

立法會
Legislative Council

LC Paper No. CB(2)2537/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Tuesday, 10 June 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Andrew CHENG Kar-foo
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Dr Hon KWOK Ka-ki

Member attending : Hon Albert CHAN Wai-yip

Members absent : Hon TAM Yiu-chung, GBS, JP
Hon Alan LEONG Kah-kit, SC

Public officers attending : Items III and IV

Food and Health Bureau

Ms Olivia NIP
Deputy Secretary for Food and Health (Food)

Mr Francis HO
Principal Assistant Secretary for Food and Health (Food)2

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Item III

Food and Environmental Hygiene Department

Mr LO Fu-wai
Assistant Director (Operations)1

Buildings Department

Mr Patrick TSUI Ho
Chief Building Surveyor (Rail and Licensing)

Fire Services Department

Mr LAI Man-hin
Chief Fire Officer (Licensing & Certification Command)

Mr LAU Mun-ming
Deputy Chief Fire Officer (Licensing & Certification
Command)

Item IV

Food and Environmental Hygiene Department

Ms Alice LAU Yim
Deputy Director (Environmental Hygiene)

Mr LO Siu-fung
Assistant Director (Operations)2 (Acting)

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Ms Alice LEUNG
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)2

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I. Information paper(s) issued since the last meeting

Members noted that a letter dated 13 May 2008 from Society for Abandoned Animals on the additional conditions attached to the animal trader licence had been issued to members since the last meeting [LC Paper No. CB(2)2054/07-08(01)] (English version only).

II. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)2147/07-08]

Next regular meeting on 8 July 2008

2. Members agreed to discuss the following two items proposed by the Administration at the next regular meeting scheduled for 8 July 2008 -

- (a) regulation and labelling of genetically modified food; and
- (b) inspection and quarantine arrangement for the 2008 Olympic and Paralympic Equestrian Events.

Special Meeting on 16 June 2008

3. At the suggestion of the Chairman, members agreed that the Panel should hold a special meeting on 16 June 2008 at 5:30 pm to invite deputations from the trade concerned to give their views on and discuss with the Administration the recent incident of discovery of H5N1 virus in chickens at Po On Road market. Members further agreed to invite members of the Panel on Health Services to the meeting.

(Post-meeting note: notice of the special meeting scheduled for 16 June 2008 was issued to members vide LC Paper No. CB(2)2235/07-08 on 11 June 2008.)

III. Liquor licensing review

[LC Paper Nos. CB(2)2147/07-08(01) and (02)]

Presentation by the Administration

4. Deputy Secretary for Food and Health (Food) (DS(FH)(Food)) informed members that the Efficiency Unit completed a review of liquor licence in 2006, and made a total of 16 recommendations on the principle, process and communications aspects of the liquor licensing regime, the details of which were given in the Annex to the Administration's paper. The review also suggested that the Administration

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should review the appropriate party for holding a liquor licence, the duration of the licence, and the need for a newspaper advertisement to inform members of the public on the licence application. As regards the concerns of some District Councils (DCs) and local residents about fire hazard and environmental hygiene problems caused by an increasing number of upstairs bars, DS(FH)(Food) advised that the Administration was considering whether further control measures should be imposed to limit the number and capacity of liquor selling premises that might be housed in a building by making reference to the size and scale of such premises and the building.

5. Principal Assistant Secretary for Food and Health (Food)2 (PAS(FH)(Food)2) briefly highlighted the salient points of the paper entitled 'Review of liquor licensing' provided by the Administration [LC Paper No. CB(2)2147/07-08(01)]. He said that the Administration had taken various measures to address the concerns about overcrowding, fire safety and other nuisances caused by a proliferation of upstairs bars. The Administration would consult the trade, DCs and other stakeholders on its proposal to further regulate upstairs bars in a careful and extensive manner. On the review of the appropriate party for holding a liquor licence, the Administration would make reference to the Karaoke Establishment Ordinance (Cap.573) in exploring modifications to the Dutiable Commodities (Liquor) Regulations (Cap.109B) so that a person authorized by a company which wished to obtain a liquor licence could apply as the representative on its behalf. As regards the licence duration, legislative amendments to Cap.109B would be considered to enable the Liquor Licensing Board (LLB) to grant a liquor licence, at its discretion, with duration not longer than two years.

