

立法會
Legislative Council

LC Paper No. CB(1)1684/99-00

(These minutes have been
seen by the Administration)

Ref: CB1/PL/PLW/1

LegCo Panel on Planning, Lands and Works

**Minutes of meeting
held on Tuesday, 18 April 2000, at 11:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Edward HO Sing-tin, SBS, JP (Chairman)
Dr Hon TANG Siu-tong, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon WONG Yung-kan
Hon Timothy FOK Tsun-ting, SBS, JP

Members absent : Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon LAU Wong-fat, GBS, JP
Hon TAM Yiu-chung, GBS, JP

Public officers attending : **For item IV**

Mr Gary YEUNG
Principal Assistant Secretary for Planning
and Lands (Lands)

Mr J S CORRIGALL
Director of Lands (Acting)

Mr I J MacNaughton
Assistant Director of Lands
(Estate Management)

Item V

Mr CHAN Wing-sang
Deputy Secretary for Works (Works Policy)

Mr M J Byrne
Principal Assistant Secretary for Works
(Works Policy and Safety)

Mr J COLLIER
Director of Drainage Services

Mr LAM Chiu-hung
Assistant Director of Drainage Services
(Sewage Services)

Mr HON Chi-keung
Chief Engineer of Drainage Services
(Strategic Sewage Disposal Scheme)

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Miss Irene MAN, Senior Assistant Secretary (1)9

Action

I Confirmation of minutes of meeting
(LC Paper Nos. CB(1)1096/99-00 and 1107/99-00)

The minutes of the meeting held on 13 January 2000 and the minutes of the joint meeting with Environmental Affairs Panel held on 27 January 2000 were confirmed.

II Date of next meeting and items for discussion
(LC Paper Nos. CB(1)1360/99-00(01) and (02))

2. Members agreed to discuss the following items at the next regular meeting of the Panel to be held on 18 May 2000 at 10:45 am -

- (a) North Lantau development; and
- (b) Flood prevention and control.

3. Members noted the list of follow-up actions arising from discussion at Panel meetings.

III Information papers issued since last meeting

(LC Paper Nos. CB(1)1275/99-00, 1383/99-00 and 1401/99-00)

4. Members noted the following papers -

- (a) "Central and Wan Chai reclamation - Engineering Works (Remainder) (Central Reclamation Phase III)";
- (b) "Building Condition Information System"; and
- (c) a submission from a concern group giving views on the development plan for Hung Shui Kiu.

5. On the way to deal with the submission about the development plan for Hung Shui Kiu, members noted that the Secretariat had requested the Administration to give comment and would circulate the response to the Panel. The concern group had also been advised of the action taken by the Secretariat.

Clerk

IV Illegal sale of fuel at temporary carparks on Government land

(LC Paper No. CB(1)1360/99-00(03))

6. Invited by the Chairman, the Principal Assistant Secretary for Planning and Lands (Lands)(PAS/PL) briefed members on the salient points of the information paper. He said that during the enforcement actions taken by the Customs and Excise Department (C&ED) in 1999 and January 2000, 55 locations had been identified as harbouring illegal filling operations. Of these, 25 were Government land sites held under short term tenancies (STT) for fee-paying vehicle parking. The Lands Department had been issuing warning letters to carpark operators on the relevant STT sites to require cessation of the illegal activities. In early 2000, two of these STTs were terminated. The Lands Department would continue to monitor the situation closely with C&ED and enhance the existing provisions of the tenancy agreements to facilitate more effective lease enforcement action. A new clause had been incorporated in the new tenancy agreements for vehicle parking sites obliging the carpark operators to seek advice from the police for the provision of proper security measures. Further clauses would be incorporated in future tenancy agreements to facilitate early termination of tenancies.

7. Mr LEE Wing-tat was dissatisfied with the way the Administration had handled the issue. He said that STT operators could not possibly be unaware of the illegal filling operations on their sites since large filling vehicles were moving around. Given that the contractor would be held responsible for

the employment of illegal workers at his construction site, Mr LEE considered that the operators of the STT sites should be held liable in the same manner. He expressed grave concern about the delay on the part of the Administration in taking enforcement actions and the resultant loss of tax revenue. Only two STTs were terminated after wide publicity in the media. He enquired whether the STTs could be immediately terminated upon confirmed reports of illegal activities under the existing provisions.

