

立法會
Legislative Council

LC Paper No. CB(1) 212/11-12
(These minutes have been seen
by the Administration)

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Panel on Environmental Affairs

Minutes of meeting
held on Monday, 27 June 2011, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon CHAN Hak-kan (Chairman)
Hon Audrey EU Yuet-mee, SC, JP (Deputy Chairman)
Hon Miriam LAU Kin-yee, GBS, JP
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** : Hon Starry LEE Wai-king, JP
Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Hon James TO Kun-sun
Hon WONG Yung-kan, SBS, JP
- Public officers attending** : **For item IV**
Dr Kitty POON
Under Secretary for the Environment

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

Mr H M WONG
Principal Environmental Protection Officer (Strategic
Assessment)
Environmental Protection Department

**Attendance by
invitation** : **For item IV**

Federation of Hong Kong Industries

Mr Daniel CHENG
Deputy Chairman

Civic Exchange

Mr Mike KIBURN
Environmental Programme Manager

Civic Party

Mr Albert LAI
Vice-Chairman

Friends of the Earth (HK)

Mr Edwin LAU
Director

Designing Hong Kong

Mr Paul ZIMMERMAN
Chief Executive Officer

Green Sense

Ms HO Ka-po
Project Manager

Greeners Action

Ms YIP Chui-man
Senior Project Officer

Individual

Mr SONG Sio-chong

The Association of Consulting Engineers of Hong Kong

Dr Anne KERR
Council Member

Individual

Dr LEW Mon-hung, BBS

South Tokwawan Concern Group

Mr Edwin TOWN
Chairman

The Conservancy Association

Mr Roy NG
Senior Campaign Officer

Kadoorie Farm & Botanic Garden

Mr Andy BROWN
Executive Director

Hong Kong Bird Watching Society

Mr CHENG Nok-ming
Conservation Officer

Hong Kong Construction Industry Employees General Union

Mr FUNG Kin-cho

Individual

Mr CHAN Chung-yau

WWF Hong Kong

Mr Alan LEUNG
Conservation Manager/Terrestrial

Construction Industry Council

Mr Ivan WONG
Senor Manager (Council Services)

Clean Air Network

Ms Vivian NGAN
Campaign Manager

Association of Engineering Professionals in Society

Ir FAN Ying-ming

Dashun Policy Research Centre

Prof WONG Chak-kee

Innovation and Technology Association

Ir Spencer LI
Chartered President

The Construction Professionals' Development Centre

Ir Dr King WONG
Chief Executive

Hong Kong Construction Industry Bar-Bending Workers
Union

Mr LUK Kwan-ngai

香港泥水建築職工會

Mr WU Kwok-wing

Hong Kong Construction Industry Clerical, Managerial
and Professional Employees Association

Mr LEE Tsan-kui

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 Jacqueline CHUNG
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Confirmation of minutes and endorsement of the draft report of the Panel for submission to the Legislative Council

(LC Paper No. CB(1)2547/10-11	— Minutes of the meeting held on 20 April 2011
LC Paper No. CB(1) 2546/10-11	— Draft report of the Panel for submission to the Legislative Council)

The minutes of the meeting held on 20 April 2011 were confirmed.

2. Members endorsed the draft report of the Panel on Environmental Affairs for the current session, and authorized the Clerk to revise the report to cover discussion at the current meeting before it was presented to the Council on 13 July 2011.

II. Information paper issued since last meeting

3 Members noted that no information paper had been issued since last meeting.

III. Items for discussion at the next meeting

- (LC Paper No. CB(1) 2548/10-11(01) — List of follow-up actions
LC Paper No. CB(1) 2548/10-11(02) — List of outstanding items for discussion)

4. The Chairman informed members that the Administration had proposed to discuss the following items at the next regular meeting scheduled for Monday, 20 July 2011, at 10:45 am -

- (a) Motor Vehicle Idling (Fixed Penalty) Regulation; and
- (b) Public consultation on the extension of the Environmental Levy Scheme on Plastic Shopping Bags.

