HONG KONG LEGISLATIVE COUNCIL -- 23 January 1991 1

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 23 January 1991

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)
THE CHIEF SECRETARY
THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY
THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL
THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

DR THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, O.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS ROSANNA TAM WONG YICK-MING, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

DR THE HONOURABLE DANIEL TSE, C.B.E., J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE YEUNG KAI-YIN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS ANSON CHAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE MICHAEL DAVID CARTLAND, J.P.
SECRETARY FOR HEALTH AND WELFARE

ABSENT

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation L.N. No.

Immigration Ordinance Immigration (Amendment) Regulations 1991..... 17/91

Public Health and Municipal Services Ordinance Public Health and Municipal Services
(Public Pleasure Grounds) (Amendment of
Fourth Schedule) (No. 2) Order 1991..... 20/91

Registration of Persons Ordinance Registration of Persons (Application for
New Identity Cards) Order 1991..... 21/91

Sessional Papers 1990-91

No. 43 -- Hong Kong Productivity Council Annual Report 1989-90

No. 44 -- The Hong Kong Academy for Performing Arts
Annual Report July 1989 to June 1990

Addresses by Members

The Hong Kong Academy for Performing Arts
Annual Report July 1989 to June 1990

MRS LAU: Sir, the 1989-1990 Annual Report of the Hong Kong Academy for Performing

Arts for the year ended 30 June 1990 is tabled before this Council today.

As a member of the Council of the Academy, it is my great pleasure to present this report to you and Members of this Council.

The Annual Report illustrates the wide range of public performances in dance, drama and music which continue to be central to the training of students at the Academy. I wish to draw particular attention to the initiatives which aim at creating new audiences for performances by Academy students and which bring enjoyment to a wide cross-section of the Hong Kong community. For example the year under review saw the introduction of a series of Monday lunch-time concerts which have drawn into the Academy many people working in the Wan Chai area to enjoy the high quality musical performances of Western and Chinese music in an informal lunch-time setting. These concerts regularly attract audiences of over a hundred on each occasion, a high proportion of which is young people.

The Academy's production in December 1989 of its first fully staged musical -- "Grease" was a landmark not only for the Academy, but also the theatre in Hong Kong. I believe everyone who had the opportunity of seeing this production must be impressed by its tremendous vitality and the professionalism of its presentation.

But it is not only at home that the Academy has been seen to be in the forefront of the development of the performing arts in Hong Kong. During the year under review, the Academy's students have been ambassadors for the young people of Hong Kong internationally. In February 1990, students from the four Schools in the Academy represented Hong Kong at the Commonwealth Games in Auckland, New Zealand, and subsequently toured around the country with a specially devised performance of Chinese dance and music. Furthermore students from the Dance School gave performances in Seoul, Korea; students and staff from the Drama School represented Hong Kong at a drama festival in Bratislava, Czechoslovakia, and the Junior Chamber Orchestra toured Europe during the summer giving concerts in France, Luxemburg and Switzerland. These visits abroad not only helped to promote the Academy more widely but they also contribute significantly towards maintaining and developing the international image of Hong Kong.

Sir, it is gratifying to note that the Academy continues to maintain a high level of public performance activity in its splendid venues. In addition to the wide range of Academy student performances given during the academic year, the venues continued

to be available for hire by the business sector and the community at large. Outside hire events during the year under review included a number of Arts Festival programmes in February 1990 which the Academy supported not only by providing venues but also by rendering considerable technical management and support.

But the most significant event for the Academy during the year under review remains the Executive Council's decision in October 1989, that the Academy should become a degree-granting institution subject to accreditation by the Hong Kong Council for Academic Accreditation. The Annual Report indicates the work which the Academy has already done to pave the way for this development with the target date of autumn 1992 for admission of the first degree level students. As I said when I presented the previous year's Annual Report to this Council, it is my view that the ability of the Academy to offer degrees will not only recognize the high standards of professional training being achieved at the Academy, but will also secure its future recruitment of high calibre students both from here in Hong Kong and also from overseas to help achieve the international standards to which the Academy is committed.

Sir, as the Academy moves towards becoming a degree-granting institution and as awareness, interest and confidence in the training offered by the Academy increase, it is most important that Government should continue to grant the level of funding necessary to enable the Academy to develop and grow. Investment in the promotion of culture and arts in Hong Kong is a long-term and worthwhile investment. The Academy having just started to make an impact on the performing arts scene, we must do all that we can to ensure that such impact is sustained and improved.

Hong Kong Productivity Council Annual Report 1989-90

MR TIEN: Sir, I have much pleasure today in presenting the Annual Report of the Hong Kong Productivity Council (HKPC).

The demand for HKPC professional services and support has remained strong for the past year. The revenue derived from fees was HK$58.7 million, up 31% from the previous year. For the past five years, revenue growth averaged nearly 30% each year, driven largely by growing needs of industry to improve productivity in response of the pressures of costs and competition.

However, despite this strong growth, there remain many areas where we would like to do more by way of assistance to the manufacturing industry, which in Hong Kong, is undergoing fundamental change. Opportunities are shifting in favour of companies that are able to produce high quality and innovative products with short production cycles and reduced lead times. Rapid changes in technology have created an urgent need for HKPC to continue to upgrade its capability to serve the more sophisticated demand from industry.

