

立法會
Legislative Council

LC Paper No. CB(1)58/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EDEV/1

Panel on Economic Development

Minutes of meeting
held on Monday, 28 April 2014, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon Charles Peter MOK
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu
Hon CHUNG Kwok-pan

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Han-pan

Members attending : Hon James TO Kun-sun
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP

Public officers attending : Agenda Item IV

Professor Anthony CHEUNG
Secretary for Transport and Housing
Transport and Housing Bureau

Mr Joseph LAI
Permanent Secretary for Transport and Housing
(Transport)
Transport and Housing Bureau

Mrs Magdalen WONG
PEO (Transport) Investigation
Transport and Housing Bureau

Mr Michael WONG
Director of Marine
Marine Department

Mr Keith YEUNG
Director of Public Prosecutions
Department of Justice

Ms Lorraine CHAN
Senior Government Counsel
International Law Division
Department of Justice

Ms Vivian SUM
Deputy Secretary for the Civil Service 3
Civil Service Bureau

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Daniel SIN
Senior Council Secretary (1)7

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting

(LC Paper No. CB(1)1250/13-14 —Minutes of special meeting held on 6 February 2014)

The minutes of the special meeting held on 6 February 2014 were confirmed.

II Information paper issued since last meeting

(LC Paper No. CB(1)1181/13-14(01) —Letter dated 21 March 2014 from Hon Albert CHAN Wai-yip on the purchase of the new air traffic management system Autotrac 3 by the Civil Aviation Department

LC Paper No. CB(1)1191/13-14(01) —Administration's paper on tables and graphs showing the import and retail prices of major oil products from March 2012 to February 2014)

2. Members noted the above papers issued since the last regular meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)1295/13-14(01) —List of outstanding items for discussion

LC Paper No. CB(1)1295/13-14(02) —List of follow-up actions)

3. Members agreed that the following items should be discussed at the meeting scheduled for 26 May 2014 –

- (a) Update on the operation of the Kai Tak Cruise Terminal; and
- (b) Engagement and consultation plan of the Competition Commission for the regulatory guidelines required under the Competition Ordinance.

4. In view of the number of members who indicated their intention to speak on item IV on the agenda, the Chairman suggested that a special meeting be convened on 12 May 2014 to continue discussion if necessary. Mr CHAN Kam-lam proposed that the item should be discussed at the present meeting whereas item V on "the public consultation on the future fuel mix for electricity generation" originally scheduled for discussion at the present meeting should be deferred to another meeting. Mr Kenneth LEUNG and Mr Paul TSE expressed similar views. Dr Fernando CHEUNG suggested that deputations be invited to express views on the future fuel mix for electricity generation. The Chairman directed that a special meeting be scheduled for 12 May 2014 to discuss the future fuel mix for electricity generation.

(Post-meeting note: Notice of the special meeting to be held on 12 May 2014 was issued to members vide CB(1)1332/13-14 on 28 April 2014.)

IV The Transport and Housing Bureau's investigation into staff conduct in the Marine Department in relation to the Vessel Collision Incident near Lamma Island on 1 October 2012

(LC Paper No. CB(1)1295/13-14(03) —Administration's paper on the Transport and Housing Bureau's investigation into staff conduct in the Marine Department in relation to the Vessel Collision Incident near Lamma Island on 1 October 2012

LC Paper No. CB(1)899/13-14(07) —Administration's paper on update on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012

LC Paper No. CB(1)899/13-14(08) —Paper on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(1)1330/13-14(01) —Administration's response to list of follow-up actions for the meeting on 24 March 2014
(*tabled at the meeting and subsequently issued on 29 April 2014*)

LC Paper No. CB(1)1330/13-14(02) —Letter dated 27 April 2014 from a member of the bereaved families of the Lamma Island vessel collision incident
(*Chinese version only, tabled at the meeting and subsequently issued on 29 April 2014*)

LC Paper No. CB(1)1330/13-14(03) —Speaking note of the Director of Public Prosecutions
(*Chinese version only, tabled at the meeting and subsequently issued on 29 April 2014*)

5. Secretary for Transport and Housing ("STH") briefed members on the overall findings of the Transport and Housing Bureau's investigation into staff conduct in the Marine Department ("MD") in relation to the vessel collision incident near Lamma Island on 1 October 2012 ("the incident") as set out in LC Paper No. CB(1)1295/13-14(03). He said that on the question of the disclosure or otherwise of the investigation report ("the Report"), the Transport and Housing Bureau ("THB") had taken full account of legal advice in particular the advice of the Director of Public Prosecutions ("DPP"). DPP explained from the Prosecution's perspective the considerations behind the decision of not releasing to the public the Report.

