board of Directors for consideration and finally to the Board for approval. The proven track record of AA also demonstrated that it was operated in excellent business sense. As regards the possible dilution of management resources to the HKIA, CEO/AA said that under careful planning, both human resources and their competencies could be enriched in the longer term through enlarged operation and expanded employees' horizons.

39. Ms Miriam LAU pointed out that the existing institutional arrangement of AA could not catch up with the development needs of the logistics industry because AA's activities were restricted to the CLK Island. This contravened the concepts of logistics which concerned connectivity, flexibility and cooperativeness. Whilst our major counterparts were airports in the PRD, it was necessary for AA to go beyond this and enter into alliance with other airports outside the PRD for logistic development purpose. Whilst acknowledging that AA had no intention to compete for business opportunities with the private sector, she also agreed that some wordings of the draft Schedule were open to suspicions warranting review and tidy up. She remarked that logistic was undergoing rapid development and urged members to support the early passage of the Order so as not to lag behind other airports.

40. Mrs Selina CHOW opined that whilst appreciating the need for members to scrutinize the permitted scope of airport-related activities in which AA might engage in to ensure accountability of AA, there was also a need to ensure the competitiveness of the HKIA taking into account the latest development in the airport industry. As members generally agreed to the broad direction set out in the paper, AA should be vested with sufficient power to facilitate its further development. For monitoring purpose, she said that AA was bound by the AA Ordinance. It had to operate in accordance with prudent commercial principles. AA's management was also accountable to the legislature and this explained why they were present at the meeting to answer members' questions. To address members' concerns raised at the meeting, she opined that the Administration should review the technical drafting of the proposed Order. If members considered that some form of control should be introduced before AA could engage in or carry on the airport-related activities as specified, the Administration could further explore the feasibility of such proposal.

Action

41. Mr Abraham SHEK opined that once the Order was gazetted, the Board of Directors of AA should be held responsible for the investment decisions made according to prudent commercial principles. Inserting the requirement of a higher level endorsement for investments intruded its autonomy and might affect its international rating.

42. SES said that the Administration would take into account Members' view in revising the draft Order. The Panel would be consulted again when a revised draft was available. Members welcomed the Administration's proposal to consult them further on the proposed Order. However, such should not be binding on any Member, whether in Council, or in the Subcommittee to be formed to scrutinize the proposed Order.

43. The Chairman concluded that the Panel was generally in support of the direction set out in the paper to enhance the competitiveness of the HKIA. It however had reservation about the drafting of the proposed Order which gave AA too much flexibility to undertake its future business activities whether in Hong Kong or elsewhere. Members considered it necessary to narrow down the scope of the permitted activities in which AA might engage in, and that the Order should not be drafted in such a way that it was of a much wider scope than intended. The Chairman asked the Administration to take into account members' views expressed at the meeting. He also considered it necessary to set up a subcommittee to examine the proposed Order in detail when it was formally introduced into the Council. Mr CHAN Kam-lam remarked that he had reservation on the general direction set out in the paper.

V Reconstruction of Public Piers at Kat O Chau, Peng Chau, Cheung Chau and Wu Kai Sha

(LC Paper No. CB(1)1310/01-02(05) - Information paper provided by the Administration)

44. Chief Engineer/Technical Services, Civil Engineering Department (CE/TS-CED) introduced the Administration's paper.

45. Mr CHAN Kam-lam supported the proposed reconstruction of public piers at Kat O Chau, Peng Chau, Cheung Chau and Wu Kai Sha. Referring to the pier at Cheung Chau as an example, he enquired whether it was feasible to provide a replacement pier at the vicinity of the existing pier, thereby saving the need for providing temporary berthing and mooring facilities during construction stage.

46. Senior Engineer/Special Projects (SE/SP-CED) advised that the Administration had considered the proposal to provide a replacement pier at Cheung Chau immediately south of the existing pier. However, the proposal was considered

Action

not feasible as the exit of the replacement pier would affect existing facilities in the area. Regarding the materials to be used, he said that the temporary pier would be in the form of a steel structure to be fabricated by steel I-beams and supported on steel H-piles. Steel plates with anti-skidding finish would be laid on top of the pier. They would be sufficiently strong to cater for adverse weather conditions such as typhoon.

47. Referring to the reconstruction of Wu Kai Sha public pier, Mr Henry WU also enquired the reason for providing temporary berthing and mooring facilities at a separate location rather than next to the existing pier as was the case in Kat O Chau, thereby saving the need to carry out unnecessary works.