These developments should come as no surprise because in so many HKPC reports, we have drawn attention to the restructuring of the economy and the structural weaknesses of many industries and their vulnerability to international competition. Current circumstances merely serve to confirm and underline the central message: Hong Kong industry cannot cling to low-wage, low value-added activities where we have no competitive advantage. We must move towards the higher value-added goods and services wherein lie the best hopes for prosperity over the longer term.

We have reached a critical stage in our industrial development. In consequence, the HKPC has a great amount to do. Yet, our ability to progress is restricted on account of lack of funds. Our hopes for growth have been severely limited to low or near zero.

There are several major growth areas in demand for HKPC services: Total Quality Management, Environmental Management, Information Technology Application, Computer Aided Design and Manufacturing, Product Development and Technology and Management Training. Without increased funding support, it is not possible for HKPC to meet the existing demand, let alone more importantly, to upgrade its capability to provide industry with the leadership and higher expertise required to move up-market. Council members of HKPC have reviewed the situation on a number of occasions. We have agreed to redeploy some existing resources to upgrade Computer Aided Design and Computer Assisted Manufacturing facilities to meet future demands. However, there is a limit to what can be done with the redeployment of resources to meet the other demands of HKPC services in the growth areas.

I shall quote a few examples to illustrate this point.

There is a very obvious trend in the electronics industry to develop smaller and more compact products. Further miniaturization requires the use of integrated circuits with high grate and pin counts, together with fine-line printed circuit

boards with a large number of layers. Although HKPC has established a successful Surface Mount Technology Laboratory, it is essential for HKPC to move to the next level of sophistication and to master fine-line Surface Mount Technology techniques in order to provide the necessary support services to industry. But further expansion of the SMT labouratory has not received government funding support.

When I introduced the HKPC Annual Report to this Council last year, I emphasized the need for the Government to provide adequate support services to industry to comply with environmental legislation. I regret to report that fresh funds are unlikely to be forthcoming in the near future to support HKPC's further initiatives in this important programme area.

The Clothing Technology Demonstration Centre which HKPC has established in co-operation with the Clothing Industry Training Authority has stimulated considerable interest but it is unlikely that we will be able to secure additional funds to move into phase two of the programme to demonstrate a mechanized overhead hanger system in accordance with the recommendations of the Textiles Committee of the Industry Development Board.

Sir, time does not permit me to continue but the examples I have quoted serve to illustrate the widening gap between resources and requirements. I call upon the Government and Members of this Council to reassess the changing industrial environment and the role of both Government and other important industry support organizations such as HKPC in facilitating the future development of our industry on which Hong Kong's future prosperity and stability still so heavily depends.

On a note of good news I am pleased to report the completion of the new HKPC Building, which represents another milestone in our development. By early February, all operational divisions will have moved into these new premises. With the centralization of our facilities under one roof, HKPC will be in a stronger position to offer improved and more integrated range of services to industry.

Sir, finally, I would like to thank members of HKPC's Council, particularly members who serve on the Accommodation Committee for their support and dedicated work during the year. I should also like to express my sincere appreciation to the staff of the HKPC, whose combined efforts have produced another set of record results for the year.

Oral answers to questions

Watchmen Ordinance

1. MR CHUNG asked (in Cantonese): Will Government inform this Council of the progress regarding the review of the Watchmen Ordinance and when the outcome of the review will be available?

SECRETARY FOR SECURITY: Sir, the Fight Crime Committee has established an advisory committee to consider the need for new legislation to regulate the security industry in Hong Kong and to improve standards. The advisory committee has drawn up proposals for a new licensing system both for security companies and for security officers (including watchmen) and persons designing, installing and maintaining security devices. The intention is that, following the introduction of this new legislation, the Watchmen Ordinance will be repealed.

Drafting of the necessary legislation is now at an advanced stage. I hope that it will be put before this Council later this year.

MR CHUNG (in Cantonese): Can the Secretary inform this Council of the criteria for the licensing of watchmen in future? Will there be requirements for an upper age limit, medical examinations, a clean criminal record and so on? Will those people engaging in management duties in buildings (now called caretakers) be required to be licensed?

SECRETARY FOR SECURITY: Sir, the criteria for the licensing of security officers are still to be considered in detail. They are likely to include a limit on age, they are likely to include a person having no previous convictions and they are also likely to require some physical standards.

As regards the second part of the question, those who are engaged in watchmen or security duties in private buildings, including many people who are now called caretakers, would require to be licensed.

MR HO SAI-CHU (in Cantonese): As regards the age limit, will the Government inform this Council of the upper limit below which people will be allowed to register? Does this mean some security officers or watchmen will lose their jobs as a result?

SECRETARY FOR SECURITY: Sir, as I said in reply to Mr CHUNG, we have not come to a final decision on the criteria for security officers, but I believe that an upper age limit of 65 is what is being considered at the moment.

MR CHUNG (in Cantonese): The Secretary has mentioned that the age limit is 65. Will the Government consider that people over 60 have to produce medical certificates annually before they can have their contracts renewed?

SECRETARY FOR SECURITY: Sir, as I have said, the question of the upper age limit is being considered. We will certainly take that suggestion into account.

Exchange Fund investment earnings

2. MR TIEN asked: Will the Government please inform this Council whether consideration could be given to disclosing the information concerning the amount of the accumulated investment earnings of the Exchange Fund? If the answer is in the negative, what are the reasons?

