

立法會
Legislative Council

LC Paper No. CB(1) 2964/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EA/1

Panel on Environmental Affairs

Minutes of meeting
held on Monday, 23 May 2011, at 2:00 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon CHAN Hak-kan (Chairman)
Hon Audrey EU Yuet-mee, SC, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Andrew CHENG Kar-foo
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Hon IP Wai-ming, MH
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
- Members attending** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LAU Kong-wah, JP
Hon Vincent FANG Kang, SBS, JP
- Members absent** : Hon WONG Yung-kan, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP

**Public officers
attending**

: For item IV

Mr Benny WONG
Deputy Director of Environmental Protection (1)
Environmental Protection Department

Mr Gordon WAN
Acting Principal Environmental Protection Officer
(Sewerage Infrastructure)
Environmental Protection Department

Mr CHAN Kin-kwong
Assistant Director (Projects and Development)
Drainage Services Department

Mr IP Wing-cheung
Chief Engineer (Project Management)
Drainage Services Department

Mr Samson LAM
Senior Engineer (Consultants Management)
Drainage Services Department

For item V

Mr Edward YAU
Secretary for the Environment

Mr Albert LAM
Deputy Director of Environmental Protection (2)
Environmental Protection Department

Mr Samson LAI
Assistant Director (Waste Management Policy)
Environmental Protection Department

For item VI

Mr Edward YAU
Secretary for the Environment

Mr Benny WONG
Deputy Director of Environmental Protection (1)

Mr Eric CHAN
Administration Assistant to Secretary for the
Environment

Mr WONG Hon-meng
Principal Environmental Protection Officer (Strategic
Assessment)
Environmental Protection Department

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

- I. Confirmation of minutes**
(LC Paper No. CB(1) 2191/10-11 — Minutes of the meeting held
on 28 March 2011)

The minutes of the meeting held on 28 March 2011 were confirmed.

II. Information paper issued since last meeting

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

LC Paper No. CB(1) 2112/10-11(01) — Submissions opposing to the
extension of the South East
New Territories Landfill;

LC Paper No. CB(1) 2112/10-11(01) — Submission regarding the
draft Tseung Kwan O Outline
Zoning Plan; and

LC Paper No. CB(1) 2176/10-11(01) — Referral from Duty Roster Members regarding the progress of installation of noise barriers (Chinese version only) (Restricted to Members)

III. Items for discussion at the next meeting

(LC Paper No. CB(1) 2193/10-11(01) — List of follow-up actions

LC Paper No. CB(1) 2193/10-11(02) — List of outstanding items for discussion)

3. The Chairman informed members that the Administration had proposed to discuss the following items at the next regular meeting scheduled for Monday, 27 June 2011, at 2:30 pm -

(a) Promoting green economy; and

(b) Latest development in reduction and treatment of food waste.

On item (a), the Chairman said that the Administration had provided an information paper as per members' request. As members had indicated the need for a joint discussion on the subject with the Panel on Economic Services (ES Panel), the Chairman suggested holding a joint meeting on 27 June 2011 at 2:30 pm to discuss item (a), to be followed by the regular meeting of the Panel on Environmental Affairs at 3:30 pm to discuss item (b). Mr Jeffrey LAM, Chairman of the ES Panel, said that he would need to consult members of the ES Panel on the proposed joint meeting.

4. Ms Audrey EU enquired about the timing for discussion of the retrofitting of noise barriers. She also considered a need to invite deputations to express views on the review of Environmental Impact Assessment (EIA) mechanism. The Chairman advised that the retrofitting of noise barriers had been included in the list of outstanding items for discussion by the Panel. On the need to invite deputations' views on the review of EIA mechanism, he said that this could be decided when the subject was discussed under item VI.

(Post-meeting note: Pursuant to members' decision, the next meeting scheduled for 27 June 2011 would be devoted to discuss the subject on review of the EIA mechanism. Deputations would be invited to give views.)

IV. Provision of sewerage in North District and Tolo Harbour Catchment

(LC Paper No. CB(1) 2193/10-11(03) — Administration's paper on provision of sewerage in North District and Tolo Harbour Catchment)

5. The Deputy Director of Environmental Protection (1) (DDEP(1)) introduced the Administration's proposals to -

- (a) upgrade part of **332DS** – Lam Tsuen Valley sewerage to Category A at an estimated cost of \$274.4 million in money-of-the-day (MOD) price;
- (b) upgrade part of **339DS** – North District sewerage, stage 1 phase 2C and stage 2 phase 1 to Category A at an estimated cost of \$226.8 million in MOD price; and
- (c) upgrade part of **345DS** – North District sewerage, stage 2 part 2A to Category A at an estimated cost of \$272.1million in MOD price.

