

For information

BILLS COMMITTEE

**PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2005
(CHAPTER 132)**

CONTROL OF MOSQUITO BREEDING

REPORT ON CONSULTATION RESULTS

PURPOSE

This paper briefs members on the results of our consultation exercise with District Councils, the Heung Yee Kuk New Territories (HYK), pest control trade and building management bodies on the Public Health and Municipal Services (Amendment) Bill 2005 (the Bill).

BACKGROUND

2. We propose to amend the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) to allow the Food and Environmental Hygiene Department (FEHD) -

- (a) to deal with mosquito breeding problems arising from the presence of articles capable of causing accumulation of water and create a related offence;
- (b) to hold the management body legally liable for mosquito breeding and responsible for prevention of mosquito breeding; and
- (c) to take immediate action to prevent the breeding of mosquitoes without issuing notice to occupier or owner or management body where there is mosquito-related health hazard and to recover the associated costs.

3. The Administration introduced the Bill into the Legislative Council on 4 May 2005. The first meeting of the Bills Committee was held on 24 May 2005. At the meeting, members requested the Administration to consult District Councils and the Heung Yee Kuk New Territories before resuming scrutiny of the Bill. Members also requested for a map, with Shatin as an example, to illustrate the areas covered by a 2-km radius. The map is attached at Annex.

CONSULTATION RESULTS

District Councils and the Community

4. We convened two forums on 18 and 26 July 2005 to consult members of District Councils, Area Committees, Clean Hong Kong District Committees and village representatives. In general, the attendees were supportive to the proposed legislative amendments as they could help improve public health. They urged the government to expedite the legislative process and implement the proposed measures as soon as possible. Some of the attendees raised concern about FEHD's power of entry into private premises but were content after we clarified such power being provided in the existing provisions in the Ordinance and the conditions under which the proposals would be exercised. We also reassured the attendees that clear guidelines and procedures for the exercise of such power would be drawn up.

Pest Control Trade

5. On 10 August 2005, we consulted the four major pest control trade associations in Hong Kong, namely, the Pest Control Personnel Association of Hong Kong, the Hong Kong Cleaning Association, the Hong Kong Pest Management Association and the Environmental Contractors Management Association. The associations supported the legislative proposals, as they could help improve public health and environmental hygiene, as well as reduce the risk of mosquito-borne diseases. They would be prepared to work closely with the government in planning future anti-mosquito activities and to educate the public and property management bodies to pay more attention to environmental hygiene problem.

Heung Yee Kuk New Territories

6. The HYK was consulted on 20 September 2005. The HYK supported stepping up anti-mosquito measures to safeguard public health. However, they had reservation on the possible impact of the Bill in relation to the cost recovery mechanism, the liability of occupiers/owners/managers of land and the effect of the government's power of entry into private premises. They opined that the government should recover the cost for anti-mosquito action only on land with economic activities. They also pointed out that some land were prone to accumulate water, due to either the distinctive geographical feature such as wetland, or government works in the vicinity. They found it difficult to clear water accumulation in these areas and felt it unfair if they were required to be held responsible for the problem. With a view to addressing the government's concern that FEHD had difficulty in identifying land owners to take anti-mosquito action in abandoned huts/farm land, the HYK proposed that it could represent the land owners in the New Territories to authorize FEHD staff to enter into the land if they consider it necessary to take anti-mosquito actions therein, provided that FEHD would not recover cost from them.

7. We explained to the HYK that the cost recovery mechanism was already provided for in the existing Ordinance and we had not proposed any change. It was a well-established principle that owner/occupier of private land should manage the land themselves. According to the New Territories Ordinance (Cap. 97), the manager appointed under section 15 to manage the New Territories land on behalf of a clan, family, t'ong has the full power to deal with the said land as if the manager is the sole owner thereof. We reassured the HYK members that our objective was not to make prosecution easier or to charge more but to shorten the lead time needed to take anti-mosquito actions when there was mosquito-related health hazard. The government also did not intend to request land owners to clear water accumulation on land without taking into consideration the geographical features of the area. We offered to provide advice on anti-mosquito measures for land which accumulated water easily. Besides, under our proposal, a person would be guilty of an offence only when the mosquito problem was attributable

to any act, default or sufferance of the person. This proposal was in fact more lenient than the current arrangement which imposed an offence on a person once larvae or pupae were found in accumulated water in the person's premises.

