

LC Paper No. ESC13/99-00

(These minutes have been
seen by the Administration)

Ref : CB1/F/3/2

**Establishment Subcommittee of the Finance Committee
of the Legislative Council**

**Minutes of the 4th meeting
held at the Legislative Council Chamber
on Wednesday, 17 November 1999, at 9:00 am**

Members present:

Dr Hon Philip WONG Yu-hong (Chairman)
Hon NG Leung-sing (Deputy Chairman)
Hon Michael HO Mun-ka
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Member attending:

Hon SIN Chung-kai

Members absent:

Dr Hon David LI Kwok-po, JP
Hon Margaret NG
Hon MA Fung-kwok
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon SZETO Wah

Public officers attending:

Mrs Carrie LAM, JP	Deputy Secretary for the Treasury
Mr D W PESCOD, JP	Deputy Secretary for the Civil Service
Mr K K LAM	Principal Executive Officer (General), Finance Bureau
Mr M J T ROWSE, JP	Commissioner for Tourism
Mr Y C LO, JP	Director of Civil Engineering
Mr W K TAM, JP	Deputy Director of Civil Engineering
Mr CHENG Wei Dart, JP	Deputy Director of Buildings

Clerk in attendance:

Miss Polly YEUNG	Chief Assistant Secretary (1)3
------------------	--------------------------------

Staff in attendance:

Ms Pauline NG	Assistant Secretary General 1
Mr Jimmy MA	Legal Adviser
Ms Sarah YUEN	Senior Assistant Secretary (1)4

EC(1999-2000)24 Proposed -

- (a) creation of four supernumerary posts of one Administrative Officer Staff Grade C (D2) in the Government Secretariat: Economic Services Bureau, one Principal Government Engineer (D3) and one Chief Engineer (D1) in the Civil Engineering Department from 1 December 1999 to 31 March 2005; and one Chief Structural Engineer (D1) in the Buildings Department from 1 April 2001 to 31 March 2002; and**
- (b) redeployment of one permanent post of Chief Engineer (D1) in the Civil Engineering Department from 1 December 1999**

for the development of a world class international theme park “Hong Kong Disneyland”

Mr CHEUNG Man-kwong said that whilst he was in support of the staffing proposal, he considered it inappropriate that the present proposal should be submitted to the Subcommittee for endorsement before the proposal on the relevant infrastructure works to be overseen by the proposed posts was

endorsed by the Public Works Subcommittee (PWSC). He added that he was not in a position to give firm support to the present proposal pending clarification of certain points in the relevant PWSC paper. Mrs Selina CHOW disagreed that the creation of the proposed posts should be contingent on the endorsement of the relevant PWSC proposal as the two proposals related to separate aspects.

2. The Chairman advised that the Subcommittee had been asked to consider and, where appropriate, to endorse the present proposal and recommend it to the Finance Committee (FC) for approval. Even if the proposal was endorsed by the Subcommittee at this meeting, members were still at liberty to seek clarifications to any queries they might have at the following PWSC and FC meetings before the vote was taken at the FC.

3. The Deputy Secretary for the Treasury echoed the Chairman's views and stressed that the sequence of the present meeting (which had been re-scheduled from 10 November 1999 to enable members to discuss the proposal at the Economic Services Panel meeting) and the PWSC meeting had been drawn up with the Secretariat having regard to the time slot available and the urgency of the Disney Project (the Project). The Administration had no pre-conceived idea on which meeting should precede as each proposal related to different funding requirements. She requested members to examine the relevant proposals within the remits of the two Subcommittees and then make the final decision at the FC meeting. The Commissioner for Tourism (CT) supplemented that the draft papers for the FC and its two Subcommittees together with the covering paper explaining the entire project had been issued in connection with the special House Committee meeting held on 3 November 1999 for members' advance perusal.

4. Mr CHEUNG Man-kwong, Mr Michael HO, Mr SIN Chung-kai and Miss Emily LAU questioned whether it was legally in order for the Government to submit the financial proposals relating to the Hong Kong Disneyland (HKD) to the FC and its two Subcommittees before the relevant Environmental Impact Assessment (EIA) reports were endorsed. In particular, Mr HO drew the Administration's attention to a press report about an environmental group's intention to seek judicial review on the Administration's decision to proceed with the HKD project in the absence of a full EIA study.