(Post-meeting note: A set of power-point presentation materials was circulated to members under LC Paper No. CB(1) 2260/10-11(01) on 24 May 2011.)

6. Ms Audrey EU enquired about the progress of the overall village sewerage programmes and the anticipated improvement to water quality upon completion of these projects. DDEP(1) said that there were more than 900 villages in Hong Kong and some of them were currently not within the village sewerage programmes primarily because of practical or geographical constraints. About 140 villages in Hong Kong were already sewered at present. Construction works for about 40 to 50 villages had commenced, while the extension of public sewerage to other villages covered under the village sewerage programmes were at various stages of planning, design or other necessary preparations. The Administration would continue to implement the village sewerage programmes progressively. Priority for village sewerage projects would be accorded taking into account factors such as the pollution loads, the population of the villages as well as the presence of practical constraints. Completion of more village sewerage works would certainly bring about further improvement to water quality.

7. Mr KAM Nai-wai enquired if the provision of sewerage under the proposed projects could resolve the problem of improper discharge of sewage from unsewered small houses. DDEP(1) said that as there might be some small houses where connections were not feasible due to topographical or other practical constraints, the rate of sewerage connections would typically reach around 80% based on past experience with the completed village sewerage projects. The proposed works should therefore be able to channel most of the sewage back to proper treatment. Efforts would be made to provide the branch sewer up to the lot boundary of a small house so as to facilitate the owner to carry out the house-to-sewerage connection works.

8. Noting that some villagers were reluctant to make the necessary house-to-sewerage connection works in the past, Ms Audrey EU asked if enforcement actions would be taken against these villagers as well as pollution or nuisances associated with ineffective septic tanks and soakaway (STS) systems. DDEP(1) said that individual small house owners were required under the Water Pollution Control (Sewerage) Regulation to complete house-to-sewerage connection upon availability of public sewerage in the area unless the connection was practically not feasible. As small house owners would be consulted on the alignment of the sewerage connections in the course of planning and implementation, typically about 80% of them would complete the house-to-sewerage connections. Enforcement actions would be taken as appropriate against owners who refused to make the required connections on a case-by-case basis. DDEP(1) added that at present, sewage from unsewered areas was often treated and disposed of by means of private treatment facilities, such as STS systems. Pollution might occur if the STS systems were too close to watercourses or not properly maintained. Depending on the circumstances of each case, improper discharge of sewage from malfunctioned private treatment facilities might contravene the Water Pollution Control Ordinance (Cap. 358).

332DS – Lam Tsuen Valley sewerage

9. As the three sewerage projects would extend the sewerage to unsewered areas in Lam Tsuen and Tolo Harbour catchment, Mr CHEUNG Hok-ming hoped that these could be carried out as soon as possible after approval of funding. Noting that the scope of **332DS** would only cover unsewered villages in the lower catchment of Lam Tsuen River, he enquired about the timing for provision of public sewerage to the remaining unsewered villages in the upper catchment. Given the different timeframes for completion of the sewerage works in the upper and lower catchments, he enquired whether the extension of trunk sewers along Lam Kam Road (which was being implemented under **364DS** "Lam Tsuen Valley sewerage – trunk sewers, pumping station and rising mains") would also reach those villages in the upper catchment. DDEP(1) said

that the Administration had planned to provide sewerage to 27 unsewered areas in Lam Tsuen Valley under **332DS**. The current proposal was to proceed with the project in phases by commencing the sewerage works for 14 of these areas first. Planning and design of sewerage works for the remaining 13 villages were underway, and the Administration would seek funding for implementing the remainder of **332DS** as soon as possible upon completion of the preparatory work. The Assistant Director of Drainage Services (Projects and Development) (ADDS(PD)) said that construction of the trunk sewers at Lam Kam Road had already commenced and would be completed ahead of the proposed village sewerage works under the currently proposed works package. The Chief Engineer (Project Management) (CE(PM)) added that the trunk sewers under construction at Lam Kam Road would also reach the upper catchment of Lam Tsuen River to enable subsequent extension of public sewerage to the remaining 13 unsewered areas.