FINANCIAL SECRETARY: Sir, there is a balance to be struck between our fundamental desire for greater transparency and the need to ensure that our ability to maintain exchange rate stability is not impaired in any way. I can assure Members that the possibility of disclosing further information relating to the affairs of the Exchange Fund is kept constantly under review. Given a degree of uncertainty in the financial markets, I believe that at present the publication of additional figures might well not be to the advantage of the community. Our first priority must be the maintenance of a stable Hong Kong dollar for the benefit of the people of Hong Kong.

MR TIEN: Sir, greater transparency of the Exchange Fund will give Hong Kong people

a better chance to monitor our own financial affairs after 1997. Would the Administration please advise whether, instead of keeping a constant review as was the case for the past few decades, details of the Fund would be disclosed before 1997?

FINANCIAL SECRETARY: I cannot answer that question today. Much depends upon the circumstances at any moment in time. I have stressed in my principal answer the degree of uncertainty that exists at the present time; if we enter a period of prolonged and predictable stability, I will certainly give further consideration to this question.

MR PETER WONG: Sir, will the Secretary please confirm that prior to the Second World War full details of the Exchange Fund were regularly disclosed? Would he also tell this Council whether he has copied his answer from Yes, Minister?

FINANCIAL SECRETARY: I am afraid I cannot remember what the situation was immediately before the Second World War; I was still young at the time. I will certainly carry out a little research to see exactly what the position was. And lastly, my answer was not copied from Yes, Minister.

MR MARTIN LEE: Sir, will the Financial Secretary inform this Council whether the figures relating to the Exchange Fund have been disclosed either directly or indirectly to the People's Republic of China?

FINANCIAL SECRETARY: Sir, from time to time we have had various discussions of a confidential nature regarding the management of our financial affairs, but, as I say, the discussions are confidential. I cannot give any further information this afternoon.

MR CHOW (in Cantonese): Sir, the Administration considers that it is inappropriate to disclose the amount of the accumulated investment earnings of the Exchange Fund for otherwise the exchange rate of the Hong Kong dollar will be affected. However, generally speaking, at what level should the Exchange Fund be kept so that it may

well be said to be reasonable or sufficient in stabilizing the Hong Kong dollar?

FINANCIAL SECRETARY: I do not think it is correct to state what the exact level should be. Much depends upon our ability to intervene in the markets; that depends not only on the amount that is in the Exchange Fund but also on the confidence that exists in the management of the Fund.

MR TIEN: Keeping the confidentiality of the accumulated investment earnings of the Exchange Fund to stabilize the Hong Kong dollar would certainly apply to the area of the monetary market. But since most countries, though having to stabilize their own currency, can release such information, would the Administration please explain to this Council why Hong Kong cannot?

FINANCIAL SECRETARY: Sir, Hong Kong is a small, open economy with a free flow of capital and it is, perhaps, especially vulnerable to speculative attacks on its currency. I think that we are in a somewhat different position from most other economies.

Fire in Ho Man Tin Estate

3. MRS TAM asked (in Cantonese): In the wake of a recent blaze in Ho Man Tin Estate in which four young children were burnt to death, will Government inform this Council --

(i) what progress has been made in the inquiry into the cause of the fire?

(ii) how many public housing estates and private buildings in Hong Kong are currently fitted with fire services installations similar to those in Ho Man Tin Estate?

(iii) how fire-fighting equipment and installations in public housing estates and private buildings are monitored to ensure that they can be effectively put to use in the event of a fire?

SECRETARY FOR SECURITY: Sir, the Fire Services Department is now conducting an

investigation into the cause of the fire. This is expected to take about one month to complete. The circumstances of the fire and the tragic deaths which resulted are likely to be the subject of a subsequent coroner's inquiry, and so I would not wish to comment further at this stage.

At present, a total of 46 housing estates, containing 225 buildings, are fitted with dry riser fire services installations similar to those in Ho Man Tin Estate. Fifty-one of these buildings are due to be demolished for redevelopment within the next five years. For the remainder, an improvement programme is under way to convert the existing dry riser installations into wet riser systems, which is the standard in all new public housing estates. I regret that statistics are not readily available on the number of private buildings fitted with dry riser systems.

As regards monitoring and inspection, regulation 8 of the Fire Service (Installations and Equipment) Regulations requires the owners of any fire service installations or equipment to keep them in efficient working order at all times and to have them inspected by registered contractors at least once in every 12 months.

At present, all fire services installations and equipment in public housing estates are inspected and tested by registered fire services contractors twice a year. Following each inspection, a maintenance certificate will be submitted to the Fire Services Department confirming that the installations and equipment are in efficient working order in accordance with the Code of Practice. So far there has generally been no problem with the operational effectiveness of these installations in public housing estates.

In addition, Fire Services Department staff visit and inspect buildings within their respective station areas on their own initiative for training and familiarization, or upon receipt of complaints.

MRS TAM (in Cantonese): Sir, could the Secretary inform this Council what the differences are between the dry riser and the wet riser fire services installations in terms of actual fire-fighting functions, and whether there is a difference in the time required for using the two systems?