Noting that the proposed items were not included in the list of outstanding items for discussion, Miss Tanya CHAN enquired if there was any urgency in discussing these items. She also enquired about the timing for discussion of the Producer Responsibility Scheme (PRS) for Waste Electrical and Electronic Equipment (WEEE) which was originally scheduled for mid-2011. The Under Secretary for the Environment (USEN) advised that the Administration wished to consult the Panel on the second phase of Environmental Levy Scheme on Plastic Shopping Bags (the Levy Scheme), and the Motor Vehicle Idling (Fixed Penalty) Regulation before end of the current legislative session in July 2011. Meanwhile, the PRS for WEEE would be ready for discussion in the third quarter of 2011. In view of the far-reaching implications of the second phase of the Levy Scheme, the Chairman proposed and members agreed that deputations should be invited to express their views.

IV. Review of the environmental impact assessment mechanism

5. The Chairman welcomed the Administration and deputations to the meeting to exchange views on the review of the environmental impact assessment (EIA) mechanism. As the Administration had filed an appeal against the Judgment of the Court of First Instance 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), he reminded the meeting that it would not be appropriate to publicly discuss the case due to subjudice.

Meeting with Federation of Hong Kong Industries (FHKI)
(LC Paper No. CB(1) 2607/10-11(01))

6. Mr Daniel CHENG, Deputy Chairman, declared that he was a former member of the Advisory Council on the Environment (ACE) which played an

important role in the EIA mechanism. The EIA Subcommittee of ACE would examine EIA reports and make recommendations on measures to minimize the impacts of designated projects on the environment. The existing EIA mechanism was open, objective, transparent and worth supporting. While suitable changes were necessary to improve the existing mechanism, these changes should be subject to extensive consultation and should not have retrospective effect, as this would lead to unfairness and undermine the role of ACE. However, the Judgment had a significant impact on the existing EIA mechanism and led to the withdrawal of over 70 EIA projects pending the outcome of the appeal. The construction industry was deeply concerned about the possible delay of the relevant construction projects which would not only affect the livelihood of construction workers, but also cause the project prices to rise substantially.

Meeting with Civic Exchange

7. Mr Mike KILBURN, Environmental Programme Manager, called for a review of the roles of the Environmental Protection Department (EPD) and the Director of Environmental Protection (DEP) in the EIA process. He said that DEP was a highly specialized job requiring substantial technical and legislative expertise, particularly in regulating and enforcing the EIA process. Before 2005, the post of DEP was filled by an environmental scientist. Following the amalgamation of the Environment Branch (EB) of the former Environment, Transport and Works Bureau (ETWB) and EPD to form the Environmental Bureau (EB) in 2005, the post of DEP was merged with the post of Permanent Secretary for the Environment and filled by an Administrative Officer (AO). At the same time, four senior advisor posts at director grade had been deleted. Since then, DEP was no longer an environmental scientist. Being an AO from outside EPD, DEP lacked the required expertise to make professional judgment. The amalgamation had also led to the conflicting roles of EPD as both the administrator and umpire in the EIA process.

Meeting with Civic Party

(LC Paper No. CB(1) 2607/10-11(02))

8. Mr Albert LAI, Vice-Chairman, noted that the Civic Party had been severely criticized for its role in the judicial review of the air quality assessment of the HZMB project. He however stressed the need for a review of the EIA mechanism to address the conflicting roles of EPD as both the administrator and umpire in the EIA process. To ensure impartiality, there was a need to re-constitute ACE as an independent statutory body with members being nominated by academics, green groups and professional bodies rather than appointed by the Administration. An independent consultant should be engaged to provide the statutory body with expert advice on EIA reports. To facilitate communication and enhance transparency, bilingual EIA reports should

be provided and public hearing sessions should be held. Consideration should also be given to extending the time limits for receiving comments from the public and ACE. In parallel with the technical feasibility study, a strategic environmental assessment (SEA) should be conducted to take account of the cumulative environmental and social impacts. The heads of professional departments, such as EPD, should be filled by professional staff to ensure professionalism and capability in making informed decisions. Given the significance of public involvement in the EIA process, funding should be provided to non-government organizations (NGOs) to support their research or studies in environmental and conservation matters.