Risk arising from disclosure of the investigation report

6. Mr CHAN Kam-lam expressed condolences to the victims of the incident. He said that evidence had revealed possible maladministration and negligence of duty of MD officers in carrying out their duties in the past relating to the Lamma IV. The Administration should take appropriate remedial measures to prevent future recurrence of a similar tragedy. Mr CHAN noted DPP's concerns that public disclosure of the full Report at this

stage might risk prejudicing the ongoing criminal investigation by the Police and potential criminal proceedings in respect of the incident. Mr CHAN commented that, notwithstanding DPP's concerns, the Administration should address the wish of the bereaved families to know the truth of the incident. Mr CHAN suggested that the Administration should make suitable arrangements to allow Members or bereaved families to peruse the Report under a confidentiality agreement.

7. STH said that the Administration was prepared to consider allowing the bereaved families to peruse the Report under a confidentiality agreement. Also, the Administration would give consideration to public disclosure of the Report after conclusion of all criminal/disciplinary procedures. STH added that the Secretary for Justice was scheduled to meet the bereaved families on 15 May 2014 and might make known the Administration's position then.

8. Mr SIN Chung-kai indicated his intention to move a motion at the meeting to urge the Administration to disclose the full Report. He expressed reservation about the suggestion of allowing only the bereaved families to peruse part of the Report under a non-disclosure agreement since it would be difficult for them to obtain professional advice on any information they obtained under such arrangement for pursuing legal actions. He argued that the public should not be denied of the right to be informed of the Administration's findings. Ms Claudia MO made a similar comment. Mr CHAN Kam-lam said that he would propose an amendment to Mr SIN Chung-kai's motion.

9. STH explained that the internal investigation was conducted to identify shortfalls or deficiencies on the part of MD officers when carrying out their duties in respect of the Lamma IV in the past as revealed by the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 ("CoI"). Disclosure of the report of the internal investigation should be handled duly so as not to prejudice the criminal investigation being carried out by the Police. STH also pointed out the need to strike a balance between the public's right to know on the one hand, and for the officers alleged of having misconducted themselves and disciplinary proceedings recommended to be initiated against them, their right to a fair hearing on the other. DPP echoed STH's comment.

10. Ms Claudia MO criticized the Administration for failing to disclose the Report in full. She did not consider that avoiding the risk of prejudicing criminal investigation and subsequent criminal proceedings should be used to justify the Administration's refusal to disclose the full Report. The Administration should not deny the right of the bereaved families to know the basic facts of the incident including whether MD officers had been negligent in

carrying out their duties. Ms MO commented that the suggestion of allowing Legislative Council Members to peruse the Report under a non-disclosure agreement was tantamount to encouraging the Administration to keep the public in the dark.

11. STH said that the internal investigation was a staff discipline investigation conducted in an independent manner; and the question of whether and to what extent the Report should be disclosed having regard to the risks of prejudicing subsequent criminal/disciplinary proceedings was based on legal considerations. DPP said that criminal procedure began when an investigation was initiated. The Administration had to assess carefully the implications of each step it took because any move was irreversible.

Risk of prejudicing criminal proceedings

12. Mr Kenneth LEUNG said that the Independent Commission Against Corruption had released information about the official entertainment expenses of officials when it was investigating into alleged improper conduct of its former Commissioner. Mr LEUNG said that there were previous examples of making public inquiry reports relating to cases in which criminal investigation was in progress. He queried DPP's point of view regarding the disclosure of the Report since if any MD officers were prosecuted and brought to trial, the jury would be able to read the full Report.