Upstairs bars

6. Mr WONG Kwok-hing commented that the Administration's paper failed to provide any concrete policy measures that would solve the problems caused by the proliferation of upstairs bars. He was concerned about the fire safety problem of upstairs bars and clubs, particularly those housed in a single staircase residential or composite commercial/residential building. On the Administration's proposal to impose a limit on the number and capacity of liquor selling premises that might be housed in a building, Mr WONG considered that it was necessary for the Administration to work out detailed and clear guidelines on the approving conditions for issuing liquor licences. He asked the Administration about LLB's view on the proposed measures to tighten the control over upstairs bars.

7. In response to Mr WONG Kwok-hing's concern over the fire safety of upstairs bars, DS(FH)(Food) explained that the pre-requisite for granting of a liquor licence was a full or provisional restaurant licence issued by the Food and Environmental Hygiene Department (FEHD) or a Certificate of Compliance (CoC) by the Home Affairs Department (HAD). The Fire Services Department would conduct fire risk assessment, when processing an application for restaurant licence.

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To ensure buildings having adequate means of escape, the Buildings Department would assess the adequacy of means of escape of a building with reference to the design population/capacity of the premises, i.e. the number of persons normally expected in the premises, and such design population/capacity was calculated in accordance with the guidelines in the 'Code of Practice for the Provision of Means of Escape in case of Fire 1996' (MOE Code). As for premises with a CoC, the maximum capacity in a club-house was assessed by HAD having taken into account the MOE Code and other relevant factors. DS(FH)(Food) further explained that, to address the community's concerns over upstairs bars and clubs, the Administration had put forward some possible measures, as outlined in the Administration's paper, for consultation with the Panel, DCs and the stakeholders. On LLB's views on the proposed control measures, the Administration had communicated with the Chairman of LLB in this regard. LLB was also concerned that more bars and clubs were opened on the upper floors of composite commercial/residential buildings or residential buildings, posing noise and hygiene problems as well as fire safety hazards to those living in the same building and nearby residents.

8. Mr Vincent FANG expressed concern about the problem of noise and environmental nuisance caused by upstairs bars, of which many were located in Wanchai District. He considered that the proposed control measures to tighten regulation over the granting of liquor licences to prevent proliferation of bars on upper floors of these buildings should be implemented expeditiously. In this regard, he asked about the Administration's timetable for implementing these measures.

9. Mr Albert CHAN shared the concerns of Mr WONG Kwok-hing and Mr Vincent FANG. He was strongly of the view that liquor licences should not be issued to liquor selling premises which only occupied one single unit or several units on a floor of a single staircase residential or composite commercial/residential building. He said that, when applying for a liquor licence, the applicant should be required to prove that the premises concerned did not contravene the prescribed land use and the Deed of Mutual Covenant of the building, any breach of the prescribed land use and the Deed of Mutual Covenant should lead to rejection of the application.

10. On members' views and concerns over upstairs bars, DS(FH)(Food) responded that any proposal to further regulate upstairs bars would need to strike a balance between the interests of the local community and the trade. She reiterated that the Administration would consult the trade, DCs, and other stakeholders concerned carefully and extensively on its preliminary proposals. DS(FH)(Food) said that the Administration's plan was to introduce the legislative amendments to Cap.109B into the Legislative Council (LegCo) in 2009-2010 session.

11. Assistant Director (Operations)1 of FEHD (AD(O)1/FEHD) supplemented that, since mid-April 2006, FEHD had implemented new licensing procedures for

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new application of food business licence and transfer of licence to ensure that licensed food premises were free of unauthorized building works and in compliance with Government lease conditions and statutory plan restrictions. It was the standing policy of LLB that a liquor licence would normally be issued if the premises to which the application concerned were covered by a restaurant licence (full or provisional) or a CoC.