Meeting with Friends of the Earth (HK)
(LC Paper No. CB(1) 2607/10-11(03))

9. Mr Edwin LAU, Director, expressed concern about the independency of EIA reports as EIA consultants were hired by project proponents. There was also the question of conflict of roles if the projects were proposed by the Administration while EPD was responsible for issuing the respective Environmental Permits (EPs). He held the view that the existing EIA mechanism could only provide very limited protection to the environment, and that there was a need for the Administration to review the mechanism in a holistic manner. Resources should be allocated to ACE for hiring independent professional consultants to help scrutinize EIA reports. In addition to air quality assessment, health impact assessment should also be included in EIA reports. A more transparent public consultation process was required to apprise the public of the mitigation measures taken in response to the concerns raised.

Meeting with Designing Hong Kong
(LC Paper Nos. CB(1) 2661/10-11(03) and 2548/10-11(04))

10. While acknowledging that the objective of the EIA mechanism was to ensure that major developments were carried out in an environmentally acceptable manner, Mr Paul ZIMMERMAN, Chief Executive Officer, expressed concern about the conflicting role of EPD in the EIA process. To encourage wider community participation, the consultation period should be extended to allow sufficient time for public inspection and comment on the EIA reports. Hearing sessions should also be arranged to receive public views. Given the significance in controlling the cumulative impact on the environment, he urged the Administration to maintain and publish a database of baseline data and impacts of projects (existing/committed/planned) for both construction and operation periods so that the cumulative impact could be duly considered.

Meeting with Green Sense

(LC Paper No. CB(1) 2584/10-11(01))

11. Ms HO Ka-po, Project Manager, pointed out that as EIA studies were conducted at the downstream stage where decisions on the planning and construction of the development had already been made, there was very limited scope for amendments. There was also question on the independency of EIA reports given that the consultants who conducted EIA studies were hired by project proponents. To enhance the EIA mechanism, feasibility, sustainability and preliminary EIA studies should be carried out at the planning stage in parallel with public consultation. A statutory body should be set up to engage independent consultants to conduct EIA studies taking into account the cumulative impact on the surrounding environment. There should be greater transparency in the EIA process and the outcome of feasibility studies should be made available to the public. There was also a need to tighten the current Air Quality Objectives (AQOs) for approval of EIA reports.

Meeting with Greeners Action

(LC Paper Nos. CB(1) 2261/10-11(02) and CB(1) 2607/10-11(04))

12. Ms YIP Chui-man, Senior Project Officer, said that the purpose of the EIA mechanism was to ensure that effective mitigation measures would be drawn up and duly implemented before commencement of works to avoid irreversible damage to the environment. The EIA mechanism played a significant role in balancing environmental and development needs. It was a tool through which project proponents could convince the public of the acceptability of the projects with or without compensatory measures. However, there were questions on the conflicting roles of EPD and the independency of EIA reports as the consultants were hired by the project proponents who might not disclose the full impacts of projects on the environment and ecology. Besides, the AQOs adopted for approval of EIA reports were too lenient as these had not been updated since their adoption in 1987. She therefore urged for an early review of the EIA mechanism. Consideration should also be given to requiring the selection of independent consultants by a third party through tender for carrying out EIA studies.

Meeting with Mr SONG Sio-chong

(LC Paper No. CB(1) 2548/10-11(05))

13. Mr SONG Sio-chong said that the EIA mechanism should aim at striking a proper balance between environmental protection and development needs. It was appropriate for project proponents to hire consultants for EIA studies as the latter were experts in their fields. Any changes to the EIA mechanism should be based on the existing one and should not cause negative impacts on economic development and people's livelihood. While agreeing to the need to enhance

the openness and transparency of ACE through wider community participation at the early planning stage, the proposal of re-constituting ACE as a statutory body was not worth supporting as this would involve a very complicated process. As the EIA process might involve neighbouring areas, particularly the Pearl River Delta Region, cross-border coordination would be required.