13. DPP said that the criteria for a document to be admitted as evidence in a prosecution were stringent. It was not certain in the meantime whether the Report would be admitted as evidence in a trial related to the criminal responsibility for the incident.

14. Mr James TO criticized the Administration for holding back findings of the Report by using the risk of prejudicing potential criminal proceedings as an excuse. It was also inconsistent with its existing practice in similar cases. Mr TO cast doubt on whether the Administration genuinely intended to disclose the Report in future.

15. Mr Dennis KWOK said that the CoI's view was that the release of its report would not affect future criminal proceedings as all the investigation into the incident had been completed. DPP responded that the investigation mentioned in the CoI report referred to the charge of manslaughter against the captain of the concerned vessel, whereas the outstanding criminal investigation referred to in the Report under discussion involved the allegation of misconduct or negligence of public officers.

16. As regards DPP's argument that premature release of the investigation findings might prejudice possible future trials, Mr Dennis KWOK commented that in the event that the case was brought to trial, the judge would direct the jury to consider only the relevant evidence. It could not be assumed that the jury could be easily influenced by media reports on the investigation report. Citing the comment made by the Court of Final Appeal against the publication of an investigation report on the misconduct of a defendant before the conclusion of the criminal proceedings initiated against the defendant in the case of HKSAR v LEE Ming Tee ((2001)4 HKCFAR 133), DPP said that the Administration should exercise great caution in handling the findings of the Report.

Progress of criminal proceedings

17. Mr WONG Kwok-hing said that the victims' families had awaited the Report for a long time only to find that the Administration refused to disclose the findings of its internal investigation on the pretext that the disclosure might affect future possible criminal prosecution. Mr WONG asked why the Administration did not initiate the investigation into misconduct of public officers right from the start and when the Administration had officially commenced the criminal investigation into the misconduct of MD staff.

18. STH said that the internal investigation into conduct of MD staff was carried out in parallel with the Police investigation but he had no information about the timing of commencement of the criminal investigation. Referring to a press release of the Department of Justice issued on 8 October 2013, DPP supplemented that, the criminal investigation had commenced at that time. However, it would be difficult to pinpoint an exact time on when the investigation commenced or was completed as the inquiry would proceed according to available evidence.

Public interest and right to know

19. Dr Fernando CHEUNG commented that the CoI report had revealed many management and operational problems in MD. The internal investigation had also revealed that 17 officers had been found to have misconducted themselves while discharging their duties in respect of the Lamma IV in the past. Dr CHEUNG criticized that the Administration for not being accountable to the public by continuing to withhold from the public the truth of the incident in which 39 people had lost their lives.

20. STH said that the internal investigation was conducted to look into possible maladministration and negligence of duty of the MD officers and had now been concluded with recommendations on disciplinary actions to be taken

against a number of MD officers. The Report had been sent to the Civil Service Bureau for consideration and initiation of disciplinary actions in respect of public officers. As for matters involving suspected criminality, the Police would follow up. The Administration would consider, having regard to the risks to subsequent criminal/disciplinary proceedings, how best to address the requests of the bereaved families in respect of the disclosure of the Report.

21. Dr Kenneth CHAN commented that, notwithstanding the Administration's reiteration that it understood the public expectation and the sentiment of victims' families, the Administration had done nothing to address the right of the public to know the truth of the incident and to safeguard the interest of the victims' families. He said that he would initiate the procedure to invoke powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to require the Administration to produce the full Report. He appealed to other members to support his proposal.

22. STH said that the Administration's approach now adopted in handling disclosure of the Report was in the public interest in order to protect the integrity of the ongoing criminal investigation and any subsequent proceedings and actions, whether criminal or disciplinary, related to the incident. Indeed, it would be against the bereaved families' interest if the disclosure of any contents of the Report resulted in subsequent criminal proceedings or charges against the accused being dropped.

Claims by the bereaved families

23. Miss CHAN Yuen-han questioned why the Administration handled findings of the internal investigation into staff misconduct in MD in a way that differed from investigating occupational injury cases. In those cases, full reports of injury investigation were made available to claimants to facilitate litigation.