48. SE/SP-CED advised that due to the fairway restriction at Wu Kai Sha where the seabed was not deep enough, temporary pier facilities could not be provided next to the existing pier. Whilst the design standard for a temporary pier would be less stringent than a permanent pier, it would be safe for public use during construction. Mr Henry WU remarked that in view of the physical constraints, he was worried that the temporary pier would create operational difficulties for vessels. In response to the Chairman, SE/SP-CED confirmed that local District Council was in support of the proposal.

49. Mr CHAN Kam-lam opined that the Administration should take the opportunity to improve the facilities at the piers, taking into account the additional demand generated by tourism development in the areas.

50. CE/TS-CED advised that the Administration had examined the matter, taking into account the views expressed by local bodies. The berthing places at Kat O Chau would be increased from one to two, Peng Chau from two to three and Cheung Chau from three to four. The berthing place in Wu Kai Sha would remain at one in view of its low utilization.

51. The Chairman concluded that the Panel supported the proposed reconstruction of the public piers.

VI Financial implication of the decommissioning of Cheoy Lee Shipyard at Penny's Bay

(LC Paper No. CB(1)1331/01-02 - Background brief on the Hong Kong Disneyland project - Decommissioning of Cheoy Lee Shipyard at Penny's Bay prepared by the Secretariat; and
LC Paper No. CB(1)1310/01-02(04) - Information paper provided by the Administration)

52. Before commencing discussion, the Chairman informed members that the

Action

Environmental Affairs Panel (the EA Panel) had discussed the treatment of dioxin-contaminated soil at Penny's Bay on 12 and 19 March 2002. The purpose of the meeting was to review with the Administration the financial implication of the decommissioning of Cheoy Lee Shipyard (CLS).

53. At the Chairman's invitation, the Commissioner for Tourism (C for Tourism) briefed members on the financial implications of the decommissioning of CLS. The decommissioning project comprised mainly demolition and removal of all existing buildings and structures on the CLS site, excavation and treatment of contaminated soil and implementation of appropriate mitigation measures to avoid/minimize any adverse environmental impacts arising from the decommissioning. The estimated cost of the decommissioning project was \$450 million in money-of-the-day prices. Discounting the transportation cost of a few million dollars, the cost for commissioning a treatment plant at the CLS site and at To Kau Wan (TKW) was basically the same. However, putting a treatment plant at the CLS site would have implications on the construction programme for the roads leading to Hong Kong Disneyland (HKD) which in turn would delay the opening of the park by two to three years. The resulting economic loss would be in the region of \$ 6 billion to \$ 7 billion a year. After assessing the advantages and disadvantages of the various options, the off-site treatment at TKW would be the most practicable solution.

54. Miss Emily LAU remarked that it had all along been the Administration's intent to adhere to the scheduled opening of HKD, and hence, economic consideration had taken precedence over all other considerations. In the absence of a specific environmental impact assessment for the HKD before a decision was made on the project, the community as a whole had to bear the resulting environmental cost. In her opinion, the Administration had failed to discharge its responsibility. It had also repeatedly misinformed the LegCo that there was no indication of any insurmountable environmental issues in relation to CLS. However, it turned out to be more serious than expected.

55. Mr CHEUNG Man-kwong stated that as a result of the omissions on the part of the Administration, the decommissioning cost was revised from \$22 million to \$450 million. In his opinion, the present situation could have been avoided if the Administration had undertaken the following precautionary/follow-up measures to safeguard its own interest during the negotiation process:

- (a) arrangement could have been made to apply a warrant under Section 23 of the Environmental Impact Assessment Ordinance (Cap. 499) (EIAO) to enable the Administration to gain access to CLS site for a thorough investigation, given that the resumed land was required for an essential project with wide public interest;
- (b) failing the above, arrangement could have been made to ascertain the extent of the contamination and the required clearance cost before

Action

effecting the acquisition payment; or

- (c) even if both (a) and (b) above had not been done, suitable provisions could still have been provided for in the Deed of Surrender to enable the Government to make a retrospective claim against CLS if the level of contamination was found to be deviated from the original estimate.

56. Mr Kenneth TING echoed the view of Mr CHEUNG. He remarked that as CLS did not allow Government to enter the site to carry out thorough investigation before returning the land to Government, it was obvious that CLS had intended to hide the seriousness of the problem. Under such circumstances, the Administration should have instituted appropriate measures to safeguard its own interest.