SECRETARY FOR SECURITY: Sir, this may risk becoming a bit technical and I am not

sure that I am competent to give a very technical answer to this. Basically, I believe the difference between a dry riser system and a wet riser system is that the wet riser system contains within it a pump and, therefore, can be used straight away. A dry riser system contains no pump and must have water pumped through it from a fire service vehicle. In practice, that means that only the Fire Services can use dry riser systems, but I am told that there is no significant difference in time for using either system once the Fire Services arrive on scene.

MRS LAM (in Cantonese): Sir, the incident in question was caused by parents having gone out and leaving their children unattended. If the blaze was caused by children playing with fire, then could the Government inform this Council what effective measures will be taken to prevent similar incidents from occurring?

SECRETARY FOR SECURITY: Sir, I feel that I should, perhaps, ask the Secretary for Health and Welfare to reply to this question.

SECRETARY FOR HEALTH AND WELFARE: Sir, it is perhaps stretching the interpretation of the question about fire appliances and the causes of a particular fire to bring up the question of children being left unattended, particularly since a separate question specifically on that subject has been put down for the next sitting of this Council and I would, therefore, offer to reply on all related aspects at that time.

MR POON CHI-FAI (in Cantonese): Regrettably, Sir, my question is similar to Mrs LAM's. Nonetheless, I think it is still worth raising. No parents would want to leave their young children at home alone, but most of them have to do so because they have no other alternatives. Would the Government learn a lesson from this incident of "four deaths" and, in addition to reviewing fire-fighting installations, conduct a full review on whether there is adequate child-caring service and whether the fee required is affordable by the lower income group? Would the Government also consider expanding the scope of the occasional child care service that is currently on trial by, for example, providing it in densely populated areas, and relaxing the application criteria that are too stringent at present?

HIS HONOUR THE PRESIDENT: Mr POON, that clearly does anticipate the question which is being put down for answer next week and I would prefer you to defer your question until the question is asked at the next sitting of the Council.

MR EDWARD HO: Sir, will the Secretary please inform this Council whether the dry riser fire services system installed in the 46 housing estates was in compliance with the Fire Services Department's Code of Practice when the housing estates were built, and whether the same system was likewise installed in residential buildings in the private sector, which were constructed during that period?

SECRETARY FOR SECURITY: Sir, the answer to both questions is yes. As I understand it, before 1987 dry riser systems were the standard in public and private buildings. Since 1987, I believe, residential buildings of over six stories have had to install wet riser systems.

MR ARCULLI: Sir, will the Secretary for Security please inform this Council of the reason for the change from a dry riser system to a wet riser system and whether, insofar as private buildings are concerned, there is a case for requiring actual conversion to a wet riser system?

SECRETARY FOR SECURITY: Sir, the present standard and thinking on fire services installations have obviously developed over the years. The present thinking, I believe, is that a wet riser system is certainly preferable particularly in very tall buildings, but existing buildings built before the new standards were introduced are not required to convert.

MRS TAM (in Cantonese): The Secretary mentioned in his reply that there is an improvement programme which aims at converting all the dry riser fire services installations into wet riser systems in all public housing estates; could I ask the Secretary how long it will take to complete this programme?

SECRETARY FOR SECURITY: Sir, I am afraid I do not have a definite date. I believe

that the conversion programme is likely to take some years.

Exclusion of urban district public housing for selection by new applicants

4. MISS LEUNG asked: Will the Government explain the rationale for the Housing Authority's decision to exclude urban districts for selection by new public rental housing Waiting List applicants?

SECRETARY FOR HOME AFFAIRS: Sir, the decision to which Miss LEUNG referred was taken by the Housing Authority's Management and Operations Committee at its meeting on 13 December 1990. The Committee noted that available supply of flats in urban districts in the next few years would be barely adequate to provide local rehousing for families previously accommodated in older urban estates which have been redeveloped, residents in the Kowloon Walled City, squatter areas and temporary housing areas scheduled for clearance. The balance between supply and demand is such, and can be expected to remain so, that there is no hope of providing families rehoused through the Waiting List with flats on Hong Kong Island or urban Kowloon. If and when a small number of flats should become available to waiting list applicants, these will first be offered to those on the list for nearly 10 years and certainly not to new applicants. In order not to raise false hopes, the Committee decided that new applicants should be required to make their choice from among the six other districts where there is a reasonable prospect of flats becoming available. This decision was to avoid a considerable amount of abortive work in processing applications from families who are, at the time of the offer, unwilling to accept rehousing in the districts where flats are available.

The Committee is well aware of an apparent "inequity" in not giving new applicants the full range of choices, but feels nonetheless that a provision for the applicant to state a preference without any prospect of success has no practical meaning to the applicant. Indeed, it might even mislead him into remaining for longer than would be necessary in inadequate private accommodation.

Sir, the Committee will review this decision in three years' time in the light of supply and demand situation prevailing then.

MISS LEUNG (in Cantonese): Sir, instead of sticking to its so-called "new measure" which deprives new applicants of their slim chance of being offered urban housing units, why does the Housing Authority not review the public housing allocation policy with a view to enhancing the chance of urban housing allocation to those law-abiding applicants with low household income who are subjected to means tests?

SECRETARY FOR HOME AFFAIRS: Sir, this is not a permanent decision; this is a decision which has taken into account the current state of supply and demand. As and when supply and demand balance themselves out and when it becomes possible, remotely though it may be, that applicants would stand a chance of being offered flats in the urban area, then that decision will be reviewed.