Meeting with The Association of Consulting Engineers of Hong Kong (ACEHK)

14. Dr Anne KERR, Council Member, said that the uncertainty brought about by the Judgment might result in significant delay and cost increase of projects that were currently subject to the Environmental Impact Assessment Ordinance (Cap.499) (EIAO). This would have an adverse effect on stakeholders, project proponents and the future development of Hong Kong. Given the wide range of possible scenarios which would arise over time, it might not be practical to forecast future baseline studies. The "stand alone" assessment and the best practical means to be adopted could make the EIA process longer and more costly without necessarily generating benefit to the quality or the outcome of the project. While the Administration had lodged an appeal against the Judgment, some changes to the EIA mechanism were inevitable in the near future. ACEHK would like to participate in any discussion regarding changes to the EIA mechanism, including changes to EIA reports which had already been approved.

Meeting with Dr LEW Mon-hung

15. Despite that the HZMB project was one of the most important infrastructural projects under planning which had been approved by the Central Government, Dr LEW Mon-hung noted with concern that the related EIA report, which was conducted in accordance with the study brief drawn up under the Technical Memorandum (TM) of EIAO, was subsequently quashed by the Court. He questioned whether the decision of the local court could override the decision of the Central Government. He also held the view that the requirements under the existing EIA mechanism should remain in effect unless and until amendments were made. Major construction projects could not be able to proceed if the requirements for "stand alone" analysis and baseline studies had to be met. He stressed that the review of EIA mechanism should aim at striking a proper balance between environmental protection and development needs.

Meeting with South Tokwawan Concern Group
(LC Paper No. CB(1) 2548/10-11(06))

16. Mr Edwin TOWN, Chairman, stressed the importance of the EIA process in preventing climate change and protecting public health. To ensure that the

Administration would not put too much emphasis on economic development at the expense of public health, he suggested that health impact assessments should be included in EIA reports, and that the environmental requirements should be in line with the established standards of World Health Organization. Contingency plans would need to be worked out to facilitate crisis management. To encourage wider community participation, documents available for public inspection should be provided in both Chinese and English, and EIA reports should be forwarded to respective District Councils for review and endorsement.

Meeting with The Conservancy Association
(LC Paper No. CB(1) 2548/10-11(07))

17. Mr Roy NG, Senior Campaign Officer, held the view that community involvement and interaction with stakeholders should be strengthened in the EIA process. Apart from invitation for comments on EIA reports in two widely circulated newspapers (one Chinese and one English) and the EIA website, consideration should be given to using other communication channels to enhance public access. Consideration should also be given to providing EIA reports in both Chinese and English to facilitate public understanding, as well as extending the consultation period given the scope and technicality of EIA reports. To encourage wider community participation and better monitoring of the EIA process, the Administration should provide funding to NGOs to undertake environmental researches and studies for ACE's consideration. It was also necessary to review the effectiveness of mitigation measures proposed in EIA reports to ensure better planning, implementation and management of these measures.

Meeting with The Kadoorie Farm & Botanic Garden
(LC Paper No. CB(1) 2584/10-11(02))

18. Mr Andy BROWN, Executive Director, shared the concern about the conflicting roles of EPD in the existing EIA mechanism. He also pointed out that the quality of ecological impact assessments could be affected by time, cost, and standards of consultants. To ensure that ecological issues could be properly addressed, an independent "Ecological Advisory Committee" should be set up to provide scientific advice on the adequacy of the ecological impact assessments. A senior ecologist should serve on ACE to provide a balanced and holistic judgment on the actual ecological impact. To increase the accountability and professionalism of consultants, and to enhance the transparency of the EIA process, EIA reports should list out all the consultants involved, their credentials, exact roles and time input with dates and times of surveys provided. EPD should also produce and maintain a register of consultants, their professional training, expertise and experience. To minimize the impacts on environment, mitigation measures should be implemented prior to commencement of construction works.

