

立法會
Legislative Council

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Panel on Environmental Affairs

**Minutes of special meeting
held on Friday, 11 April 2008, at 2:45 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Martin LEE Chu-ming, SC, JP
Hon SIN Chung-kai, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yea, GBS, JP
Hon CHOY So-yuk, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP
Hon Mrs Anson CHAN, GBM, JP
- Member attending** : Hon CHEUNG Man-kwong
- Member absent** : Hon Howard YOUNG, SBS, JP
- Public officers attending** : Environmental Protection Department

Dr Mike CHIU
Deputy Director of Environmental Protection (1)

Mr TANG Kin-fai
Assistant Director (Environmental Compliance)
- Food and Environmental Hygiene Department

Ms CHU Lan-ying
Assistant Director (Operation) 3

Home Affairs Department

Mr Allan CHOW
District Officer (Kwai Tsing)

Lands Department

Mr James MERRITT
Assistant Director (Kowloon) (Lands Administration
Office, Headquarters)

Planning Department

Mr Kelvin CHAN
Chief Town Planner/ Central Enforcement and Prosecution
(Acting)

Development Bureau

Miss Diane WONG
Principal Assistant Secretary (Planning & Lands) 1

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

Staff in attendance : Mrs Mary TANG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)4

I. Measures to tackle fly-tipping

- (LC Paper No. CB(1) 1199/07-08(01) — Administration's paper on land filling activities on Government land and private land using construction and demolition materials-the Shing Mun Road incident
- LC Paper No. CB(1) 1199/07-08(02) — Paper on fly-tipping and land filing activities on private land prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1) 1224/07-08(01) — Submission from Friends of the Earth (HK) (Chinese version only)

In the temporary absence of the Chairman at the beginning of the meeting, the Deputy Chairman presided at the meeting. The Chairman took over the chair at 2:54 pm.

2. At the Chairman's invitation, the Deputy Director of Environmental Protection (1) (DDEP(1)) briefed members on the actions taken by various bureaux/departments in dealing with the land filling activities on government and private land at Shing Mun Road.

3. Miss CHOY So-yuk remarked that the prevalence of land filling activities on private land in the New Territories was partly attributed to the restriction for development imposed by the Government, particularly for land with high ecological value. In order to facilitate development of their land, the landowners concerned would allow land filling activities with a view to destroying the biodiversity of the land. To curb the problem, Miss CHOY opined that the Administration should seriously consider allowing land exchange or transfer of plot ratio for the landowners so that ecologically sensitive areas could be preserved.

4. The Principal Assistant Secretary (Planning & Lands)1 (PAS(P&L)1) explained that transfer of plot ratio was a complicated issue as this might involve changes in legislation and thrashing out other details. Very strong justifications would be required, if this approach was to be put up for consideration. In respect of nature conservation, the Development Bureau (DEVB) and Departments under its purview played a facilitating role and rendered their support to ENB. She explained the current system on conservation-related zones and the new measure introduced in recent years. To help address the land filling problem within the "Agriculture" zone, the Town Planning Board (TPB) had incorporated the land filling control for "Agriculture" zones in the rural Outline Zoning Plans in April and July 2005. Such amendments had helped to step up the control on land filling activities by requiring prior planning permission from TPB under section 16 of the Town Planning Ordinance (Cap. 131) (TPO) for undertaking or continuing land filling activities, except for laying of soil not exceeding 1.2 metres in thickness for cultivation, or for construction of any agricultural structure with prior written approval issued by the Lands Department.

5. Referring to the submission from WWF Hong Kong tabled at the meeting, Mrs Anson CHAN noted that then Housing, Planning and Lands Bureau had undertaken to explore with TPB the feasibility of introducing a clean record system from which TPB could make reference to in considering planning applications. She enquired about the progress in this respect. PAS (P&L)1 said at the outset that any unauthorized development or environmental degradation in the hope of getting agreement from TPB for subsequent rezoning would be subject to enforcement and such rezoning application would not receive sympathetic consideration by TPB. TPB had looked into the proposal on "clean record system" but considered that there were legal issues and practical problems. Planning consideration should be those relating specifically to the use and development of land. Experience suggested that personal circumstances (such as personal misconduct) were rarely of relevance. It

would not be difficult to get round the test by having someone with a “clean record” to submit the application. The Chairman recalled that when the clean record system was discussed during the scrutiny of the Waste Disposal (Amendment) (No. 2) Bill 2003 (the Bill) in 2004, she had pointed out that problems, such as land filling activities not carried out by existing landowners, could not be resolved merely by the introduction of a clean record system. At members’ request, PAS (P&L)¹ said that the DevB would provide a written reply on the latest development of the proposal on “clean record system”.

(Post-meeting note: The submission from WWF Hong Kong and the Administration's response on the latest development of the proposal on "clean record system" were subsequently circulated to members vide LC Paper Nos. CB(1) 1246/07-08 and CB(1) 1538/07-08 on 14 April and 14 May 2008 respectively.)