MRS TU: Sir, my question is similar but I think that I had better ask it. The Secretary's reply blatantly indicates favourable treatment of those who have been privileged to live in public housing for many years or who at some time built illegal flats in Kowloon Walled City or huts in squatter areas. Since many of those being so favoured are financially better off than those on the waiting list who have been paying high rents to landlords, are subjected to tight income limits and will find travelling from the New Territories a financial burden, how does the Government justify this gross inequity?

SECRETARY FOR HOME AFFAIRS: Sir, there is no way of telling whether or not the people that we clear are in fact well off or not well off as compared with other people on the list. What the Housing Authority has done is to have in place a rule which is honest, open and does not mislead people into believing that they might be getting something which in fact they are not, and I endorse that rule.

MR TAM (in Cantonese): Sir, will this compulsory measure of the Housing Authority contravene the International Covenant on Civil and Political Rights which provides that a person shall have the right to liberty of movement and freedom to choose his residence?

SECRETARY FOR HOME AFFAIRS: I would hesitate to answer this in legal terms, but what

the Housing Authority does is to make an offer or not at all and I think the Housing Authority equally has the freedom to do so.

MRS CHOW: Sir, as the Secretary mentioned the apparent inequity in the penultimate paragraph of his principal answer, may I ask the Secretary to enlighten us as to whether the committee concerned or the Housing Authority has indeed examined if that inequity is indeed apparent or real in the sense of how many privileges are being presently enjoyed by existing public housing tenants which are not being enjoyed by applicants who are on the waiting list?

SECRETARY FOR HOME AFFAIRS: Sir, I think the Housing Authority and the committee concerned consider that the inequity is apparent rather than real.

MISS LEUNG (in Cantonese): Sir, in response to Mrs TU's supplementary question, the Secretary claimed that there were neither evidence nor statistics from which to tell whether families affected by clearance of squatter areas were financially better off or not as compared with those on the waiting list. In fact I raised before this Council last March a question concerning the income levels of squatter households at the time of clearance by the Housing Authority. Sir, I am not going to give figures today. But I would like to ask the Secretary to submit to this Council findings of the survey conducted by the Housing Department last year on the income levels of squatter households. Could I, Sir, ask the Secretary how many public rental housing units will be completed in the urban area in the next three years? How does the number compare with that of the previous three years? If the present new policy is found to be the result of a projected reduction in urban housing supply in the coming three years, will the Government review its policy of land supply so as to provide more land for the building of more rental housing units in the urban area?

SECRETARY FOR HOME AFFAIRS: Sir, given the current policy of land administration, I think it is most unlikely that there will be a substantial increase in the amount of land in the urban area becoming available for building public housing, particularly rental housing. The production of rental housing in the public sector at the current rate is unlikely to be able to catch up with the outstanding demands. So, for some years, I am afraid, it is more than likely that new applicants will have to apply

for flats outside the urban area. But, as I said earlier on, in three years' time the Committee will be reviewing the position and looking at the supply and demand situation once again. If there is any change, then certainly the rule will be amended accordingly.

MR TAM (in Cantonese): Sir, in reply to my supplementary question, the Secretary for Home Affairs pointed out that it might lead to a legal question. Could the Attorney General enlighten me on this?

ATTORNEY GENERAL: I am not prepared to give the Attorney General's opinion on the International Covenant on Civil and Political Rights on the eligibility of persons for housing this afternoon.

MRS CHOW: Would the Secretary please answer my question which is whether the committee concerned or Housing Authority has indeed compared and examined the privileges that are currently enjoyed by the existing public housing tenants with those applicants on the waiting list and would he also tell us the basis for an earlier reply of his that the inequity is only apparent but not real?

SECRETARY FOR HOME AFFAIRS: Sir, the Housing Authority, and the Management and Operations Committee in particular, in arriving at a decision took into account all relevant factors including whether or not it would be inequitable as between those on the waiting list and those applying on so-called "green forms". I said the inequity is apparent rather than real because it appears that there is an inequity in real terms, not because the Housing Authority is trying to offer housing to those already in the urban area and New Territories accommodation to anybody else who voluntarily applies. The reason is because while those who are being cleared are involuntary clearees, those who are applying are voluntary applicants. If one applies voluntarily, the rule currently is that one should apply for housing in the New Territories.

MISS LEUNG (in Cantonese): Sir, what we are now discussing is an important, new policy which will transform the Government's long-established public housing

allocation policy. Could I ask the Secretary why such an important policy should be decided by a small committee under the Housing Authority? Why should it not be deliberated in the plenary session of the Authority and, on endorsement, submitted to the Executive Council for consideration before it is implemented?

SECRETARY FOR HOME AFFAIRS: Sir, the Housing Authority itself, of course, has more or less autonomy in deciding policies of this nature. It has delegated this power to the Management and Operations Committee. However, as I understand it, it may well be that the matter might be raised in the plenary session of the Housing Authority, where it would be debated. If the matter should be brought to the Housing Authority, I, as a member, will support this ruling.

Economic relations with Vietnam

5. MR BARROW asked: In the light of closer relations with Vietnam by the European Community and the Association of Southeast Asian Nations, will the Government inform this Council whether it will change its policy on economic relations with Vietnam and, in particular, whether it will now allow direct commercial flights between Hong Kong and Vietnam and relax the visa arrangements for Vietnamese officials visiting Hong Kong, and also whether it will recommend to Her Majesty's Government that it permits Vietnamese authorities to issue visas for Vietnam in Hong Kong through the permanent presence of a consular official?