57. Regarding the substantial rise in the decommissioning cost, the Director of Civil Engineering (DCE) explained that it was mainly attributed to the presence of dioxins in the soil, effective and thorough treatment of which was very expensive. Whilst other contaminants were commonly found in shipyards during the decommissioning process, the Administration had not encountered dioxins in previous shipyard decommissioning projects. The limited contamination assessments carried out also did not reveal the extent of the contamination problem in CLS. Indeed prior to land acquisition, an advanced site investigation was conducted by the Administration in December 2000. Soil and groundwater samples were collected at 13 boreholes. Testing results indicated that soil contamination by heavy metals or total petroleum hydrocarbons (TPH) occurred at some sampling locations at surface level only. TPH and heavy metals were detected in groundwater samples but none exceeded established levels. Dioxins were not expected.

58. The Director of Lands (D of L) advised that the shipyard site was returned to the Government on 3 April 2001. On the sum of the land compensation, it was calculated on a "as is" basis. Apart from paying a land compensation of \$22.7 million, Government also paid an ex-gratia payment of \$1.48 billion in accordance with the zonal compensation rate for Zone A land which was required for essential projects with territory-wide significance.

59. D of L further said that CLS had been a private premise, the Administration could not gain access to the site without the approval of the owner. Based on the then information available, the use of the site was not inconsistent with its designated use as a shipyard. There was also no indication that the site had been seriously contaminated. As such, specific provision was not included in the Deed to the effect that Government would be entitled to a refund of the ex-gratia land compensation had the land been contaminated beyond a certain level.

60. C for Tourism added that prior to land acquisition, the Administration had taken all reasonable steps to ascertain the extent of the problem based on past experience. The actual level of contamination and types of contaminants existing in

Action

CLS could only be assessed after the site had been returned to Government. In the process, a total of 17 220 laboratory tests on the soil and groundwater samples were carried out and about 87 000 m³ of soil had been found to contain different types of contaminants.

61. The Deputy Law Officer (Civil Law) (Commercial) (DLO) said that a warrant of entry under section 23 of EIAO would only be issued if there was reasonable ground to believe that an offence against the Ordinance had been or was being committed. As the consultant had done everything possible around the site both on sea and land to ascertain the extent of potential contamination, it was difficult at that stage to establish reasonable grounds that the site might have been heavily contaminated and justify the issuance of a warrant of entry.

62. Mr CHEUNG Man-kwong was not satisfied with the Administration's reply. He maintained his view that the present situation was a result of the omissions on the part of the Administration.

63. Mr Fred LI also commented that in order to solicit members' support for the HKD project, the Administration had scaled down the related problems when preparing the estimate for the decommissioning project at the outset. This could be demonstrated by the fact that the revised estimate for treatment of contaminants other than dioxins already amounted to \$88 million which had substantially exceeded the original estimate of \$22 million made in November 1999. Expressing dissatisfaction with the situation, he remarked that members had no other alternative at this stage but approve the funding arrangement for the decommissioning works.

64. DCE replied that the EA Panel held a special meeting on 19 March 2002 to receive expertise advice on the treatment of dioxins. Two international experts confirmed that dioxins would not be produced in the normal operation of shipyards and the present situation at CLS was very unusual. As the original estimate was worked out on the basis of other decommissioning projects for shipyards in the territory, it did not take into account the presence of dioxin at CLS. Unlike other cases of decommissioning work, it was found that dioxin-contaminated soil was buried in the ground of CLS site. The level of metal contamination was also much higher than those existed in other shipyards.

65. The Chairman enquired about the liability of CLS for the present land contamination with reference to the land lease. In accordance with the polluters-pay principle, Miss Emily LAU opined that the related clearance cost should be borne by CLS but not tax payers. Mr CHEUNG Man-kwong and Mr Fred LI expressed similar views. Miss Emily LAU also enquired whether CLS was expected to bear the related cost at the outset, irrespective of whether the amount was \$22 million or \$450 million as revised.

66. C for Tourism advised that for public works projects, the Administration

Action

would list out all expenditure items in the relevant paper submitted to the Finance Committee irrespective of whether expenditure of individual items could be recovered from other sources by the Administration in the end.

67. D of L advised that under the lease conditions, there was a standard clause requiring the grantee not to deposit contaminants onto the lot. However, it was premature to say that the contaminants so identified were due to the operation of CLS. On possible legal remedies, DLO advised that government lawyers were still examining the options available. As the former CLS had also applied to the court for a judicial review against a previous Government decision, it would not be appropriate for the Administration to comment further on the related issues at this stage.