5. In response, CT pointed out that the creation of the proposed posts was submitted in accordance with the Public Finance Ordinance and was in no way connected with the statutory procedures under the Environmental Impact Assessment Ordinance (EIAO) because the posts were required for preparatory work for the Project. He stressed that the Administration would not award any contract or start work on site unless and until all statutory procedures had been complied with. As such, the Government was acting in accordance with the law. The Director of Civil Engineering (DCE) supplemented that in actual practice, many of the projects being handled by the Civil Engineering

Department (CED) were also at the planning stage only but staff would nevertheless be required for the preparatory work.

6. At members' request, the Legal Adviser (LA) of the Secretariat advised that under section 9 of EIAO, designated projects could not proceed without first obtaining an Environmental Permit. As to whether it was proper for a project's funding proposal to be submitted to FC and its Subcommittees before endorsement of its EIA report, LA said that in his opinion, this was primarily a procedural issue for the Administration, FC and its Subcommittees.

7. Addressing some members' concern about the Project taking precedence over safeguards for environmental protection, CT re-assured members that the Project's various construction works would not start without the necessary Environmental Permits from the Environmental Protection Department, the issuance of which would be contingent upon the completion of the EIA study to the satisfaction of the Director of Environmental Protection. He further advised that based on the findings of the EIA studies conducted so far in connection with the container port development and Northshore Lantau Development, there was no indication of any insurmountable environmental problems associated with the HKD development at Penny's Bay and the associated developments.

8. Miss Emily LAU referred to the FC meeting on 2 July 1999, at which members had also been requested to approve the West Rail (phase 1) - essential public infrastructure works for the Yuen Long section before all the necessary EIA procedures were completed. She expressed grave concern about the Administration's repeated deviation from the normal procedures in seeking funding approval. Noting that compliance with the usual EIA procedures in this case would only cause a delay of some four to five months, she was of the view that members should not be asked to rush through and endorse the present proposal without waiting for a few more months.

9. In response, CT explained that members' approval were being sought for the relevant ESC, PWSC and FC proposals urgently in order that the Government could enter into formal contract with Walt Disney Company (WD) before the end of the year. Given the benefits the Project could bring to Hong Kong and that the deal was reasonable and fair, he considered it advisable to confirm it early. He also stressed that waiting for four to five months might affect the progress in meeting HKD's target opening date. As the returns from the Project had been estimated on the basis of the target opening date, they might not be valid if the date was missed and as a result renegotiations on the deal's financial terms might be necessary. He further advised that in the very unlikely event that the EIA reports were not endorsed, the contract signed with WD would be terminated without penalty.

10. Dr Raymond HO supported the present proposal in recognition of the need for professional support to facilitate early preparation for the Project. He said that so far as he could recall, no works project had ever been aborted because of the failure to obtain the requisite Environmental Permit.

11. Addressing concerns of Mr CHEUNG Man-kwong and Mr Michael HO about the staffing arrangement in case the Project could not proceed for one reason or another, CT advised that under such circumstances, staff promoted or deployed internally to fill the proposed posts would be redeployed to other jobs. He however did not envisage any waste of staffing resources as the relevant EIA reports would be ready in a few months' time and there was not any foreseeable reason as to why the Project would have to be aborted. DCE supplemented that where the CED was concerned, staff responsible for the Project's preparation work would be deployed internally by phases with regard to the increase in workload.

12. Miss Emily LAU referred to the paper CB(1)384/99-00(01) entitled "Agreement between the Government and The Walt Disney Company - Termination and Compensation Provisions" (the English version of which was provided to members after the special meeting of the Economic Services Panel on 15 November 1999 but the Chinese version was still not available). As members did not have the opportunity to discuss the paper at the said Panel meeting, she expressed concern about the complexity of the termination and compensation provisions and the uncertainty of the Project programme having regard that only two Milestone Dates had been agreed. Miss LAU opined that members should be given the opportunity to seek further clarifications before examining the relevant funding proposals.