10. The Chairman said that he had been approached by a Tai Po District Councillor expressing concern about the infeasibility of sewerage connections to a proposed development adjacent to Ying Tai Villa in Tong Min Tsuen due to technical constraints. He enquired about the nature of the problem, and the alternative solutions (such as biological treatment facilities) available to resolve the situation. CE(PM) said that while Ying Tai Villa would be served by the proposed sewerage with the help of a pumping station at Tong Min Tsuen, the possibility of providing sewers to the adjacent low-lying area was heavily constrained by the local topography and the lack of suitable government land nearby for the necessary facilities. The Administration had apprised residents and village representatives of the situation, and further discussion with the concerned parties would continue.

11. While supporting the sewerage projects, Mr KAM Nai-wai was concerned about the possible ecological impact on Lam Tsuen River if the sewers were to be laid along the river bank. He enquired whether affected villagers would be consulted on such alignments. ADDS(PD) said that all the sewerage for the three projects would be laid underneath existing roads and village areas. No sewers would be laid along and across the river banks.

12. Noting that there were a total of 26 objections concerning land resumption issues or service area of the proposed sewerage works, Ms Audrey EU enquired if any of the claims for compensation were made on grounds of fung shui. CE(PM) said that compensation for land resumption to the affected parties would be considered in accordance with the criteria set by the Lands Department. At members' request, the Administration agreed to provide supplementary information on the progress of village sewerage programmes, the village population involved, as well as the nature and amount of compensation associated with the proposed works.

339DS – North District sewerage, stage 1 phase 2C and stage 2 phase 1
345DS – North District sewerage, stage 2 part 2A

13. While supporting the sewerage projects which would help resolve the problem associated with the lack of sewerage facilities in the North District, Mr Jeffrey LAM enquired if these projects could be completed as scheduled, and whether these could cater for the potential sewage flow from future developments in the North District. DDEP(1) said that the sewerage projects were meant to provide sewerage connections to existing unsewered villages in rural areas, and separate sewerage planning studies would be made in respect of future developments in the North District. ADDS(PD) added that efforts would be made to complete the projects on time.

14. In concluding, the Chairman said that members raised no objection to the submission of the proposals to Public Works Subcommittee.

V. Public consultation on the extension of the Environmental Levy Scheme on Plastic Shopping Bags

(LC Paper No. CB(1) 2193/10-11(04) — Administration's paper on Public consultation on the extension of the Environmental Levy Scheme on Plastic Shopping Bags

LC Paper No. CB(1) 2193/10-11(05) — Paper on Environmental Levy Scheme on Plastic Shopping Bags prepared by the Legislative Council Secretariat (background brief))

15. At the Chairman's invitation, the Deputy Director of Environmental Protection (2) (DDEP(2)) gave a power-point presentation on the Consultation Document on the Extension of the Environmental Levy Scheme on Plastic Shopping Bags (the Consultation Document).

(Post-meeting note: A set of power-point presentation materials was circulated to members under LC Paper No. CB(1) 2260/10-11(02) on 24 May 2011.)

16. Referring to the findings of the landfill survey on disposal of plastic shopping bags (PSBs) in Annex A to the Consultation Document,

Mr CHAN Kin-por noted with concern that while there was a substantial drop in landfill disposal of PSBs distributed by retailers covered in the first phase of the Environmental Levy Scheme on PSBs (the Levy Scheme), the amount of reusable bags, paper shopping bags and plastic garbage bags disposed of at landfills was on the rise. Ms Audrey EU was also concerned about the increase of 6.7% of PSB disposal originated from other sources. Mr Vincent FANG further enquired if the increase in PSB disposal from other sources represented a shift in disposal pattern. The Secretary for the Environment (SEN) said that according to the two landfill surveys conducted in mid-2009 and mid-2010, the landfill disposal of PSBs distributed by supermarkets, convenience stores as well as medicare and cosmetics stores registered over 75% decrease in mid-2010 when compared with the same in mid-2009. Taking into account the estimation that about 65% of the pre-levy PSB distribution under the above retail categories could be attributable to registered retail outlets under the Levy Scheme, the reduction in PSBs distributed by registered retailers since the launch of the Levy Scheme in July 2009 could be as high as 90%. PSB disposal attributable to these registered retailers dropped from some 14% of the overall disposal figure to about 3%. Yet there remained room for further reduction, particularly given the 6.7% increase in PSB disposal originated from other sources. The Administration considered it opportune to extend the coverage of the Levy Scheme to include all retailers and all types of PSBs including flat-top bags.