8. The Director of Lands (Acting) (D of L(Atg)) explained that the Lands Department was fully aware of the illegal filling activities on some STT sites and was keen to eradicate them. The Department was seeking cooperation with the STT tenants who had been showing responsible attitude by implementing improved security measures and keeping in touch with the police for the provision of enhanced security arrangements. In many cases, the tenants were aware of the illegal activities being carried out on their STT sites and, in some instances, prosecution actually resulted from reports made by them. However, the Administration had to show understanding towards the tenants' difficult situation when their staff were understood to be subject to intimidation by the operators of the illegal activities. D of L (Atg) explained that according to the legal advice, if the Administration took immediate possession of the STTs and did not give the tenants a reasonable opportunity to purge the breach in the lease, it would be vulnerable to challenge in court. This explained why the Administration had chosen to terminate the two STT sites by giving the Notice-to-Quit (NTQ). Nevertheless, the Administration was still facing legal challenge.

9. Noting that there was no provision in the existing tenancy agreement to prohibit the operation of illegal activities on STT sites, Mr LEE Wing-tat said that it was a clear loophole. In the absence of such a provision, he doubted the effect of the warning letters issued to the operators. The Assistant Director of Lands (Estate Management) (AD of L) responded that the Administration wrote three times to the operators of the 25 carparks over the past two months stating clearly that if they did not improve the security measures of their sites, the Administration might not only cancel their tenancies but would also consider excluding them from future tender exercises. The response from the tenants was generally cooperative. They were prepared to introduce a range of new security measures. The Administration had to give them an opportunity to rectify the breach. If the tenants were unable to do that, the Administration would terminate the tenancies. The recent cancellation of the two tenancies was due to repeated offences.

10. The Chairman sought clarification as to whether the Administration was challenged on the ground that the operators were not aware of the conduct of illegal activities on their sites. AD of L advised that in one of the two termination cases, the Administration responded to complaints by writing to the tenant giving him a chance to remedy the breach. There was no evidence of illegal filling activities upon inspection of the site afterwards. However, given

the mobile and criminal nature of the illegal filling operation, it was difficult for C&ED to take enforcement action and for the tenants to stop them.

11. Mr LEE Wing-tat considered the provision of improved security measures on the vehicle parking sites insufficient. In his view, the Lands Department should work closely with C&ED and STTs should be terminated immediately upon confirmed reports of illegal filling activities. Dr TANG Siu-tong shared the view that the conditions of STT should be tightened up to facilitate effective enforcement actions. The Chairman said that one of the most effective ways to tackle the problem was to amend the relevant legislation to the effect that tenants of STTs would be held liable for the illegal activities on their sites.

12. In response, PAS/PL advised that the Administration was taking a multi-pronged approach to tackle the problem. Improving the security measures on the STT sites was one of the ways. If the tenants did not devise a proper security system and evidence of illegal filling operations was found, the Lands Department could then terminate the tenancy. PAS/PL said that technically the Administration could terminate all the STTs which had been found to harbour illegal filling operations. However, the consequences of such an approach had to be considered. There would be insufficient parking spaces in the districts concerned. Moreover, the same problem might recur after retendering of the STT sites. It should be appreciated that on some occasions, the tenants might be unaware of the illegal filling activities on their sites. In the Administration's view, the way forward was to continue with the enforcement actions by C&ED and to tighten up the tenancy agreements. All relevant departments would continue to work closely to resolve the problem at different levels.

13. AD of L supplemented that many of the raids carried out by C & ED and the police against the illegal filling activities on the STT sites were actually requested by the tenants. In fact, many tenants were aware of the problems but had difficulty in preventing them because of the mobile and organized nature of the criminal activities. However, at the end of the day, the tenants were responsible for the security of their premises and if this was not assured the STTs could be terminated.

14. Noting that tenants were required to submit within three months from the commencement date of the tenancy a proposed scheme of security to the Commissioner of Police for approval, Mr WONG Yung-kan suggested that a shorter period be given. AD of L advised that this condition had been in place for nine months. Tenants should be given a reasonable time to prepare for a security scheme in detail.

15. To avoid the parking problem created by termination of STTs, Dr TANG Siu-tong enquired whether the Administration would consider managing the carparks on the STTs temporarily. PAS/PL said that this would

have manpower implications. He reiterated that the best way to tackle the problem was to improve the security system on the vehicle parking sites, to enhance the provisions of the existing tenancy agreement, and to continue with the enforcement actions.