24. Miss CHAN Yuen-han said that the time limit for representatives of the deceased and the injured to seek redress through civil actions was three years. Any further delay in releasing the full Report might deprive them of the opportunity for filing civil claims. Mr Dennis KWOK made a similar comment and said that the Administration needed to safeguard the victim families' rights and interests. Dr Elizabeth QUAT asked the Administration to clarify if deferring the release of the full Report would affect the civil claims of the victims' families. Mr TANK Ka-piu said that the Administration should explore with the victims' families to come up with a mutually acceptable way of allowing their access to the Report, and ensuring that they would not be denied of their rights to seek civil damages.

25. DPP said that in civil litigation, both the plaintiff and the respondent could seek disclosure of documentary evidence after a case had commenced. Once litigation had started, the three-year limit for filing claims would not count. However, DPP stressed that his decision of not recommending the release of the full Report was strictly based on professional principles, having regard to the court's ruling in the case of HKSAR v LEE Ming Tee, and that the implications of his decision on the Government's civil liability or the bereaved families' civil litigation were not his considerations.

26. As regards Dr QUAT's query, STH explained that some of the victims/bereaved families had already expressed their intention of filing a writ against the Government, and the Department of Justice had been in touch with the claimants' lawyers. DPP supplemented that in general if criminal prosecution was initiated while civil litigation on the same case was still in progress, either party in the civil litigation might apply for postponing the civil litigation.

27. Mr Albert CHAN urged the Administration to address the bereaved families' concern that without the details that might be obtained from the Report, they could not identify the responsible parties against whom to initiate litigation.

Timing of disclosing the full Report

28. Mr Paul TSE said that the Administration should try to release the internal investigation report unless there were overriding public interest considerations otherwise and that the hypothetical ramifications on possible criminal prosecution in future were not a convincing argument. He considered it inappropriate for DPP to base his argument for not disclosing the full Report on the judgment in the case of HKSAR v LEE Ming Tee as the court's consideration in that case was made under very different circumstances. In his view, the Administration was exploiting a legal technicality to defer the release of the Report, so that the Administration could buy time to put MD in order. Mr TSE criticized the Administration for ignoring the voice of the community and being overly protective towards the civil servants who had misconducted themselves in carrying out their duties.

29. Mr Charles MOK commented that the way the Administration handled the release of the Report gave the public a strong impression that the Administration was trying to cover up certain information. Mr MOK asked when the criminal proceedings were expected to be completed, and whether the Report would then be released. Mr Frankie YICK made a similar query.

30. STH said that the Administration would consider whether the full Report could be disclosed when criminal/disciplinary proceedings were completed. When disclosing the Report, the Administration would also need to consider the mandatory restrictions under the Personal Data (Privacy) Ordinance. DPP supplemented that from the Prosecution's point of view, there should be no objection to releasing the full Report after the criminal proceedings had been completed.

Disclosure of part of the Report

31. Mr Charles MOK asked whether the chapter of the Report related to the operational problems found in MD could be released independently, as it would be unlikely that the contents therein would affect any subsequent criminal proceedings related to the misconduct of MD staff. STH explained that this chapter might contain details of some incidents the disclosure of which would risk prejudicing subsequent criminal proceedings. DPP supplemented that the Prosecution considered that the present approach of releasing the summary of the Report was appropriate as the risk of its contents affecting future criminal proceedings was minimized.

32. Mr WONG Ting-kwong queried whether it was proper for Panel members and victims' families to persist in pressing the Government to publicize the Report, as LegCo Members held no responsibility if the subsequent prosecution actions could not proceed.

Follow-up on disciplinary actions and management of the Marine Department

33. Dr Elizabeth QUAT asked if the disciplinary actions on the public officers involved would be deferred until the completion of the criminal proceedings. STH said that the relevant cases had been referred to the Civil Service Bureau for consideration of follow-up actions. Deputy Secretary for the Civil Service 3 said that in general, disciplinary action would not commence where criminal investigation/proceedings were ongoing but each case had to be considered based on its own merits. For the cases covered in the Report, the Bureau would seek legal advice on each of them to ensure that disciplinary action would be taken according to procedures, including such action would not affect criminal investigation/proceedings.