12. The Chairman said that he was supportive of the Administration's proposals to enhance trade facilitation and urged the Administration to introduce the legislative amendments into LegCo in 2008-2009 session for early implementation. The Chairman, however, had some reservations about the proposals to step up the regulation over upstairs bars. He considered that, when applying these new measures, the Administration should avoid affecting the business of existing licensed upstairs bars and clubs. He also envisaged that the number of upstairs bars and clubs would be reduced drastically when the smoking ban imposed by the Smoking (Public Health)(Amendment) Ordinance 2006 would apply to licensed bars and clubs with effect from 1 July 2009.

13. Dr Joseph LEE was concerned about recent media reports about the problem of drug abuse by adolescents patronizing upstairs bars. He enquired how FEHD would tighten its regulation over upstairs bars to tackle the youth drug abuse problem. AD(O)1/FEHD explained that the Police, as the enforcement agency of Cap.109B, would conduct licence checks on the liquor-licensed premises. DS(FH)(Food) further explained that the Police would conduct random operations against dissemination and selling of illicit drugs in liquor licensed premises. The Police would institute prosecution actions against a liquor licensee if he/she was found to have committed such illegal acts. Under Cap.109B, LLB might revoke a liquor licence if, in its opinion, the licensee had ceased to be a fit and proper person to hold the licence. She added that there was a recent case of drug abuse by patrons of upstairs bars. In 2007, there were 11 cases of revocation or refusal of application for issuing/renewal of liquor licences by LLB.

Selling of liquor at other non-liquor-licences premises

14. The Deputy Chairman pointed out that there was presently no control over the selling of alcoholic beverages (e.g. beer) in 'dai pai dongs', restaurant patrons binging along their wine, and customers of convenience stores consuming alcoholic drinks outside the stores after purchase. He considered that, as a trade facilitation measure, the Administration should make reference to Singapore where 'dai pai dongs' were allowed to sell alcoholic beverages.

15. AD(O)1/FEHD explained that, under Cap.109B, any person intending to sell liquor at any premises for consumption on the premises must obtain a liquor licence or a club liquor licence from LLB before commencement of such business. In the light of this, liquor licences would not be required for restaurants whose patrons

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brought their own wine for consumption there and for convenience stores which only sold alcoholic beverages to customers. As regards the suggestion of issuing liquor licences to 'dai pai dongs', AD(O)1/FEHD said that there were stringent requirements on the suitability of the premises under application for a liquor licence having regard to the location, fire safety, hygienic conditions, and the structure of the premises. In this respect, 'dai pai dongs' at FEHD's cooked food centres might have physical constraint for the issue of liquor licence. However, the Administration would consult LLB's view on the Deputy Chairman's suggestion.

16. Mr WONG Yung-kan expressed worry over noise and environment nuisance caused by drunken patrons of food premises which operated 24 hours, particularly those located in the vicinity of residential buildings and housing estates. He wondered whether there was any restriction on the liquor selling time of these food premises. Mr WONG also pointed out that many private barbecue sites sold alcoholic beverages to their patrons. He suspected that these private barbecue sites did not hold any valid liquor licences and wondered if the Administration would consider allowing these premises to apply for liquor licences so as to subject them to regulation.

17. DS(FH)(Food) responded that, under the present law, there was no restriction on the operation time of licensed food premises. As regards liquor licence, LLB might impose conditions on liquor selling hours for premises located in a residential building or a composite commercial/residential building in a residential area. AD(O)1/FEHD supplemented that, under the existing licensing regime for food premises, there was no specific type of licence for private barbecue sites. Operators of barbecue sites might, however, apply for various types of food premises licences according to their mode of business. For examples, the operator of a barbecue site which only sold prepackaged meat for barbecue could apply for a fresh provision shop licence. The operators might apply for food factory licences if they would marinate meat and prepare food for sale to customers. However, if the mode of operation of a barbecue site was similar to a restaurant where seating and services would be provided for consumption of food there, the operator would be required to apply for a restaurant licence.