6. In reply to Mrs Anson CHAN’s further enquiry on the progress of the pilot construction waste fly-tipping spotter scheme, DDEP(1) explained that three districts with high number of fly-tipping complaints, namely the Shamshuipo, Shatin and Eastern Districts, had been selected for the trial. 110 spotters, including EPD staff, had joined the scheme as spotters. So far, no prosecution had been made under the scheme. Regular reviews would be conducted to ascertain the effectiveness of the scheme. Subject to the experience gained and the outcome of the reviews, consideration would be given to extending the pilot scheme to cover other concerned districts.

7. Miss CHOY So-yuk opined that the Administration should conduct a territory-wide survey to ascertain the problem of fly-tipping. To facilitate enforcement, she asked whether photographs of fly-tipping activities or statements from witnesses would be accepted as evidence for prosecution. DDEP(1) confirmed that regular inspections, particularly at night when fly-tipping usually took place, were carried out by EPD staff at notorious black spots. They would also instigate investigation and prosecution upon receipt of reports of fly-tipping from the public. However, photographs per se were not sufficient as they could be easily tampered with. The witness would have to go through the normal legal procedure of taking statement and appearing before court. Nevertheless, EPD would liaise with the Transport Department if the photographs revealed the car plate numbers of the vehicles concerned.

Shing Mun Road incident

8. Mr LEE Wing-tat said that the incident at Shing Mun Road had caught public attention because of extensive media coverage. In fact, there were many places in the territory which were facing similar or perhaps more serious problem of fly-tipping under the disguise of land filling activities. By way of illustration, the group of residents from Shek Wu Wai Sun Tsuen protesting outside the Legislative Council Building claimed that the construction waste disposed of near their village could fill up two football fields. The waste had also blocked the drainage which could lead to

flooding during rainy season. Although the residents had lodged their complaints with nine government departments, none of these departments had taken up the case as there was no evidence of violation. Mr LEE however pointed out that the decision on whether the case constituted a violation rested with the Administration. For instance, the Food and Environmental Hygiene Department could invoke the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO) to require clearance of the waste if it considered that the waste had caused nuisance to public health. To address the problem, he considered it necessary to identify a lead department to coordinate enforcement against fly-tipping activities.

9. DDEP(1) advised that complaints of land filling activities at Shing Mun Road were lodged with the government departments in late February 2008. Investigation revealed land filling using construction and demolition (C&D) materials took place on a piece of land incurring both government and private lots to form a flat platform for private purpose. A total of about 1 390 square metres of land had been affected, 17% being on government land, and the remaining 83% on private land. Kwai Tsing District Office (K&TDO) subsequently set up an interdepartmental task force on 6 March 2008 to coordinate enforcement and follow-up actions. In respect of the unauthorized land filling on government land, EPD had collected evidence and initiated prosecution against the person who arranged for the land filling under section.16A of the Waste Disposal Ordinance (Cap. 354) (WDO). Hence, he was not able to disclose more details as the legal proceedings were underway.

10. The District Officer (Kwai Tsing) (DO(K&T)) supplemented that while K&TDO convened the first meeting of the Task Force on 6 March, it was not the lead department of the Shing Mun Road incident. The action taken by K&TDO was in fact in line with the general circular on district administration subsequently issued by the Chief Secretary for Administration (CS) on 13 March 2008, which set out an early alert and action mechanism under which bureaux and departments were required to alert DOs to major or potentially controversial issues affecting people's well-being in districts as early as possible. Depending on the nature of the issues, DOs might convene District Inter-departmental Committee meetings or ask the departments concerned to set up task forces on a need basis, with a view to expediting resolution of the district problems identified. He opined that the identification or assignment of a lead department would have to be decided on a case-by-case basis taking into account the nature of the case and its relevancy to the jurisdictions of individual departments. In his opinion, EPD would be the appropriate lead department for the Shing Mun Road incident.

11. Ms Miriam LAU opined that it might not be cost-effective to convene inter-departmental committee meetings for each and every case. Besides, the general public might have difficulty in identifying the department to which they should lodge their complaints. A better alternative would be for DOs to receive and screen the complaints first with a view to identifying the suitable department(s) to handle the cases. DO(K&T) said that according to the general circular, the holding of inter-department committee meetings was not the only means to deal with complaints against fly-tipping. Where appropriate, DOs could ask the department(s) concerned to set up task forces.