Meeting with Hong Kong Bird Watching Society (HKBWS)
(LC Paper No. CB(1) 2607/10-11(05))

19. Mr CHENG Nok-ming, Conservation Officer, said that HKBWS agreed to the underlying principles of the EIA mechanism, and believed that EIAO provided a good legislative framework for the protection of the environment. The Long Valley case in 2001 was a very good example of how EIAO could successfully maintain the balance between development and nature conservation. However, the effectiveness of EIAO in protecting the environment had since been degraded by the current trend of infrastructure-driven economy which focused on development at the expense of the environment as evidenced by the cases of the Lung Mei Artificial Beach and the Integrated Waste Management Facilities. HKBWS called for a more comprehensive EIA study, which should include a detailed and objective assessment on cumulative ecological impact. To address the concern about the independency of EIA mechanism, the public and NGOs should be encouraged to conduct separate assessments on environmental impacts for ACE's consideration. Hearing sessions should be held as part of the public consultation exercise to enable the Administration and project proponents to respond to public comments on EIA reports. To ensure that there was adequate expertise within ACE, there was a need to review the selection process for membership which should be expanded to enhance efficiency in reviewing EIA reports.

Meeting with Hong Kong Construction Industry Employees General Union (HKCIEGU)

20. Mr FUNG Kin-cho said that while economic development could enhance the competitiveness of Hong Kong and increase employment opportunities, there was a need to achieve a balance between economic development and environmental protection. Also, issues relating to economy and livelihood should not be politicized. However, the Judgment would affect infrastructural projects estimated at a cost of \$49.6 billion this year and the possible creation of some 62 500 jobs. If these projects were suspended, about 50 000 jobs in the construction industry would be lost, and this would push up the unemployment rate from 6.4% to 18.5%. Those who specialized in form working, bar bending, concreting, levelers, mechanical and civil engineering etc. would be hard hit if the construction projects did not proceed as planned. Owing to the nature of their skills, these workers could not be able to shift to other types of works. HKCIEGU was gravely concerned about the livelihood of 270 000 registered construction workers. Therefore, it would object to any move that would adversely affect the prospect of employment. It was hoped that construction projects could be carried out as scheduled for the interests of construction workers and the economy.

Meeting with Mr CHAN Chung-yau

21. Mr CHAN Chung-yau doubted the credibility of EIA reports, which in his view were neither comprehensive nor objective. To this end, a comparison on the states of environment before and after the completion of projects should be included in EIA reports. Green groups should be invited to formulate environmental standards and participate in the EIA process. He also pointed out that the current set of AQOs, which was established in 1987 based on the Air Pollution Control Ordinance (Cap 311), were out-dated and could no longer reflect the actual situation of air quality in Hong Kong or protect public health. In view of the inadequacy of the EIA mechanism as reflected by the Judgment, he urged the Administration to revise AQOs with reference to the recommended interim targets of the updated Air Quality Guidelines (AQGs) promulgated by WHO in 2006, and to review AQOs on a regular basis.

Meeting with WWF Hong Kong

(LC Paper Nos. CB(1) 2261/10-11(04) and 2584/10-11(03))

22. Referring to the United Nations' Report of the World Commission on Environment and Development which stated that "sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs", Mr Alan LEUNG, Conservation Manager/Terrestrial, agreed that a balance between development and conservation was essential for sustainable development. However, the existing EIA mechanism was inadequate in conserving and sustaining biological diversity. WWF urged the Administration to draw up a comprehensive conservation policy, which should be consistent with the Convention on Biological Diversity. Consideration should be given to including in the EIA mechanism cumulative impact assessments of multiple development projects to facilitate a complete understanding of environmental effects. There was also a need to enhance public participation in monitoring the EIA process. Meanwhile, the Administration should ensure that the mitigation measures were appropriate and effective, and implemented as soon as possible to avoid any serious environmental damages.

Meeting with Construction Industry Council

23. Mr Ivan WONG, Senior Manager (Council Services), said that the construction industry was gravely concerned that any changes to the EIA mechanism would delay the planning, approval and implementation of construction projects, which would in turn affect the livelihood of construction workers. It hoped that the planned construction projects could proceed as scheduled.