18. Mr Albert CHAN commented that there was virtually no regulatory control over the operation of private barbecue sites selling liquor without any valid liquor licence. He was gravely concerned that patrons and the operation of these establishments had caused serious noise and environmental nuisance to nearby residents. He criticized the Administration for its failure to take any actions to rectify the problem despite repeated complaints made by local residents over the past years.

19. AD(O)1/FEHD responded that FEHD would follow up and take prosecution action against unlicensed food premises when there was sufficient evidence. The Police would follow up and take necessary actions against premises for selling

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liquor without valid liquor licences.

Trade facilitation measures

20. The Deputy Chairman suggested that, as a trade facilitation measure to 'dai pai dongs' and small and medium restaurants, the Administration should consider issuing two different categories of liquor licences e.g. one for selling beverages with an alcohol content of less than 5% (such as beer) and the other with an alcohol content of more than 5%. The Chairman shared a similar view. In response, AD(O)1/FEHD said that the Administration would need to consult LLB on the suggestion.

21. Echoing the Chairman's and the Deputy Chairman's suggestion, Mr Albert CHAN considered that the Administration should also consider providing a 'one-stop' service for applications of food premises and liquor licences as a trade facilitation measure. On the proposal to lengthen the duration of licence to not more than two years, Mr CHAN held a strong view that a clear and stringent mechanism should be put in place to monitor the liquor licensed premises for compliance with the licensing conditions e.g. the current Demerit Points System for licensed food premises. Mr WONG Yung-kan and Dr KWOK Ka-ki also shared the view.

22. DS(FH)(Food) responded that the Administration would consider introducing a review mechanism so that LLB might monitor the operation of the liquor licensed premises and impose additional licensing conditions to the liquor licence where appropriate. She pointed out that, if objections to applications for liquor licences were received, LLB would consider the applications in open hearings or closed-door meetings in accordance with the established procedures. The applicant and the objector(s) would be invited to make representations to LLB in person in open hearings. If any applicant or objector(s) was not satisfied with LLB's decision, he/she might lodge an appeal to the Municipal Services Appeals Board in accordance with the relevant provision of Cap.109B.

23. On the Administration's response, Dr KWOK Ka-ki said that there should be representation of local community in LLB so that views and concerns of local residents would be taken into account in its consideration of applications for issue/renewal of liquor licences. The Chairman, however, commented that most of the members of LLB were DC members and, in most cases, DC Chairmen were nominated to attend the hearing of the appeal cases. He also pointed out that, at present, LLB could issue a liquor licence for a period of a shorter duration than 12 month, e.g. three or six months.

IV. Review on hawker licensing policy

[LC Paper No. CB(2)2147/07-08(03)]

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Briefing by the Administration

24. DS(FH)(Food) informed members that the Food and Health Bureau (FHB) and FEHD were jointly reviewing the policy on hawker licensing, including exploring the feasibility of re-issuing new hawker licences and relaxing the requirements for succession and transfer of hawker licences without compromising environmental hygiene. The Administration would also strengthen the role of DCs in terms of hawker licensing and hawker bazaar management at the district level.

25. Deputy Director (Environmental Hygiene) of FEHD (DD(EH)/FEHD) briefly presented the Administration's paper entitled 'Review on hawker licensing policy' [LC Paper No. CB(2)2147/07-08(03)]. On fixed-pitch hawker licences, the Administration proposed that, provided the current number of fixed pitches was maintained, consideration might be given to issuing licences to new operators for trading in the vacant pitches or allowing licensees of adjacent pitches to use vacant pitches as an expanded business area. As regards 'dai pai dongs', it was suggested that when a 'dai pai dong' was closing down because of the death of the licensee or other reasons, the relevant DC might advise the Government on whether it should be allowed to continue to operate in situ, after having regard to the specific circumstances of the district and the residents' aspirations. If so, the Administration might consider arranging for the succession and transfer of licences, or issue new licences to interested operators. This would address various concerns without increasing the number of 'dai pai dongs'.