Consultation of Building Management Bodies

8. We consulted building management associations through the Hong Kong Association of Property Management Companies Limited (HKAPMC) on 24 October 2005. The attendees sought clarifications on the share of liability between owners' corporations and management companies in different scenarios and circumstances under which clearance or prevention of accumulation of water was difficult. Attendees expressed no objection to the proposals.

ASSESSMENT

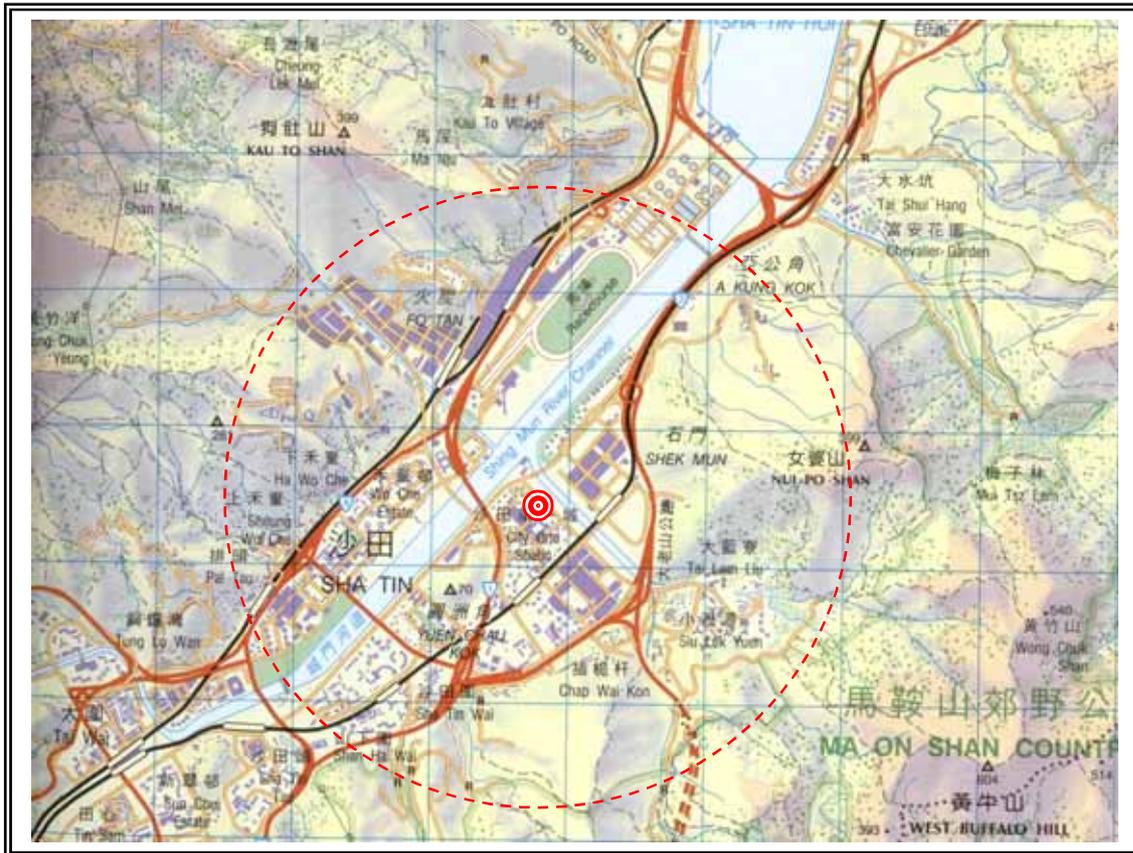
9. The proposed amendments were supported by the pest control trade and members of the District Councils, Area Committee, Clean Hong Kong District Committee who attended the consultation forums. Building management bodies indicated no objection to the proposals.

10. Regarding the areas of concern expressed by the HYK, they are in fact not initiated by the Bill. The existing legislation already imposes a duty on land owners/occupier/appointed contractors of a building site to manage their private land and the cost recovery principle already applies, whereas the managers of land in the New Territories bears the same responsibilities as land owners. Their duties and responsibility will remain intact even if the Bill is not passed. On the other hand, a person does not commit any offence under the Bill if the mosquito problem is not attributable to the act, default or sufferance of the person.