Meeting with Clean Air Network (CAN)
(LC Paper No. CB(1) 2607/10-11(06))

24. Ms Vivian NGAN, Campaign Manager, said that CAN was gravely concerned about the air quality in Hong Kong and called for a balance between development and public health. Noting that the current AQOs in Hong Kong had lagged behind international standards, CAN urged the Administration to introduce a new set of AQOs, which should be established based on the latest AQGs published by WHO in 2006. A health impact assessment should be included in EIA reports so that the public would be fully aware of the health impacts of construction projects during and after construction works. The health impact assessment should contain detailed account of short and long-term health impacts in terms of additional number of deaths, illnesses or doctor's visits arising from a project and the effectiveness of mitigation measure in reducing these health hazards.

Meeting with Association of Engineering Professionals in Society Ltd (AES)

25. Ir FAN Ying-ming noted with concern that since the announcement of the Judgment, a number of infrastructural projects had been suspended which had indeed affected the pace of development in Hong Kong. He said that the existing EIA mechanism was deemed practical as it had identified the cumulative impacts of designated projects, and included appropriate mitigation measures to reduce these impacts to an acceptable level. Besides, both ACE and the public could play a significant monitoring role in the EIA process. Given the complexity and uniqueness of each designated project, there were no hard and fast rules on how EIA studies should be conducted. In this connection, the Administration should adopt new technologies to alleviate environmental problems, and closely monitor the implementation and performance of mitigation measures. The review of the EIA mechanism should aim at minimizing the environmental impacts arising from developments.

Meeting with Dashun Policy Research Centre

26. Prof WONG Chak-kee noted that under the existing EIA mechanism, an EP would be issued upon approval of the EIA report if the latter met the requirements of the study brief and TM. This would not provide incentives to project proponents to contemplate further mitigation measures to alleviate environmental impacts. While acknowledging the need to strike a balance between the co-existence of development and environmental protection in view of the limited resources, the trade-offs between environmental protection and economic development should be measured in terms of the increase in pollution loads as against the creation of additional jobs. Reference could be made to the Acid Rain Programme in the United States and the Quota Management System for fisheries industry in New Zealand. The price of pollution as reflected by

the damages to the environment by a project could be worked out via a market-based mechanism or by independent experts.

Meeting with Innovation and Technology Association

27. Ir Spencer LI, Chartered President, said that a review of EIA mechanism was vital and essential. As a successful EIA mechanism would involve a lot of give-and-take among stakeholders, it had to be transparent with participation of both the public and independent experts. To allay public concerns, any amendments to the EIA mechanism should not have retrospective effect on projects which had been approved. It was worth noting that EIA study was indeed a complicated process as unpredictable environmental impacts might arise in the course of construction which might result in deviations from the approved EIA report. Therefore, effective mechanism should be in place to closely monitor the EIA process as a whole. He also stressed the importance of technology and innovation in the EIA process, and that the EIA mechanism should be in line with international standards and practices.

Meeting with The Construction Professionals' Development Centre (CPDC)

28. Ir Dr King WONG, Chief Executive, said that CPDC aimed at promoting public recognition of the work of professionals engaged in the construction industry, including engineering, surveying, construction, landscaping, planning and management. While agreeing to the need to strike a balance between environmental protection and development needs, all provisions and relevant requirements under the current EIAO should be complied with. He was however disappointed that some people were exploiting the loopholes of the EIA mechanism and the legal process to impede development.

Meeting with Hong Kong Construction Industry Bar-Bending Workers Union

29. Mr LUK Kwan-ngai said that the EIA mechanism played a significant role in balancing the need for economic development and environmental protection to ensure that construction workers were able to share the benefits of economic development. However, the suspension of some 70 construction projects in the light of the Judgment had indeed adversely affected the livelihood of construction workers who were mostly paid on daily rates.