SECRETARY FOR SECURITY: Sir, as regards air services, we are prepared to commence talks with the Vietnamese authorities at a mutually convenient time to discuss the arrangements for the resumption of air services between Hong Kong and Vietnam. At this stage it is difficult to indicate when such services might resume.

As regards visas, we have recently reviewed our policy. We are now prepared to grant visas to all categories of visitors from Vietnam; hitherto, we have granted visas only for business visits. We have also simplified the procedures for the issue of visas, which should in future be granted in about two weeks, rather than the previous one month.

We are not at present considering the opening of a Vietnamese Consulate in Hong Kong. However, Vietnam does have an unofficial trade office in Hong Kong, and we have indicated to the Vietnamese authorities that we would be prepared for this office

to have a visa issuing function.

MR BARROW: Sir, given that there are now air services between Vietnam and Bangkok, Kuala Lumpur, Singapore, Jakarta and Manila, and shortly Taipei, I am sure the Secretary would accept that the Hong Kong service is a matter of urgency if Hong Kong is not going to be left out in the cold. Could the Secretary tell why it is difficult to indicate a starting date? Does he see any particular hurdles to be overcome?

HIS HONOUR THE PRESIDENT: I think that is more properly directed to the Secretary for Economic Services.

SECRETARY FOR ECONOMIC SERVICES: Sir, we would obviously begin discussions with the Vietnamese authorities on the resumption of air links as soon as possible. On the assumption that both sides would be desirous of the resumption of air services as soon as possible, I am hopeful that we will make reasonably good progress.

MR PAUL CHENG: Sir, will the Government advise this Council whether the Vietnamese authorities did indeed make a submission to allow their trade office to grant visas? If yes, when will approval be granted? If no, did they express an interest during our preliminary discussions with them?

SECRETARY FOR SECURITY: Sir, the Vietnamese authorities have indicated a wish to be able to issue visas in Hong Kong. We have only very recently indicated that we would be prepared to consider them doing this through their trade office here. There will, I think, need further discussions between the two sides before this becomes a reality.

MR McGREGOR: Sir, will the Government now deal with these matters as a matter of urgency, considering the great advantages that may accrue to Hong Kong from successful negotiations?

SECRETARY FOR SECURITY: Sir, it does of course take two sides to bring these matters

to a conclusion. We are certainly anxious to proceed with them as quickly as possible.

MRS FAN: Sir, does the Secretary for Security realize that the actions described in his answer represent a much closer relationship between the Vietnamese Government and the Hong Kong Government? And his answer also indicates the possibility of even closer co-operation between the two governments in future. Under such circumstances, should the Hong Kong Government not expect the Vietnamese Government to show their good faith to abide by the international practice of taking back their illegal immigrants -- that is, Vietnamese boat people who are not refugees who are stranded in Hong Kong -- and exercise every effort to persuade the Vietnamese Government to shoulder a responsibility which is clearly theirs and not leave it to Hong Kong?

HIS HONOUR THE PRESIDENT: Mrs FAN, I think that question goes well outside the ambit of the original question. Perhaps you would put it down for a separate answer.

MR TAI: Sir, putting it in another way, will the Secretary, when negotiating these agreements, make a tit-for-tat arrangement with the Vietnamese Government regarding the boat people problem?

HIS HONOUR THE PRESIDENT: That is also outside the ambit of the original question, Mr TAI.

MR BARROW: I am going to have another try, Sir, but you may rule me in the same category.

In the light of this policy change by the Hong Kong Government, would the Secretary inform this Council if the Hong Kong and British Governments will now press the United States to take steps to improve their economic relations with Vietnam, given that this is the key to the rehabilitation of the Vietnamese economy and thus the solution to the problem of the Vietnamese boat people?

HIS HONOUR THE PRESIDENT: I think, Mr BARROW, that goes even further outside the ambit of the original question. Perhaps you would put that down for a separate answer.

Redomicile of local companies

6. MR POON CHI-FAI asked (in Cantonese): In view of the public concern in the redomicile of some major local companies, will Government inform this Council:

(i) of the positive and negative effects on Hong Kong as a result of such moves by major local companies;

(ii) the concessions and privileges enjoyed by redomiciled companies in Hong Kong; and

(iii) whether a non-interventionist approach will be followed on the ground that redomicile is a commercial decision; or whether appropriate measures will be taken to encourage major companies to keep their legal domicile in the territory on a long-term basis?

FINANCIAL SECRETARY: Sir, it must be for the management and shareholders of a company to decide whether or not they should relocate the company's domicile to an overseas jurisdiction. Whether the effect of such a move is positive or negative is largely a matter of perception involving the subjective judgement of the various parties affected. Redomiciling is not necessarily damaging to Hong Kong since redomiciled companies remain substantially the same as they were before the relocation. Their management and the majority of their public shareholders generally remain in Hong Kong. Their Hong Kong assets are unaffected by the move, and their contribution to and involvement in Hong Kong's economy are basically unchanged.