26. As regards itinerant hawker licences, DD(EH)/FEHD said that the Administration would maintain the existing policy of not issuing new itinerant hawker licences for selling wet and dry goods. For itinerant (frozen confectionery) hawker licence (commonly known as 'small ice cream vendors') and itinerant (mobile van) hawker licence (commonly known as 'ice cream vans'), the Administration would consider re-issuing a fixed number of these two categories of licences, provided that the food safety and environmental hygiene conditions would not be jeopardized.

'Dai pai dongs' and open-air hawker bazaars

27. Mr WONG Kwok-hing said that he was thankful to FHB and FEHD for responding positively to the repeated requests from him and hawker associations to review the hawker licensing policy. He was supportive of the Administration's proposals and hoped that these proposals could be implemented as soon as possible. Mr WONG asked about the Administration's timetable for completing its consultation with hawker associations and DCs. In response, DS(FH)(Food) said that the Administration would endeavour to complete the consultation exercise by the end of 2008.

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28. The Chairman said that he had moved a motion on 'preservation and inheritance of dai pai dong policy' urging the Government to review the licensing policy for 'dai pai dong' for debate at the Council meeting on 23 November 2005. He further said that, while he was supportive of most of the initial proposals put forward by the Administration, he had reservation about the proposal in respect of 'dai pai dong'. He considered that the number of 'dai pai dong' should not be frozen at the present level (i.e. 28). The Chairman suggested that the Administration should consider identifying new sites (e.g. areas in Tin Shui Wai and Lou Fou Shan) to accommodate more 'dai pai dong'. The Administration should also provide assistance to the licensed hawkers in improving the design of 'dai pai dong' so that they could meet the present-day hygiene and environmental standards.

29. Mr WONG Yung-kan asked how the Administration would define open-air hawker bazaars and whether the Administration would draw on overseas experience and issue licences to hawkers for preparing cooked food in open-air hawker bazaars. DD(EH)/FEHD responded that operators in open-air hawker bazaars (e.g. the Tung Choi Street Hawker Permitted Places) were issued with fixed-pitch hawker licences and most of them sold wet and dry goods. As regards the open-air bazaar cited by Mr WONG, she explained that it was located on a piece of government land leased out on short term tenancy. As such, the bazaar was not in public places and the selling of dry and wet goods did not require any hawker licence. However, the operators of cooked food stalls at that open-air bazaar concerned were issued with temporary food factory licences.

30. On the Administration's response, Mr WONG Yung-kan asked whether the Administration would issue fixed-pitch hawker licences for 'dai pai dong' operating in open-air hawker bazaars if it was supported by the DCs concerned. In response, DD(EH)/FEHD explained that increasing the number of fixed pitch hawker licences for cooked food (i.e. 'dai pai dong') in public areas might have a significant impact on environmental hygiene. Therefore, at this stage, the Administration did not consider it appropriate to issue more licences for 'dai pai dong'. She reiterated that the Administration might consider arranging for the succession or transfer of licence, or issue of a new licence to an interested operator if the DC concerned supported the continued operation of a 'dai pai dong' in situ when it was in danger of closing down because of the death of the licensee or other reasons. She also emphasised that the Administration would be willing to listen to any views that DCs might have on this proposal.

31. On strengthening the role of DCs, Mr WONG Yung-kan asked how DCs and FEHD could complement each other in enhancing the management of public markets. DS/FEH said that each public market had a management consultative committee with membership including the respective DC members. When discussing with the Panel the review of the provisions in the public markets in May

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2008, the Administration had already made a commitment to consult the views of DC on possible measures to enhance the viability of public markets.

Restrictions on the new licences

32. The Deputy Chairman pointed out that a fixed-pitch hawker licensee might appoint a deputy/an assistant to assist him/her to operate the daily trading business. He asked whether the fixed-pitch hawker licences could be succeeded by or transferred to the deputies/assistants, and about the assessment criteria on applicants for new licenses of 'small ice cream vendors' and 'ice cream van'.