Meeting with 香港泥水建築職工會

30. Mr WU Kwok-wing said that the livelihood of construction workers rested with the availability of jobs. The suspension of major infrastructural projects in the light of the Judgment had adversely affected the job opportunities of construction workers. While agreeing to the need for environmental protection, there were difficulties in meeting EIA requirements, particularly in

terms of air quality. The EIA mechanism should be improved with a view to striking a proper balance between environmental protection and development needs.

Meeting with Hong Kong Construction Industry Clerical, Managerial and Professional Employees Association (HKCICMPEA)

31. Mr LEE Tsan-kui said that the suspension of some 70 construction projects in the light of the Judgment had not only threatened the livelihood of construction workers and other employees in the construction-related fields, but would also incur substantial economic losses as a result of delay of projects. HKCICMPEA urged the Administration to gauge views from the community and professional groups on the means to improve the EIA mechanism in a practical and pragmatic manner. Consideration should be given to establishing an independent appeal panel to deal with appeals within a specified time frame.

32. Members also noted the following submissions from deputations not attending the meeting –

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| LC Paper No. CB(1) 2548/10-11(03) | — | Submission from Academic Research Centre; |
| LC Paper No. CB(1) 2548/10-11(08) | — | Submission from Greenpeace; |
| LC Paper No. CB(1) 2548/10-11(09) | — | Submission from The Real Estate Developers Association of Hong Kong; |
| LC Paper No. CB(1) 2548/10-11(10) | — | Submission from The Chinese Manufacturers' Association of Hong Kong; |
| LC Paper No. CB(1) 2584/10-11(04) | — | Submission from Mr LAU Nai-keung; and |
| LC Paper No. CB(1) 2607/10-11(07) | — | Submission from Dr Martin WILLIAMS. |

Meeting with Administration

(LC Paper No. CB(1) 2548/10-11(11) — Paper on environmental impact assessment mechanism prepared by the Legislative Council Secretariat (updated background brief)

Relevant paper

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

33. The Under Secretary for the Environment (USEN) said that EPD had been implementing the assessment requirements and scrutinizing EIA reports strictly in accordance with statutory requirements, standards and process in an open and transparent manner. EIAO had clear procedures for receiving comments from the public and ACE. When considering whether to approve an EIA report, EPD would consider whether relevant environmental issues raised by the public and the ACE had been addressed. All the EIA Study Briefs, EIA Reports and Environmental Permits were also available in the EIAO website allowing the public to access. As regards the Judgment, USEN said that the Judgment involved crucial legal viewpoints and had a significant impact on the principles for executing EIAO in Hong Kong. EPD would, upon completion of the whole appeal process, take into account the Court's views and judgment as well as past experience in studying the need and/or how to review the EIA mechanism. EPD would report back to the Panel on the outcome.

34. Ms Audrey EU said that despite her repeated requests for discussion of the review of the EIA mechanism, the Administration had used the impending judicial review of the HZMB project as an excuse to decline discussion of the subject. The subject had since remained on the list of outstanding items for discussion by the Panel. She pointed out that the review of EIA mechanism only aimed to improve the existing mechanism and would not affect the outcome of the court case. It was regretted that the Administration was only prepared to review the EIA mechanism upon completion of the whole appeal process. USEN said that there was a consensus between the Panel Chairman of the last session and the Administration that the subject would be discussed upon completion of the court proceedings on the HZMB project. Besides, the review of the EIA mechanism had been discussed by the Panel. In response to Ms EU's further enquiry on the impacts on the EIA mechanism if the existing AQOs were tightened, USEN said that the Administration would proceed with the review of AQOs within the year as pledged by the Chief Executive in the Question and Answer session.

35. As rightly pointed out by deputations, Miss Tanya CHAN agreed that improvements to the EIA mechanism should be made. These included

provision of bilingual EIA reports, extension of the consultation period, and holding of hearings to receive public views as in the case of the Town Planning Board. USEN said that the executive summary of the EIA reports was provided in both English and Chinese. The EIA process provided for two consultation periods for public comments, namely a 14-day period for the project profile and a 30-day period for the EIA report. Project proponents were encouraged to hold fora to consult the public on major construction projects at an early stage. Miss CHAN however pointed out that the executive summary was too brief, and that the consultation period was too short. USEN reiterated that upon completion of the of the court proceedings on the HZMB project, the Administration would study the need and/or how to review the EIA mechanism.