13. In response, CT assured members that the Administration was already making every effort to meet the two Milestone Dates set. However, even if these dates were missed, there would not be any adverse consequences for three months because the Government's position would be well protected by the following provisions in the Master Project Agreement (MPA). Firstly, all other Milestone Dates would be fixed progressively between the Government and the Hong Kong International Theme Parks Limited (HKITP) when the position was clearer and could be forecast more accurately. Secondly, if the Engineer appointed by the Government allowed the contractor an extension of time, in respect of most of those reasons provided under the Government contract with the contractor concerned, there would be an equal and corresponding postponement of the Milestone Date. Thirdly, in order to cover other situations for which there was not an equal and corresponding postponement of Milestone Date, the MPA provided a three month cushion before liquidated damages became payable by the Government to HKITP. Lastly, the daily rate, together with the liquidated damages on the part of the Government, would be fully claimed from the contractors under the contracts for the Government works. As such, with due diligence on the part of the Government, it was extremely unlikely that the termination and liquidated

damages provisions of the MPA would ever apply. Moreover, if they ever did apply, they would be more than covered by equivalent provisions in the Government's contracts.

14. In this connection, the Chairman suggested that since the paper was not directly related to the present staffing proposal, it might be more appropriate for members to consider whether issues therein should be pursued at the following PWSC meeting.

15. On whether the proposed posts would sit on the Board of the joint venture company HKITP set up to develop and operate HKD, CT advised that the Secretary for the Treasury and the Commissioner for Tourism would likely be the Directors representing the Government. One of the duties of the proposed posts would be to provide directorate support to them in connection with the Project. Addressing Miss LAU's concern about whether there would be sufficient Government representation on the Board of Directors to secure a say in HKD's future management and cost control, CT explained that the directorships would be in proportion to shareholding. For each complete 10% of shareholding that shareholder would have one place on the Board. Initially, Hong Kong Government and WD's Hong Kong subsidiary would have five and four seats on the Board respectively. In addition, there would also be two independent directors agreed by the two sides. Although the construction of the HKD would be the responsibility of the HKITP and as such would be largely Disney-led, the annual budget of the HKITP for funding the construction of the HKD would have to be submitted to the Board for approval.

16. Mr Howard YOUNG expressed support for the proposal but urged the Administration to exercise care in selecting the right candidates for the posts in order to achieve technology transfer.

17. Acknowledging members' concern, CT pointed out that the Project's massive programme of civil engineering works to be implemented by the Government would be conducted and supervised by civil servants whose experience in the airport project and other major projects had already equipped them for the job and for further development through participation in the Project. For the construction of the theme park, the Administration would also ensure that HKITP's posts would mainly be filled by local people with only a limited number of overseas staff for supervising designs which might involve WD's patented products. DCE also confirmed that all CED staff to be deployed for the Project would be well experienced in reclamation, civil engineering and road construction works. As civil engineering experience gained from one project could readily be transferred for use in other projects, he believed the experience gained by staff participating in the Project would benefit Hong Kong in the long run.

18. On the proposed Chief Structural Engineer (CSE) post, Mrs Selina CHOW cast doubt on the availability of suitable candidates in the Buildings

Department (BD) as the post-holders would need to have the imagination and flair to deal with unconventional and leading-edge engineering issues. In response, the Deputy Director of Buildings (DDB) referred to the high technical competence of BD's structural engineers which was well recognised world-wide. He believed that the required calibre would be available from among the CSEs and Senior Structural Engineers in BD. Dr Raymond HO shared his view and pointed out that the CSEs in BD had commendable experience and expertise in vetting unconventional buildings such as the new wing of the Convention and Exhibition Centre and the new airport.

19. Mrs Selina CHOW considered the proposed one-year duration of the CSE post too short, having regard to the diversity and importance of his duties. In her view, the duration of the post should be longer so as to ensure continuity and follow-up actions, especially as construction should be actively under way upon expiry of the post in 2002. Dr Raymond HO shared similar concern and considered the one-year duration unrealistic, having regard to the need for inspection and take-over of related works even after completion of the Project.