(Post meeting note : With the concurrence of the Chairman, a copy of the newspaper clippings concerning the judicial review referred to in the above was issued to members vide LC Paper No. CB(1) 1361/01-02).

Admin 68. The Administration was requested to brief members further on the possible litigation against CLS in due course.

Effectiveness of the treatment methods

69. Miss CHOY So-yuk was concerned about the risk associated with the treatment of dioxins and having a treatment plant in TKW operating in parallel with HKD. She was worried that in the course of dioxin treatment, unexpected events might occur necessitating the deferral of the opening of HKD. She enquired whether the Administration had assessed the risk and liability involved.

70. C for Tourism advised that it was not appropriate to comment or disclose details of the Project Agreement reached between the Government and The Walt Disney Company which was a commercial document. Indeed, the economic loss associated with the deferral of the opening of HKD would be a more significant consideration than any contractual liability. In the worst scenario, even having a treatment plant in TKW operating in parallel with HKD, the Administration was satisfied that there should not be any major problems. On issues relating to risk assessment and contingency measures in relation to the treatment of dioxins, the Chairman said that they would be more appropriate to be dealt with by the EA Panel.

71. Mr Kenneth TING opined that given the dioxin-contaminated soil was buried several meters in the ground on which a road would be constructed, he enquired whether it was necessary to implement the proposed clean up plan at an estimated cost of \$450 million.

72. DCE replied that the average concentration level of dioxin contamination in the soil sample was 1.6 part per billion (ppb), exceeding the international standard of 1 ppb. For certain samples collected near the burnt area, the figure went up to 109 ppb.

Action

Capping the dioxin in-situ by cement and growing grasses on top of the cap had been applied to some dioxin-contaminated sites in the United States, where the land would not be used for any specific purpose. As the area covered by the contaminated soil extended over 2 hectares, an estimate of \$100 million would be required if capping was to be applied to the area. However, capping did not reduce or remove the toxicity and mobility of the contaminants. A potential environmental risk would remain on site limiting future productive uses. The Administration was of the view that it should endeavor to remove the contaminants. This was also supported by the Advisory Council on the Environment. On the potential risk of dioxins, Mr Matthew KO of the Manusell Environmental Management Consultants Limited advised that based on the findings of a study, on average, 270 out of 10 000 persons coming into direct contact with 10 ppb dioxin-contaminated soil for 30 years might result in having cancers.

(Post-meeting note: Subsequent to the meeting, it was clarified that the level of dioxin-contaminated soil with which, on average, 270 out of 10 000 persons coming into direct contact for 30 years might result in having cancers was 109 ppb instead of 10 ppb as given in the meeting.)

73. Given the high level of toxicity of the dioxin-contaminated soil, Miss Emily LAU called on the Administration to contact the former CLS workers to follow up on their health conditions. In this regard, the Chairman opined that the health conditions of the workers might serve as a good indicator in determining whether capping the dioxins in-situ was a cost-effective option. Miss Emily LAU remarked that all harmful contaminants at CLS should be thoroughly removed, treated and disposed of in an environmentally acceptable manner.

74. Mr Henry WU enquired about the cost of building the thermal desorption plant and whether the plant would be demolished after use.

75. In reply, DCE said that \$37 million was earmarked for the thermal desorption plant. He explained that thermal desorption was an enclosed separation process in which indirect heat was applied to the contaminated soil. Upon indirect heating, the contaminants would be evaporated into gaseous phase, trapped and subsequently condensed for further treatment. A lot of energy was required in the process which accounted for the high cost. The Administration would examine whether there was a need to retain the plant after treating the contaminated soil in CLS, taking into account the financial implication of the continued operation of the plant and the need for such facility. The decommissioning cost for the plant was about \$22 million. He also confirmed that the Administration had not encountered dioxins in previous shipyard decommissioning projects.

76. In response to Mr Henry WU's question about the risk involved in the decommissioning of the thermal desorption plant, Mr Matthew KO of the Manusell Environmental Management Consultants Limited pointed out such thermal desorption treatment method for dioxin had been used in several places in the world. In

Action

Australia, the related plant was subsequently demolished having ascertained that all dioxin residues were removed.

The way forward

77. Members noted that the EA Panel would hold a special meeting on 10 April 2002 at 8:30 am to follow up on the effectiveness of the treatment methods of dioxins and other related issues. The Chairman invited members to attend the meeting. The Panel would follow up on the financial aspect of the project when further information was available from the Department of Justice.

VII Any other business

78. There being no other business, the meeting ended at 6:00 pm.

Legislative Council Secretariat
24 May 2002