16. In response to Mr HO Sai-chu's enquiry about the notice period required for terminating STTs, D of L(Atg) said that there were two categories of tenancy; some tenancies, like those for vehicle parking, were on fixed term. About 8 to 9 out of the 25 STTs in question were on fixed term and the Administration was not in a position to serve them with NTQs before the expiry of that fixed term. Other tenancies were granted on a quarterly basis and the Administration would need to give a quarterly notice to terminate these tenancies.

17. Mr HO Sai-chu said that tenants might not be willing to invest in improving the management of carpark if the term of tenancy was too short. For the purpose of requiring the tenants to comply with conditions for better management of the sites, he suggested that the Administration should consider granting longer term tenancies. AD of L advised that the longest term of an STT was for a period of five years. The Administration would not consider extending this term. Generally STTs for carpark sites would be between one to three years depending on the anticipated requirement of the site for future permanent development. Mr HO said that based on the present duration of STTs, it was reasonable to require the provision of proper security measures on the site. He agreed with other members' view that the Administration should include more conditions in the tenancy agreement to prohibit illegal activities.

18. In response, AD of L advised that there were already many conditions in the current tenancy agreements, be they one or three years. Any breach of these conditions would enable the Administration to terminate the agreement. However, there was no actual clause in the current conditions which permitted the Administration to terminate the agreement in the event of criminal activities being carried out on the site by a third party. The Administration was taking steps to incorporate a new clause in future tenancy agreements to facilitate immediate termination of the agreement should there be illegal activities on the site.

19. Mr LEE Wing-tat emphasized that to resolve the problem at root, tenants should be held legally responsible for the activities conducted on their STT sites and their tenancies would be terminated if illegal activities were found. Given the highly apparent nature of the illegal filling activities, it was not possible that the tenants were unaware of them. Provided that not all the STTs were terminated at one time, there should not be any problem in retendering the sites to experienced carpark operators. He remained dissatisfied with the work done by the Lands Department so far in tackling the problem.

Admin.

20. D of L(Atg) said that the Administration would incorporate a clause which would be much in line with Mr LEE's suggestion. He would provide members with a copy of the clause once it was finalized. He added that the majority of the tenants were well organized and responsible. Based on the response of the tenants, he believed that the problem would be significantly reduced.

V Environmental Protection - Sewerage and Sewage Treatment/199DS - North and South Kowloon Sewerage, Stage I, Phase II

(PWSC(2000-01)8 and LC Paper No. CB(1)1360/99-00(04))

21. Referring to paragraph 14 of the information paper, Mr LEE Wing-tat said that the Administration undertook to implement the electronic system on utility records five years ago. He queried why it was still exploring the feasibility of the system and whether a timetable had been set on its implementation. The Deputy Secretary for Works (Works Policy)(DS for W) clarified that keeping utility records by electronic means had already been implemented by individual utility operators, including the Highways Department. The electronic system mentioned in paragraph 14 of the information paper referred to a computerized extranet to link up the utility operators for expeditious circulation of utility records. The system by itself would not rectify the inaccuracy of existing utility records. If the utility records were documented on paper incorrectly, they would remain inaccurate after being converted into electronic form. DS for W said that the rate of accuracy of the utility records was improving as aged utilities were gradually replaced. As shown in Enclosure 2 to the paper, the extent of overrun in time and cost for drainage contracts which were let in 1998 had significantly reduced.

22. Mr LEE Wing-tat pointed out that the works contracts listed in Table 2 of Enclosure 2 had yet to be completed. Only after the works had been completed would it be certain if there had been delay. He did not consider the information useful for discussion of the funding proposal.

23. The Director of Drainage Services (D of DS) explained that Table 2 was to provide members with an update of the progress for the six ongoing contracts started in 1998. By monitoring the progress, the Administration could anticipate whether there would be similar overrun in time and cost experienced in the old drainage contracts. The conclusion was that the works were making good progress.

24. Mr HO Sai-chu enquired whether the Administration had assessed its case before deciding to go for arbitration and whether legal advice had been sought. D of DS advised that in resolving major disputes of this nature, the Administration would look at the merits of the case before deciding whether to

take legal process or mediation. In this case, the contractor had cleared a small part of the site but claimed for clearance payment for the whole site. As the contractor had not physically done any clearance work for most parts of the site, the Administration considered that in principle he should not be paid for clearance of these areas and thus took the case to arbitration. Unfortunately, owing to errors in the contract document, the arbitrator ruled in favour of the contractor. The Administration was disappointed by the award and was trying to seek indemnity from the consultant engineer concerned.