20. DDB, in response, agreed that it might be more appropriate for the post to have a longer duration. BD had agreed to the proposed duration mainly because when preparing the present proposal, the property market was on the down side and it was expected that with reduced workload in vetting private housing projects, resources could be deployed internally to absorb the workload associated with HKD. Mrs CHOW, however, remained of the view that if BD considered the creation of a CSE post dedicated to supervision of the Project during construction and thereafter necessary, the proposed duration of the post should clearly reflect such a need to obviate future requests for additional funding.

21. In response, CT and DDB assured members that the bulk of the work involved should be completed during the first year and that the CSE would only be indispensable for a short period of time when the workload of BD in relation to the HKD would be at its peak. After major structural and engineering problems had been resolved, the residual workload thereafter could be taken up by more junior engineers in BD. Moreover, the former CSE would still be available for advice and assistance where necessary. DCE supplemented that likewise, workload associated with HKD upon expiry of the relevant CED posts specially created to oversee construction of the Project would be absorbed within CED.

22. The Deputy Chairman referred to the need for the proposed CSE to supervise and monitor the work of the various special consultants engaged to implement the HKD Project, and enquired about the types of consultants to be engaged, and whether the CSE would have sufficient experience and expertise to supervise their work. DDB reported that the consultants would be recruited by the HKITP to design the structures and facilities in HKD. He assured members that as CSEs in the BD in general had 20 years' experience in

supervising the construction of various complicated buildings, the proposed CSE to be deployed from within BD should be able to supervise the HKD Project satisfactorily.

23. The Deputy Chairman noted that some of the structures in the Park were facilities rather than buildings, and cast doubt on the BD's expertise to vet the related structural submissions. In response, DDB assured members that BD would liaise closely with the Electrical and Mechanical Services Department (EMSD) as regards the division of work in relation to licensing and regulation of such facilities. CT also confirmed that EMSD staff already had the experience in issuing licences in respect of theme park rides such as those in the Ocean Park. Moreover, in recognition that Disney rides were of a different generation and standards, EMSD staff would procure and study the plans previously approved in respect of theme park rides in the United States.

24. To avoid delays, Dr Raymond HO suggested to designate a small team of experts from various regulatory departments to vet HKD's building plans on a priority basis. In response, DDB advised that a centralised system of processing building plans overseen by two D1 posts had already been in operation in BD, under which copies of building plans would be referred to all relevant departments for vetting to ensure compliance with various regulatory requirements. He also pointed out that the proposed CSE would be supported by a Chief Buildings Surveyor and there would be good co-ordination of the vetting work of HKD's building plans to ensure all safety standards would be met.

25. Mr CHAN Wing-chan expressed support for the proposal by Members of the Hong Kong Federation of Trade Unions and the Democratic Alliance for Betterment of Hong Kong, and called for early implementation of the Project to create jobs. In reply to his questions on the programme of works and contingency measures, CT explained that the bulk of the work should be completed in 2005. In case of delays, the residual workload could be absorbed by existing resources in the relevant departments. In the unlikely event of a substantial delay, the Administration would review the situation.

26. Mr Michael HO stated that members of the Democratic Party would abstain from voting on this proposal pending provision of further information and subsequent discussion at meetings of the PWSC and the FC.

27. The item was put to vote. Seven members voted for the item, one voted against and two abstained.

For:

Ir Dr Raymond HO Chung-tai
Mrs Selina CHOW LIANG Shuk-ye
Mr CHAN Kwok-keung
Mr CHAN Wing-chan

Dr LEONG Che-hung
Mr Howard YOUNG
Miss CHOY So-yuk
(7 members)

Against:

Miss Emily LAU Wai-hing
(1 member)

Abstention:

Mr Michael HO Mun-ka
Mr CHEUNG Man-kwong
(2 members)

28. The item was endorsed by the Subcommittee.
29. The Subcommittee was adjourned at 10:30 am.

Legislative Council Secretariat
25 November 1999