As to the second part of Mr POON's question, redomiciled companies do not enjoy any specific concessions or privileges granted either by the Hong Kong law or by the Government. The only difference is that, upon redomiciling, they cease to be subject to Hong Kong domestic company law. There are, however, specific provisions in the Companies Ordinance which do apply to overseas-incorporated companies which have a place of business in Hong Kong. As a general principle, these overseas incorporated companies continue to be subject to Hong Kong securities regulation, the primary purpose of which is to protect the interest of investors in the Hong Kong market.

Lastly, Sir, so long as redomiciled companies abide by the same rules as companies incorporated in Hong Kong in terms of their obligations to investors, they should be free to operate in the way that suits their corporate objectives best. Thus, while the Administration does not consider it necessary or appropriate to interfere in the commercial decisions of companies, it will endeavour to ensure that there are no significant gaps in the investor protection framework for shareholders in such companies as a result of their change of domicile.

MR POON CHI-FAI (in Cantonese): Sir, the redomiciling of some Hong Kong leading companies and the support of the Government in this respect have far-reaching effects on our investors and the public. Has the Government given thought to the fact that the positive support shown by the Government on the redomiciling of the Hongkong Bank under the guise of restructuring will mislead or even prompt those companies which have not decided to redomicile to transfer their capital out of Hong Kong or to relocate their domicile overseas, thus undermining people's confidence in the future of Hong Kong? If this be the case, what steps will the Government take to clear the misunderstandings and allay the worries of the people?

FINANCIAL SECRETARY: Sir, I am very pleased that Mr POON Chi-fai has asked this supplementary question. In the press reports following the reconstruction of the Hongkong Bank's corporate position there was some reference to our support. If our press release had been read carefully it would be apparent that what was supported was the actual restructuring that left the Hongkong Bank in Hong Kong. We were saying that the arrangements as they are to take place will in fact leave the bank firmly and securely in Hong Kong. We were neutral on the decision as to whether Hongkong Bank should enter into its arrangements or not.

MR MARTIN LEE: Sir, does the Administration accept that Hong Kong would lose its status as an international financial centre almost overnight if it be known that the Government may take steps to prevent our major companies from redomiciling themselves?

FINANCIAL SECRETARY: Sir, I entirely agree with Mr Martin LEE. If we started to take steps to prevent corporations from making arrangements that they considered to be

in their interests that would certainly damage our status as an international financial centre. It would also be against the concept of freedom in which we all believe.

MR ARCULLI: Sir, will the Financial Secretary inform this Council of the number of publicly listed companies that have redomiciled or are in the process of doing so, and whether the cumulative effect is in fact getting to a point where we can no longer ignore this, and therefore we should take appropriate steps to encourage them to remain, and I emphasize "to encourage them to remain" as opposed to "preventing them from leaving"?

FINANCIAL SECRETARY: Sir, as to the figures, by the end of 1990, 61 listed companies had moved their domicile from Hong Kong to overseas. They constituted 10.83% of the total market capitalization at that time. As far as companies planning to make moves are concerned I do not have comprehensive information. With regard to encouraging major companies and others to stay in Hong Kong, we believe that the environment in Hong Kong is an attractive environment to business. It may be that there are things that we could do to make it even more attractive; that is something we constantly bear in mind.

MR McGREGOR: Sir, will the Government take note of the alternative position that nothing whatsoever should be done by the Government, other than what is being done now, to prevent any company from redomiciling; that in fact to do so would be to fly in the face of all the free enterprise philosophy that we stand for in Hong Kong?

FINANCIAL SECRETARY: Sir, I think I answered that question, essentially, in my answer to Mr Martin LEE.

MR PAUL CHENG: Sir, can the Secretary be a bit more specific on the endeavours being pursued by the Government to ensure there are no significant gaps in the investor protection framework for shareholders?

FINANCIAL SECRETARY: Sir, there is a lot of consideration being given to this particular subject by the Securities and Futures Commission; the main area for discussion relates to disclosure.

MR ARCULLI: Sir, in terms of encouraging companies to remain in Hong Kong and not to redomicile, would the Financial Secretary inform this Council whether the Administration has considered or is willing to consider passing legislation that will enable companies to redomicile at the time of their choice, so that they do not feel forced to go at this stage? After all, we have in fact taken that line regarding Hong Kong residents in terms of the British nationality package.

FINANCIAL SECRETARY: Sir, as yet, we have not considered such legislation, but as Mr Ronald ARCULLI has mentioned it, I will certainly give the matter some consideration. I can see a downside potential.

MR CHEONG: Sir, can the Administration assure this Council that through redomiciling the companies that redomicile will not, I repeat, will not derogate from any of their responsibility to pay their taxes in Hong Kong and that their fixed assets are not going to be mortgaged to the bank, and then using the bank's own liquidity to pay out dividends so as to deplete Hong Kong's liquidity?

FINANCIAL SECRETARY: Sir, I think I can give those assurances, certainly in relation to taxation. Our taxation is based, as Mr CHEONG knows, on the source principle; so even if the company has redomiciled it will still be liable to taxation in Hong Kong. Insofar as any other financial arrangements the company may make might have an effect on the position of any banks here, I think it is most unlikely that that would happen.

MRS FONG: Sir, of the 61 listed companies that have moved their domicile overseas, can the Financial Secretary inform this Council how many of them have sought relisting on our stock exchange?