34. Mr Frankie YICK expressed concern that the prospect of facing disciplinary action by a significant number of staff members in MD might affect the Department's efficiency in ship inspections, which, in turn, would affect the operation of local shipping business or ferry services. Mr YICK asked about the measures that the Administration would take to improve the management of MD.

35. Director of Marine ("D of Marine") said that improvements had been made to streamline the workflow of various operational branches of the Department in respect of ship inspection. Office of Government Chief Information Officer had been invited to develop information technology procedures and systems to support and facilitate the implementation of a more systematic and streamlined workflow. Communication protocols within the Department had also been enhanced to allow unresolved matters at the working level, where any, to be escalated to the senior management for decision more speedily. These improvements would result in more rigorous processes and help raise the safety standard although ship inspections would likely take longer too.

Members' motions

36. After discussion, the Chairman invited members to consider members' motions tabled at the meeting. Members agreed to proceed to deal with the motions.

37. The wording of the motion moved by Mr SIN Chung-kai, as amended by Mr CHAN Kam-lam, was as follows –

"運輸及房屋局 ("運房局") 曾就 2012 年 10 月 1 日南丫島附近撞船事故對海事處人員的行為進行調查，有關的調查報告 ("調查報告") 已在 2014 年 3 月 31 日提交運房局局長。本委員會促請政府將該份調查報告交予立法會供議員經保密協議後省覽。"

(Translation)

"The Transport and Housing Bureau conducted an investigation into staff conduct in the Marine Department in relation to the vessel collision incident near Lamma Island on 1 October 2012, and the relevant investigation report was submitted to the Secretary for Transport and Housing on 31 March 2014. This Panel urges the Administration to submit the investigation report to the Legislative Council for perusal by Members under a confidentiality agreement."

38. The Chairman put the motion to vote. Seven members voted for, and six members voted against the motion. The voting of individual members was as follows –

For:

Mr CHAN Kam-lam
Mr Paul TSE Wai-chun

Mr WONG Ting-kwong
Mr Frankie YICK Chi-ming

Dr Elizabeth QUAT
Mr CHUNG Kwok-pan
(7 members)

Mr TANG Ka-piu

Against:

Mr Albert CHAN Wai-yip
Mr Kenneth LEUNG
Dr Fernando CHEUNG Chiu-hung
(6 members)

Mr Charles Peter MOK
Mr Dennis KWOK
Mr SIN Chung-kai

39. The Chairman declared that the motion was carried.

40. The Chairman then invited Mr Albert CHAN to move the motion proposed by him. The wording of the motion moved by Mr Albert CHAN was as follows –

"基於運輸及房屋局拒絕公開有關 2012 年 10 月 1 日南丫島附近撞船事故對海事處人員行為的調查報告，本委員會議決引用《立法會（權力及特權）條例》成立專責委員會，調查上述事宜及索取上述的調查報告。"

(Translation)

"As the Administration refuses to disclose the report of the investigation into staff conduct in the Marine Department in relation to the vessel collision incident near Lamma Island on 1 October 2012, this Panel resolves to invoke the power under the Legislative Council (Power and Privileges) Ordinance to form a select committee to investigate into the matter and to obtain the investigation report."

41. The Chairman put Mr Albert CHAN's motion to vote. Five members voted for and six members voted against the motion. One member abstained from voting. The voting of individual members was as follows –

For:

Mr Albert CHAN Wai-yip
Mr Kenneth LEUNG
Mr SIN Chung-kai
(5 members)

Mr Charles Peter MOK
Dr Fernando CHEUNG Chiu-hung

Against:

Mr CHAN Kam-lam
Mr Frankie YICK Chi-ming

Mr WONG Ting-kwong
Dr Elizabeth QUAT

Mr TANG Ka-piu
(6 members)

Mr CHUNG Kwok-pan

Abstained:

Mr Paul TSE Wai-chun
(1 member)

42. The Chairman declared that the motion was negatived.

V Any other business

43. There being no other business, the meeting was adjourned at 12:55 pm.

Council Business Division 1
Legislative Council Secretariat
15 October 2014