Specific coverage

17. Mr LEE Wing-tat acknowledged that the Levy Scheme had succeeded in inducing behavioral change in the public against the indiscriminate use of PSBs, and that members of the public had generally developed the habit of "Bring Your Own Bag" (BYOB). While supporting for continued efforts to be made to tackle the problem of indiscriminate use of PSBs, he was concerned that full extension of the Levy Scheme might not be practicable or enforceable. He cautioned that without the support and cooperation from small and medium enterprises (SMEs), the proposed full extension would be futile. He enquired if consideration would be given to extending the Levy Scheme to retailers on the basis of their business scale to ensure that they had the capability to comply with the Levy Scheme. SEN said that the objective of the Consultation Document was to gauge views from stakeholders on how to take forward the Levy Scheme in the pursuit of reducing the indiscriminate use of PSBs. Apart from consumers, cooperation from retailers, particularly SMEs, would be a determining factor of the feasibility of the proposed extension. He assured members that the Administration would endeavour to work out a practicable and enforceable implementation mechanism for the full extension of the Levy Scheme.

18. Mr Vincent FANG agreed that the public should be educated on the avoidance of indiscriminate use of PSBs, particularly those used to carry newspapers. Apart from the proposed exemption for PSBs used on food hygiene grounds, he enquired whether consideration could be given to exempting PSBs used for take-away lunch boxes as the levy might add burden to the working class. He also emphasized the need for clear guidelines on the scope of exemption. Mr LEE Wing-tat however pointed out that PSBs for lunch boxes or drinks were unnecessary and should be dispensed with as far as possible. SEN said that the Consultation Document aimed to gauge public views on how to take forward the Levy Scheme. The Administration welcomed views from the public on the specific coverage and scope of exemption, and would take those views into account so as to devise an extended Levy Scheme that best suited the local situation.

Handling of the charges

19. Mr KAM Nai-wai said that he would support extending the Levy Scheme to cover all retailers regardless of their business scale. Of the two approaches with respect to how the PSB charge would be handled, Mr KAM held the view that the current "remittance" approach to require registered retailers, which were mostly chain operators, to remit the charge collected from distributing PSBs to the Administration should remain, while a "retention" approach to allow retailers to retain the collected charge should apply to newly covered retailers (which were mostly SMEs). The dual system would conserve the levy income from registered retailers (which amounted to over \$20 million per year) on the one hand while easing the compliance cost of SMEs on the other. SEN said that there were pros and cons for adopting the "remittance" approach or the "retention" approach. The Administration would need to choose between the two approaches taking into account administrative and other practical considerations, such as compliance cost, operational difficulties and community consensus. As regards the dual system, SEN said that this was not practicable because in theory, registered retailers, most of which being chain operators, could deregister from the current Levy Scheme and then register again as separate outlets under the extended scheme to reduce the administrative burdens. It would be difficult to justify any statutory sanctions against such business decisions. There was also concern that under the dual system, retailers who were required to collect the same mandatory charge on PSBs could be subject to different statutory requirements. The differential treatment could confuse the public on the purpose of the mandatory producer responsibility scheme (PRS).

20. Mr Jeffrey LAM concurred that it would not be appropriate to apply differential treatment to chain stores and SMEs under the dual system. He opined that all retailers should be accorded the same treatment.

Mr KAM Nai-wai was not convinced that the dual system would cause confusion since the public would be required to pay the levy of 50 cents for each PSB distributed by retailers, regardless of whether the levy would be remitted to the Administration or retained by retailers. To prevent possible abuse of the dual system, legislation should be introduced to prevent registered retailers from deregistering from the current Levy Scheme and registering again under the extended Levy Scheme. Mr James TO held the view that it would be unlikely for registered retailers to deregister from the current Levy Scheme and register again under the extended Levy Scheme as this would not only involve a lot of administrative work, but also adversely affect their business image. He nevertheless agreed to the need for an enforcement mechanism to ensure compliance. DDEP(2) assured members that the Administration would devise effective enforcement against non-compliance after the implementation of the extended Levy Scheme, including spot checks. It would also act on complaints from members of the public.