33. In response, DD(EH)/FEHD explained that, under the existing hawker licensing policy, with the exception of 'dai pai dong' licence, fixed-pitch hawker licence could be succeeded by or transferred to the 'immediate family member' of the licensee (i.e. parent, spouse, son or daughter). 'Dai pai dong' licence was also a kind of fixed-pitch licence and, according to current arrangements, might only be succeeded by or transferred to the licensee's spouse. However, under the proposed arrangement and, subject to the views of DCs, arrangements on the succession and transfer of 'dai pai dong' licences might be relaxed to allow the succession by or the transfer of the licence to not only the spouse but also other 'immediate family members' of the licensee. DD(EH)/FEHD further explained that, where a fixed-pitch hawker licensee was unable to attend to the operation of the hawker stall for legitimate reasons (such as absence from Hong Kong or illness), he/she might appoint a person to be his/her deputy during the absence. However, any permission granted in this respect should not exceed a period of six months. A fixed-pitch hawker licensee might also employ assistants to help him/her carry on his/her business. There was no limit on the number of registered assistants for each hawker stall. The registration only served a record and identification purpose, and did not confer any right to the assistants. She supplemented that, under the new proposed arrangements, the deputies and assistants would also have the opportunity to apply for new licences just like any other interested party.

34. Mr WONG Kwok-hing asked about the numbers of deputies and assistants registered with FEHD. DD(EH)/FEHD responded that some 5 600 assistants had been registered with FEHD, but the number of permits issued to deputies was much smaller.

35. Mr WONG Yung-kan was concerned about the proposal to specify a validity period (e.g. three or five years) of new licences, and restrict further succession or transfer of these licences. DD(EH)/FEHD explained that hawker licences were not commodities intended for transfer or trading in the market at will by the licensees. Their succession and transfer should therefore be subject to regulation. The introduction of the proposed arrangements could maintain the vitality of the hawker trade through the keeping of the right to operate mobile and affording opportunities to those interested in entering the trade.

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36. The Chairman said that he also had reservation about the proposal of specifying a validity period and disallowing further succession or transfer of new licences. He pointed out that this might discourage new comers to enter the trade as they might face difficulties in recovering the fixed costs of their investment. As regards the proposal of issuing new licences for 'small ice cream vendors' and 'ice cream van', the Chairman considered that the Administration should consult the hawker associations about the number of new licences to be issued. He was worried that, if the number of new licences to be issued was too large, the existing licensees might be impacted.

37. Mr Andrew CHENG shared similar concern about the specification of a validity period of new licences for 'small ice cream vendors' and 'ice cream van'. Given that the operation of 'ice cream van' would require a relatively higher level of investment, he wondered why the Administration would not allow further succession or transfer of the new licences issued by FEHD.

38. In response to the Chairman's and Mr Andrew CHENG's views, DD(EH)/FEHD reiterated that the Administration had considered all relevant factors and made its best endeavour to strike a fine balance between upkeeping the food safety and environmental hygiene conditions and enhancing the vibrancy of the hawker trade. She added that, out of 16 current licensed 'ice cream van', 14 of them were held by companies.

39. In response to the Deputy Chairman's question on the eligibility for obtaining new licences of 'small ice cream vendors' and 'ice cream van', DD(EH)/FEHD said that the issue of any new licence must be done in a fair manner. The Administration's initial thinking was that no existing licensee should be granted multiple licences. For 'dai pai dong' licences, applications made by holders of valid food business licences should be accorded a lower priority. The Administration would consult the hawker associations and DCs on the arrangements for processing and vetting licence applications, and would further study the arrangements in details.

V. Any other business

40. The Chairman reminded members that the Panel would hold a special meeting on 16 June 2008 at 5:30 pm to discuss the recent incident of discovery of H5N1 virus in chickens at Po On Road market.

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