Effect of the Judgment

36. Mr Jeffrey LAM said that economic development and environmental protection were both essential to Hong Kong. The EIA mechanism was able to ensure that infrastructural developments had been carried out in an environmentally acceptable manner over the years. However, the judicial review on the air quality assessment of the HZMB project filed by a citizen who claimed to be affected by the works had adversely affected the progress of infrastructural development. Such action was not in the interest of the long-term development of Hong Kong. He sought deputations' views on the impact of the Judgment on the economic development of Hong Kong. Dr LEW Mon-hung said that the HZMB project was accorded top priority among the seven major infrastructural projects under the 12th Five Year National Plan, and was approved by the Standing Committee of the National People's Congress. The EIA report for the HZMB project had been approved by the respective authorities in the Pearl River Delta Region. However, the Judgment delivered by the Court of First Instance in Hong Kong had ruled that additional baseline studies should be conducted. This had led to the suspension of the HZMB project and other infrastructural projects, thereby adversely affecting the development and competitiveness of Hong Kong.

37. Noting that the Judgment called for the conduct of baseline studies, Dr Priscilla LEUNG enquired if this was a standard requirement for designated projects. Ir Dr King WONG/CPDC said that, according to his understanding, baseline studies were not required for designated projects. He agreed that there was a need for the Administration to clarify the impact of the Judgment on designated projects. He pointed out that the Central Shatin Link project and some other projects had since been suspended in the light of the Judgment. This had not only adversely affected the progress of works but also the livelihood of construction workers. Dr LEUNG enquired if the Administration had alerted Members of the need for baseline studies when funding was sought for the HZMB project. Ms Audrey EU also sought clarification on the

requirement for the conduct of baseline studies. USEN said that she was not in a position to comment on the questions lest this would prejudice the appeal.

38. Professor Patrick LAU enquired about the number of projects which had been affected by the Judgment, and whether an appeal mechanism had been incorporated in the EIA process such that appellants could seek judicial reviews without going to courts. Ms Audrey EU said that according to the Administration's response to her written question at the Council meeting on 22 June 2011, some 70 projects would be affected by the Judgment. However, she failed to see how the Judgment could have affected these projects. Miss Tanya CHAN said that the impact of the Judgment on the 70 projects undergoing EIA process had been over-exaggerated. Based on the information provided at the EPD's website, there were only about three EIA reports which had since been withdrawn while the remaining projects had been progressing well and did not appear to have been affected by the Judgment. USEN said that the impact of the Judgment would depend on different stages of the projects. The respective information could be found at EPD's website. She added that project proponents should be well aware of the impacts of the Judgment on their construction projects, and should take the necessary steps to comply with requirements. EPD would endeavour to provide assistance as appropriate. The Deputy Director of Environmental Protection (1) supplemented that an appeal mechanism was available under the existing EIA mechanism through which project proponents aggrieved by DEP's decisions could appeal against such decisions.

39. Mr CHAN Kin-por declared interest as a member of the Munich Re China Advisory Board. Given the concerns raised by the construction industry on the impact of the Judgment, he enquired about the number of construction projects which would be affected if the appeal by EPD against the Judgment was quashed, as well as the consequential actions to be taken to reduce the impacts on the construction industry. USEN said that project proponents should make reference to the Court rulings in deciding the course of action to be taken. EPD had lodged an appeal against the Judgment as this involved crucial legal viewpoints and had a significant impact on the principles for executing the EIAO in Hong Kong.

V. Any other business

Subcommittee on Combating Fly-tipping

(LC Paper No. CB(1) 2526/10-11 — Report on the work of the Subcommittee on Combating Fly-tipping in the 2010-2011 session)

40. Members noted the report on the work of the Subcommittee on

Combating Fly-tipping in the 2010-2011 session, and agreed that the Subcommittee should be dissolved.

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

Council Business Division 1
Legislative Council Secretariat
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