21. Mr Jeffrey LAM enquired about the costs incurred by registered retailers in complying with the administrative requirements (such as registration, accounting, reporting and auditing requirements) under the Levy Scheme, as opposed to the over \$40 million levy income collected since the implementation of the existing Levy Scheme in July 2009. He considered it necessary for the Administration to assess the differences in administrative costs incurred from the existing Levy Scheme and the extended Levy Scheme under the "remittance" approach or the "retention" approach. SEN said that the administrative costs varied from individual registered retailers depending on the systems they adopted. In general, the administrative costs incurred would likely be minimal as the retailers covered under the current Levy Scheme were chain operators with large business scale and better administrative capability. Yet, it was questionable whether SMEs could operate under the existing compliance system without incurring compliance costs disproportionately.

22. While supporting the "retention" approach which was also adopted by the Mainland and Taiwan, Mr Vincent FANG considered it necessary for the Administration to ascertain the impact of the full extension of the Levy Scheme to include all 60 000 retailers in Hong Kong. Mr IP Wai-ming concurred that although SMEs needed not to remit the collected charge to the Administration under the "retention" approach, they would still have to account for the distribution of PSBs which would incur additional administrative burden and costs. Ms Audrey EU however pointed out that the "retention" approach adopted by the Mainland had not been effective in deterring the use of PSBs. She questioned why the Administration had put forward such a retrogressive approach for consultation. SEN said that it was the Administration's intention to implement the mandatory PRS by phases. Apart from bringing about significant reduction in PSB distribution, the first phase had also engendered a

green lifestyle and a BYOB culture which would contribute to the successful implementation of the second phase.

23. Mr CHAN Kin-por expressed concern that if retailers were allowed to retain the collected charge under the "retention" approach, they could easily get around the regulation by offering a rebate to their customers. Mr IP Wai-ming echoed that this would undermine the effect of the Levy Scheme to avoid indiscriminate use of PSBs. SEN said that the policy intent of the Levy Scheme was to inculcate behavioral change against the indiscriminate use of PSBs by means of an economic disincentive. The success of the Levy Scheme rested with the continued cooperation of retailers and consumers. The Administration would introduce appropriate statutory sanctions and devise effective enforcement against non-compliance. In addition, there would be suitable publicity and public education so as to enhance the public awareness that subject to the relevant exemption, free distribution of PSBs would be banned in all retail outlets under the extended levy scheme.

24. Miss Tanya CHAN enquired about overseas experience in implementing PSB levy, particularly its impact on SMEs. SEN advised that Ireland adopted the "remittance" approach as it had the support of the readily available value-added-tax (VAT) system which enabled the levy to be audited in conjunction with VAT audits. Without a similar system in Hong Kong, demanding retailers to remit the levy collected to the Government under the extended PRS would mean requesting the participating retailers (mostly SMEs) to develop new or additional accounting, reporting, auditing and other related systems. To ease the burden of SMEs in complying with the administrative requirements under the "remittance" approach, Miss CHAN suggested that some flexibility be exercised to allow SMEs to submit their returns on a yearly/half-yearly basis instead of quarterly basis as required under the existing Levy Scheme. The Administration should also re-consider using the levy collected to fund environmental initiatives. SEN reiterated that any message of dedicating the levy income to funding environmental initiatives would confuse the public of the objective of the Levy Scheme as if using PSBs would contribute to environmental protection. This might encourage the use of PSBs which was contrary to the intended purpose of the Scheme.

25. Mr Jeffrey LAM enquired about the liability for non-payment of levy under the existing Levy Scheme where retailers distributed PSBs for free or customers refused to pay the levy. He also enquired if prosecution actions had been taken against non-compliance. SEN said that free distribution of PSBs by prescribed retailers was prohibited under the current legislation. All retailers would be subject to similar requirements upon extension of the Levy Scheme. Since the implementation of the Levy Scheme in July 2009, only a few cases of non-compliance had been recorded.