12. Noting that 694 cubic metres of dumping materials had been removed from the 17% government land, Mr CHEUNG Hok-ming remarked that the amount of dumping materials on the 83% private land should have far exceeded limit of 1.2 metres under section 16 of TPO, thereby constituting an offence. He questioned why the Administration had not taken any action in this respect. His view was shared by Ms Emily LAU. PAS (P&L)1 clarified that the private areas involved in the Shing Mun Road incident were not “Agriculture” zones and hence, the new measure introduced in recent years (see paragraph 4 above) was not applicable in this context. On the part of LandsD, notwithstanding the limitation under the Block Government Leases, LandsD had written to the land owners concerned to make enquiries. DDEP(1) added that land filling activities on private lots for purposes of leveling off uneven ground surfaces and reclaiming land for car parking or recreational uses etc, if being given consent by the private lot owners and conducted in accordance with the relevant legislation regulating the activities, were not disallowed under the law. Without reasonable grounds, the Administration did not have a right to disallow land-filling activities on private lands. In respect of the Shing Mun Road incident, the investigation conducted so far had not identified breaches against existing pollution control legislation. Notwithstanding, the Administration was seeking confirmation from the private lot owners if they had given consent to the land filling activities. This would take time, particularly if the landowners declined to provide information. Further action would be taken if response from landowners was not received within the specified period.

13. The Chairman asked whether the land filling activities in Shing Mun Road incident had given rise to a nuisance or litter where action could be taken in accordance with PHMS. The Assistant Director (Operation)3, Food and Environmental Hygiene Department said that as the materials used in the land filling activities were inert materials, they did not give rise to a nuisance or litter. Nonetheless, the Department had put the site under close monitoring and would take enforcement action whenever sanitary nuisance was detected. Mr LEE Wing-tat however pointed out evidences collected by the public revealed that the land-filling materials in the Shing Mun Road incident contained non-inert materials. He remained of the view that a lead department was essential to coordinate efforts to tackle the problem. DDEP(1) said that as investigation was still in progress, the Administration would look into all evidence collected, seek legal advice and initiate prosecution where justified. PAS (P&L)1 added that the various bureaux and departments would keep on monitoring the situation closely.

14. Ms Emily LAU enquired about other measures in place to deal with fly-tipping on private land. DDEP(1) recalled that the question of whether the Director of Environmental Protection (DEP) should be empowered to enter a place to remove the waste, if he had reasonable ground to believe that the waste would pose imminent risk of adverse environmental impact, was raised during the scrutiny of the Bill. Views were divided on the need for the extensive power, its impact on the privacy of the land owners/occupier as well as the need to respect the rights of private land owners in using their land under the law. On balance, the Administration agreed to maintain status quo i.e. DEP could not enter the place to remove the waste. The

Chairman instructed the Secretariat to make available the relevant records of discussion for members' reference.

15. While agreeing to the need for protection of privacy, Mr Martin LEE opined that it should not have an overriding effect on environmental protection. Subject to conformity to the Basic Law, it might be feasible to empower DEP to enter private land to remove waste which posed an imminent risk of adverse environmental impact. He enquired if legal advice was sought on the privacy issue and whether the land filling activities in Shing Mun Road and Shek Wu Wai Sun Tsuen incidents conformed to all relevant legislation and the Basic Law. DDEP(1) confirmed that legal advice had been sought on the privacy issue which had been taken into account in the Bill. So far investigation on the incidents concerned had not identified breaches against existing pollution control legislation or caused immediate risk of adverse environmental impact. Not convinced by the Administration's response, Mr LEE strongly urged that the Shing Mun Road and Shek Wu Wai Sun Tsuen incidents should be brought to the attention of the Chief Executive.

16. Mr SIN Chung-kai opined that if fly-tipping was considered intolerable, the relevant bureaux, including ENB and DEVB, should dig into existing ordinances to see what could be done to prevent recurrences. In the event that no legal provisions were sufficient to deal with the problem, consideration should be given to amending the relevant legislation to plug the loopholes. In this connection, he suggested that the Chief Secretary for the Administration (CS) should be invited to attend a Panel meeting to discuss the issue with members. DDEP(1) reiterated that fly-tipping on both government and private land was an offence. However, land filling activities on private land with the consent of the land owners were not disallowed.

17. While agreeing that the Administration should look into the existing legal regime for improvement, Mr WONG Yung-kan stressed that any changes in legislation should undergo thorough consultation with the stakeholders.

Motion

18. Mr LEE Wing-tat proposed to move the following motion, which was seconded by Mr SIN Chung-kai -

“That, with regard to the issue of disposal of waste materials on private land, the Panel on Environmental Affairs urges the Chief Secretary for Administration to expeditiously convene an inter-departmental meeting with the Environment Bureau, Development Bureau, as well as all other relevant government departments, and to come up with a proposal for resolving the problem of disposal of waste materials on private land. The Administration is also requested to submit a report on the matter to the Panel on Environmental Affairs within one month.”

Of the members present, one abstained from voting while the rest voted for the motion. The Chairman declared that the motion was carried. At members' request, the

Chairman would write to CS on behalf of the Panel conveying the motion.

19. Members also agreed to hold a special meeting on 16 May 2008 to receive and consider the Administration's response.

II. Any other business

20. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
20 June 2008