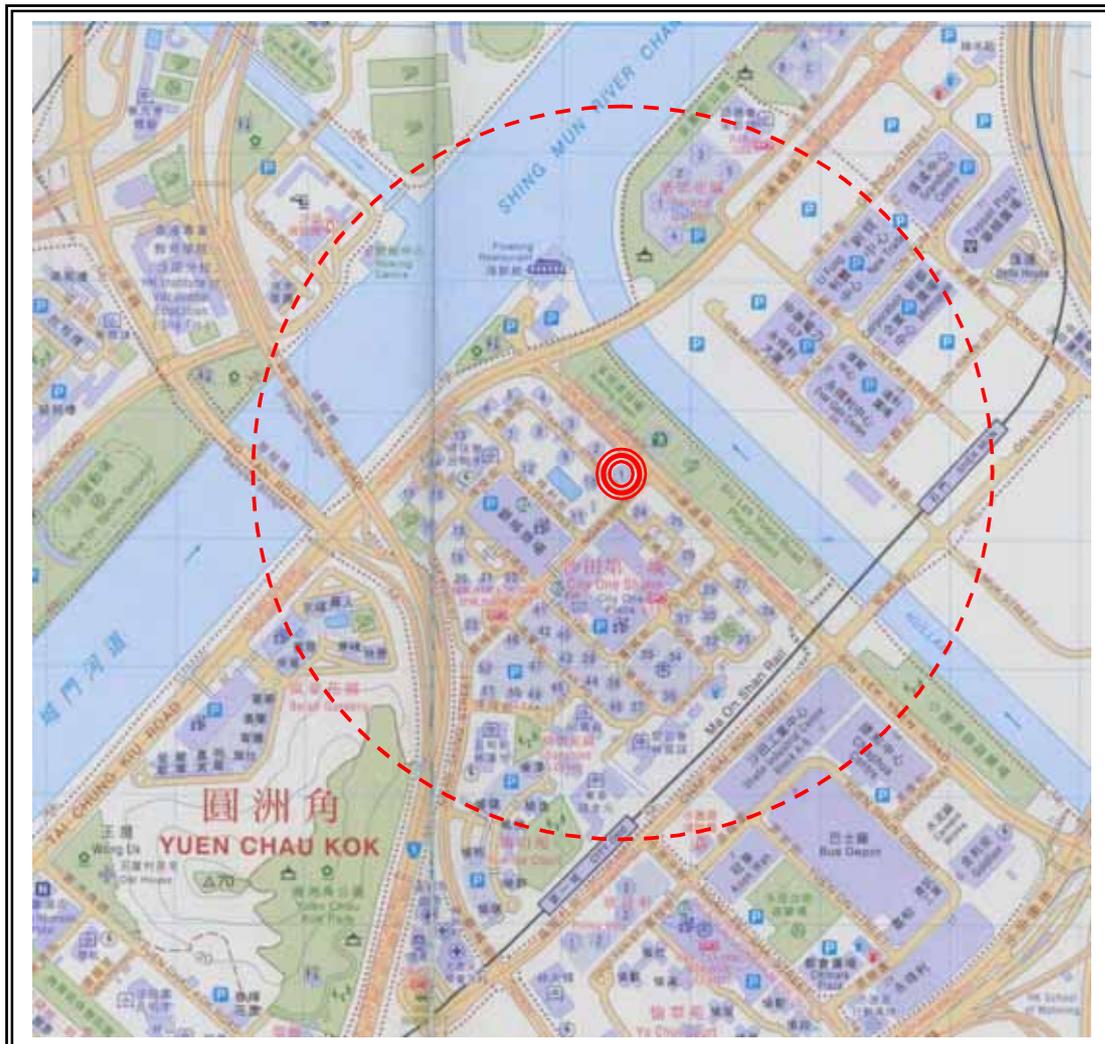
11. Notwithstanding the above, we have offered to the HYK the following to ease their concerns -

- (a) We would reflect the views of the HYK members to the relevant government departments about the impact of government works on their land; and
- (b) We invited the HYK to come up with a list of land which they considered impossible to take effective anti-mosquito actions due to the distinctive geographical features or the impact of government works. FEHD would provide advice to the land owners on what anti-mosquito actions could be taken. If nothing could be done, FEHD would not take action against the land owners should there be mosquito problem.

Health, Welfare and Food Bureau
December 2005



2-km radius illustration if a JE patient resides at City One Shatin. (Map scale 1:50 000)



500-m radius illustration if a dengue fever patient resides at City One Shatin. (Map scale 1:10 000)