26. Mr IP Wai-ming was concerned about the practicality and enforcement of extending the Levy Scheme to cover all retailers. Instead of the proposed full extension, a more practicable approach would be to apply the levy to wholesalers, manufacturers and importers of PSBs direct. Expressing similar view, Mr Albert CHAN said that this would obviate the need for retailers to comply with the complicated accounting and registration procedures under the extended Levy Scheme. He added that the Administration should take the lead in avoiding the use of PSBs. For example, the Agricultural, Fisheries and Conservation Department should refrain from using large black plastic bags for collection of waste grass and leaves. A more effective way to reduce waste was to introduce a mandatory scheme on waste segregation and recycling, as in the case of Taipei. Mr James TO supported the application of levy to wholesalers, manufacturers and importers of PSBs direct. Given the difficulty of enforcement, Ms Audrey EU agreed that consideration should be given to restricting the manufacture and import of PSBs, rather than extending the Levy Scheme to include all retailers.

27. In response, SEN said that with the proposed full extension of the Levy Scheme, all retailers would be required under the law to charge 50 cents for each PSB distributed to their customers. Publicity and educational efforts would be stepped up to enhance public awareness on the need to avoid the indiscriminate use of PSBs. The charging of levy direct on wholesalers, manufacturers and importers of PSBs could not achieve the intended purpose of the Levy Scheme which was to create a direct economic disincentive to encourage consumers to reduce the indiscriminate use of PSBs. On the other hand, it would lead to the charging of levy on PSBs used for food hygiene purposes which were intended to be exempted from the Levy Scheme.

Way forward

28. Mr Jeffrey LAM agreed that more publicity and educational efforts should be made to promote public awareness against the indiscriminate use of PSBs. Ms Cyd HO expressed concern about the conflicts which might arise from implementation of the extended Levy Scheme, particularly when retailers could easily get around the regulation by offering a rebate to their customers. Apart from consulting the public on the proposed full extension of the Levy Scheme, the Administration should alert the public of the enforcement mechanism against non-compliance. Focus of publicity should be placed on the savings to be achieved in avoiding the use of PSBs. The Administration should closely monitor the implementation of the extended Levy Scheme, and review its effectiveness in reducing the landfill disposal of PSBs. SEN said that the publicity efforts made in promoting the BYOB concept and the proven results in the first phase of the Levy Scheme should provide a good foundation for the second phase of the scheme. The Administration would take into

account administrative and other practical considerations, such as compliance cost, operational difficulties and community consensus, in working out the details of implementation of the second phase of the Levy Scheme. The relevant enforcement strategy would also be worked out to ensure compliance.

VI. Review of environmental impact assessment mechanism

(LC Paper No. CB(1) 2193/10-11(06) — Administration's paper on review of environmental impact assessment mechanism

LC Paper No. CB(1) 2193/10-11(07) — Paper on the environmental impact assessment mechanism prepared by the Legislative Council Secretariat (updated background brief))

29. In view of the impending appeal against the Judgment on the judicial review of the air quality assessment of the Hong Kong section of the Hong Kong-Zhuhai-Macao Bridge (HZMB) project (the Judgment) by the Administration, the Chairman reminded members to avoid making reference to the case, and to confine the discussion to the environmental impact assessment (EIA) mechanism.

30. SEN stressed that the EIA process was an objective, transparent and reliable way to assess the environment impacts of designated projects. As the Judgment involved crucial view points and had significant impact on the principles for executing the Environmental Impact Assessment Ordinance (Cap.499) (EIAO), the Environmental Protection Department (EPD) had lodged an appeal against the Judgment after taking legal advice and considering relevant factors thoroughly. Meanwhile, EPD would be liaising with relevant project proponents on the remedial actions to be taken as a result of the Judgment. The Chairman also appealed to members to avoid making reference to the Judgment in the course of discussion lest this might prejudice judicial proceedings and usurp the court's role.

EIA mechanism

31. Mr KAM Nai-wai said that the EIA mechanism had been severely criticized for being unfair, given the conflicting roles of EPD as both the administrator and umpire in the EIA process. As a result, almost all public works projects were approved, except for the Sheung Shui to Lok Ma Chau Spur Line Viaduct project at Long Valley. To enhance the credibility of the