25. Noting that the work done by the contractor should worth about \$1.5 million, Mr HO Sai-chu enquired about the exact amount to be paid by the Administration in accordance with the award of the arbitration. D of DS said that the arbitration award, including both the clearance payment and the interest accrued, amounted to \$89 million. The net clearance payment without interest was about \$59 million. The estimated interest per month was in the order of \$400,000.

26. As Government would be paying about 40 times of what it should pay to the contractor, Mr LEE Wing-tat asked who were involved in making the decision to go for arbitration and whether these persons should be held personally liable. D of DS said that he was personally involved in weighing the principles and the issues involved in deciding whether to resolve the dispute by arbitration or some other means. The decision of going for arbitration was supported by legal opinion and the Works Bureau. Since the arbitrator pointed clearly in his award to the error made in the contract document, the responsibility should lie with the consultant engineer. The Administration would seek indemnity from him.

27. The Chairman said that since the arbitrator had ruled in favour of the contractor, any delay in effecting the payment would incur additional cost in terms of interest. Whilst members might continue to pursue the responsibility of the parties concerned, the funding should be approved expeditiously. (At this juncture, the Chairman left and the Deputy Chairman chaired the meeting.)

28. Mr LEE Wing-tat was unconvinced that no Government officials should be held responsible for the events leading to the significant increase in costs. He was concerned that the Administration might not claim indemnity successfully from the consultant engineer. Moreover, there was bound to be cost in seeking indemnity. DS for W advised that as a general rule, the Administration would seek and act on legal advice on contractual disputes. In this case, even if the Administration did not enter into arbitration with the contractor, the dispute could not be settled by \$1.5 million since the contractor was claiming for \$60 million. The Principal Assistant Secretary for Works (Works Policy and Safety)(PAS for W) supplemented that an arbitrator's decision was similar to that of a court. The decision could go one way or the other. It was never clear at the outset which way it would go. A balanced judgement taking into account all the facts was made before deciding whether

to try to negotiate a settlement or to arbitrate. In this case, the decision was to arbitrate and the award was made on the basis of an error in the contract documents.

29. Mr LEE Wing-tat asked whether the legal adviser detected the error in the contract when he recommended arbitration, with the intention of recovering any costs from the consultant engineer. PAS for W explained that the Administration was aware that there was an error in the contract documents but it was not clear at the outset whether the arbitrator would fall for the contractor or the Government. D of DS added that at the time of making the decision to take the dispute to arbitration, the clearance work done by the contractor was worth only \$1.5 million, but he claimed about \$60 million. The Administration considered that it could hardly be justified on the basis of a documentary error to pay him the claim without subjecting that to the ruling of law. With the support of the legal advice, and for the purpose of protecting public interest, the Administration considered it justifiable to fight against the contractor's claim.

30. Mr LEE Wing-tat pointed out that he was not against the decision of going for arbitration but was concerned about the possibility of reaching a settlement between the contractor and the Government without resorting to arbitration. He said that if the Administration failed to claim from the consultant engineer in the end, public money would be spent in vain. D of DS said that without pre-empting the outcome, he considered that there was a case to claim against the consultant engineer. There was always a judgement cost in deciding which was the best way to settle disputes. The policy was that the Administration would try to mediate claims whenever possible to minimize high legal costs. However, when points of principles were involved and when the claimant did not have any case, it was not reasonable to settle the disputes through mediation. Many ongoing arbitration cases fell within this nature. In the case in question, since the legal advice was not that there was a high risk of losing the case, the Administration regarded it appropriate to take it to arbitration. As the final judgement rested with the arbitrator, it could not be said that the decision to go for arbitration was wrong.

Admin. 31. Mr HO Sai-chu expressed support for approving the funding to honour the ruling of the arbitration. He requested the Administration to keep the Panel informed of its action to recover indemnity from the consultant engineer. The Deputy Chairman agreed and said that the Administration should identify the responsibilities of the relevant Government officials for the events leading to the significant increase in costs.

32. There being no other business, the meeting ended at 1:00 p.m.

Legislative Council Secretariat
30 May 2000