EIA mechanism, consideration should be given to appointing an independent panel to execute the EIA process. SEN said that EIAO had clearly provided that the EIA process was applicable to public works projects. The Deputy Director of Environmental Protection (1) (DDEP(1)) said that under EIAO, the Director of Environmental Protection (DEP) was responsible for regulating and enforcing the EIA process. The project proponent of a designated project had to prepare an EIA report in accordance with the Technical Memorandum on Environmental Impact Assessment Process (TM) issued under EIAO and the study brief issued by DEP specifically for the project. Upon the submission of the EIA report, DEP would decide whether the EIA report met the requirements set out in the study brief and TM. If affirmative, the report would be exhibited for public inspection and DEP would take into account the public comments on the EIA report in making a decision on whether or not to approve the EIA report. If DEP was not satisfied that the submitted EIA report met the requirements set out in the study brief and TM, the report would be rejected and not exhibited for public inspection. He added that of the EIA reports submitted for consideration by DEP so far, 162 were approved, 26 were withdrawn, six were rejected before public exhibition and one was rejected after public exhibition. Given that 216 EIA Study Briefs had been issued from 1998 to 12 May 2011, Professor Patrick LAU questioned why only 162 EIA Reports were approved. DDEP(1) explained that apart from those approved, withdrawn and rejected, the EIA process for the remaining applications was still ongoing.

32. Referring to the Chief Secretary for the Administration's remark made last week on baseline studies under EIAO, Ms Audrey EU said that according to her understanding, baseline studies should be conducted on the environmental conditions prior to the implementation of a designated project. A comparison should also be made after completion of the project so that necessary mitigation measures could be carried out. In fact, baseline studies had been conducted for some major infrastructural projects. She sought clarification on the requirements for the conduct of baseline studies under TM of EIAO. Miss Tanya CHAN pointed out that section 4.3.1 of TM provided that baseline environmental surveys should be carried out where necessary to determine the existing environmental conditions on the site and in all environs likely to be affected by the proposed project. The need for baseline studies was also set out in section 3.4 of Annex 12 to TM. She enquired whether project proponents were required to conduct baseline studies in accordance with the requirements of the study briefs, as in the case of the Sheung Shui to Lok Ma Chau Spur Line Viaduct project albeit the EIA report was subsequently rejected. In response, SEN said that as the questions raised by Ms EU and Miss CHAN concerned the court ruling, it would be inappropriate for him to address them lest these might directly or indirectly prejudice the appeal. He hoped that members would respect the judicial proceedings and avoid making reference to the court case.

Besides, the Administration had provided a reply to a similar question raised at the Council meeting on 18 May 2011. Therefore, he had nothing more to add.

33. While agreeing to the need for caution in replying members' questions to avoid subjudice, Mr LAU Kong-wah opined that SEN could make reference to his earlier replies in order to elucidate the requirements under EIAO. By way of illustration, in his reply to a question raised by Mr Abraham SHEK at the Council meeting on 18 May 2011, SEN had made it clear that the requirements under section 3.4 of Annex 12 to TM regarding baseline study for air quality had been duly executed since the implementation of EIAO in 1998. He enquired about the authenticity of the statement, and the difference between "existing air quality" and "the air quality in the future assessment year without the project in place". SEN affirmed that his reply on the requirement for the conduct of baseline studies was correct. Given that the conduct of baseline study was the crux of the Judgment and the basis of contention, he did not wish to make further comments lest these might prejudice the appeal proceedings.

34. Professor Patrick LAU sought elaboration on the "stand alone" analysis of the projects to be conducted by proponents, and the time taken to carry out the mitigation measures. SEN said that pending the outcome of the appeal, EPD would follow the requirements of EIAO and the Judgment when considering applications for EPs. Given the difference in the nature and scale of designated projects, the extent of mitigation measures to be taken as well as the time frame for completion would vary. As regards the mitigation measures for the HZMB project, members could make reference to the Secretary for Transport and Housing's reply to a question raised by Ms Starry LEE at the Council meeting on 18 May 2011 regarding the impact of the Judgment on various railway projects.

35. As the Chief Executive had indicated in his last question and answer session that the Judgment would affect the implementation of designated works projects in Hong Kong, Ir Dr Raymond HO said that construction workers had recently staged a protest on the streets expressing concern about their job prospects. He therefore supported the action taken by EPD to appeal against the Judgment. To ascertain the impact of the Judgment, Ir Dr HO enquired about the number of designated projects which had not conducted the baseline studies based on a "stand alone" analysis of the projects as referred to in the Judgment, as well as the time and cost incurred as a result of the Judgment. SEN said that the purpose of the EIA process was to reduce the environmental impacts of designated projects as far as possible. It would be difficult to assess the number of designated projects and the extent to which these projects would be affected by the Judgment, as this would vary from case to case depending the stage of the EIA process they were in. Proponents of designated projects pending the approval of EIA reports or EPs under the EIA mechanism would

need to assess the adequacy of their EIA studies in the light of the Judgment. Meanwhile, information on the designated projects was available from the EPD website.

36. Mr Jeffrey LAM was concerned about the impact of the Judgment on infrastructural projects, particularly on drainage and slope improvement projects which would need to be completed before the rainy season to ensure public safety. He enquired if these projects could be carried out as scheduled despite the requirements of the Judgment. SEN said that all designated projects were required under EIAO to undergo the EIA process. Pending the outcome of the appeal, project proponents would need to carry out the designated projects in accordance with the requirements as set out in the Judgment. Mr LAM however pointed out the need to take into account the interest of the community to ensure that the public was adequately protected.

37. Noting from the Administration that 70 designated projects awaiting approval of EIA reports or EPs would likely be affected by the Judgment, Ms Audrey EU requested for a list of these projects. SEN said that the proposed list would be subject to change depending on the progress of the EIA process, and the mitigation measures taken by project proponents pursuant to the requirements of the Judgment. Updated information on designated projects at different stages of the EIA process would be made available in the EPD website.

Way forward

38. Ms Audrey EU said that a lot of problems associated with the operation of the EIA mechanism had emerged since the enactment of EIAO in 1998. She had requested for discussion on the review of the EIA mechanism, which had been included in the list of outstanding items for discussion by the Panel. However, discussion had been withheld pending the outcome of the judicial review on the air quality assessment of HZMB project. As a number of submissions requesting for a review of the EIA mechanism had been received following the Judgment, she considered it necessary for the Panel to hold a meeting to receive public views on the subject as soon as possible, given the significant implications of the EIA mechanism on major construction projects.

39. The Chairman sought members' views on the holding of a meeting to invite deputations' views on the review of the EIA mechanism. In view of the difficulty in avoiding reference to the Judgment in the course of deliberation, and the Administration's reluctance in responding to members' questions on ground of subjudice, the Chairman said that members could consider holding the meeting after completion of the appeal proceedings. If not, consideration could be given to devoting the regular meeting on 27 June 2011 to receive deputations' views.

40. Miss Tanya CHAN failed to see why the meeting should be held after completion of the appeal proceedings. She supported holding a meeting as soon as practicable to allow early discussion on the review of the EIA mechanism, adding that the Chairman should remind members to focus their discussion on the review of the EIA mechanism and not to make reference to the court case. Given that the Legislative Council had discussed subjects involving ongoing court cases before, Mr KAM Nai-wai held the view that there was no question of prejudice to the court's decision so long as the discussion did not touch on the case.

(As the scheduled time for the meeting of the Panel on Environmental Affairs (EA Panel) was over at this juncture, the venue was taken over by the Panel on Administration of Justice and Legal Services (AJLS Panel). To enable the EA Panel to complete discussion on the remaining issues, members of the AJLS Panel agreed to suspend the meeting. The meeting of the EA Panel was re-convened at 4:45 pm.)

41. Mr CHAN Kin-por asked whether discussion with deputations would be permitted in view of the court case. The Assistant Legal Adviser 5 said that the Rules of Procedure did not completely prohibit discussions on matters pending a court's decision. This was a question of self-restraint exercised by the committee and was usually decided by the chairman of a committee. The chairman of the committee would remind members to consider whether the questions raised by members and answers provided by the Administration would prejudice the court case. As for deputations addressing the committee, they were not protected by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

42. Given the significance of the EIA mechanism as evidenced by the halting of some express rail projects in the Mainland on grounds of environmental concerns, Ms Audrey EU supported early discussion on the review of the EIA mechanism. She did not see how the discussion could affect the court case so long as members refrained from making reference to the court case in the course of deliberation. Ms Cyd HO also supported inviting deputations to express views at the meeting on 27 June 2011.

43. As the majority members supported the proposal of holding a meeting as soon as possible, the Chairman decided to devote the next regular meeting on 27 June 2011 to receive views from deputations on the review of the EIA mechanism. Meanwhile, discussion on the two items proposed by the Administration at the meeting on 27 June 2011 would be deferred.

VII. Any other business

44. There being no other business, the meeting ended at 4:50 pm.

Council Business Division 1
Legislative Council Secretariat
30 August 2011