FINANCIAL SECRETARY: Sir, I do not have that information available. I think in fact the companies maintain their listing on our stock exchange but I will make further enquiries and give an answer in writing, if I may. (Annex I)

MR MARTIN LEE: Sir, does the Administration accept that there is nothing in the Joint Declaration which could possibly be interpreted to mean that the Government, either before or after 1997, could legitimately take measures to prevent major companies from redomiciling themselves?

FINANCIAL SECRETARY: Sir, I do not think there is anything in the Joint Declaration or anywhere else that would enable the Government or suggest to the Government that it should prevent companies from redomiciling themselves. As I have said in answer to Mr Martin LEE and Mr Jimmy McGREGOR earlier, I think that to take steps to prevent companies from redomiciling themselves would be totally wrong.

Pedestrian safety at zebra crossings

7. MR PETER WONG asked: Will the Administration inform this Council whether adequate measures are taken to ensure pedestrian safety at zebra crossings?

SECRETARY FOR TRANSPORT: Sir, the Road Traffic (Traffic Control) Regulations of the Road Traffic Ordinance give pedestrians using zebra crossings precedence over any vehicle. Motorists contravening this provision commit an offence which carries a fixed penalty of $280 and three driving offence points. Furthermore, motorists are not allowed to overtake in zebra controlled areas : the maximum penalty for this offence is a fine of $10,000 and imprisonment for six months. The law also requires pedestrians not to cross a road within the zebra areas, outside a zebra controlled crossing itself. All these provisions are of course designed with pedestrian safety in mind.

The location of each zebra crossing is carefully chosen to ensure good visibility for both drivers and pedestrians. Factors such as the physical alignment of the road, adjacent structures, and traffic flow conditions at a particular spot are all taken into account before a zebra crossing is installed. White stripe markings and road

studs, together with blinking beacons, make zebra crossings conspicuous to drivers, and easier for pedestrians to use. Finally, railings installed on both sides of the crossing prevent jay-walking and guide pedestrians to use the crossing properly.

Publicity and education are equally essential. High priority is given each year to funding road safety campaigns. Two Announcements of Public Interest have been produced for television to promote the proper use of zebra crossings. Road Safety Officers from the police visit schools regularly to promote road safety. These efforts supplement those already provided by the Education Department in promoting pedestrian and road safety throughout the curriculum and in many extra-curricular activities.

The Government is satisfied that all these measures together represent a good package to ensure pedestrian safety at zebra crossings.

MR PETER WONG: Sir, recent statistics show that almost as many pedestrian casualties happen at zebra crossings as within the controlled areas. Is the Government satisfied that pedestrian safety education is adequately promoted and should more enforcement action be taken?

SECRETARY FOR TRANSPORT: Sir, the number of accidents at zebra crossings over the last five years is in fact between 0.6% and 0.9% of the total number of accidents in Hong Kong. This makes it quite clear that it is a very, very minor portion of all the traffic accidents, and it does show that it is much safer to use zebra crossings than not to use them.

As regards education and publicity, I think what I have said in my main reply represents the maximum efforts the Government has taken and will take in promoting road safety, and these efforts will continue.

MR McGREGOR: Sir, can the Administration indicate whether prosecutions involving accidents where a vehicle has injured pedestrians on zebra crossings and where the driver is found to be at fault result in more severe sentences than would otherwise be the case? In other words, Sir, to the knowledge of the Administration, does the Judiciary take a more serious view in such cases?

SECRETARY FOR TRANSPORT: Sir, I cannot speak for the Judiciary but, of course, the existing regulations provide for a fixed penalty and three driving offence points. Clearly, the Government will take the effectiveness of all these into account and review the law from time to time.

MR PETER WONG: Sir, the Secretary in the second paragraph of his reply said that the location of each zebra crossing is carefully chosen to ensure good visibility. How can the Secretary be satisfied that subsequent changes in the environment around the zebra crossing has not impaired the good visibility of the crossing to both drivers and pedestrians?

SECRETARY FOR TRANSPORT: Sir, as a matter of fact, the locations of zebra crossings are reviewed regularly by the police and the Transport Department, and in some cases zebra crossings are in fact relocated or changed, depending on the circumstances at the time.

Waiting time for Certificate of No Criminal Conviction

8. MR HUI asked (in Cantonese): In view of the fact that recent applicants for Certificates of No Criminal Conviction (CNCC) may have to wait for three months after registering their applications before being interviewed for the processing of their cases, will Government inform this Council:

(1) of the progress made so far since the Secretary for Security undertook to study my suggestion in this Council on 6 June 1990 that applicants for the CNCCs be charged a fee at cost so that more staff can be deployed with a view to shortening the waiting time?

(2) of any interim measures to be taken pending the outcome of this study in order to reduce the waiting time required?

(3) of the progress made so far since the Secretary for Security informed this Council at the same sitting that the question of issuing CNCCs, together with the

Rehabilitation of Offenders Ordinance, was being reviewed by the Fight Crime Committee?

SECRETARY FOR SECURITY: Sir, all applicants for a Certificate of No Criminal Conviction (CNCC) are required to pay a fee of $110. This covers present administrative costs, although it may be necessary to raise the fee in future.

The average waiting time from registering an application for a CNCC to being interviewed is about seven weeks. A certificate can normally be issued 21 working days after an interview. I do not think that the present processing time is unreasonable, nor that there is any need for further measures to reduce it. Additional part-time staff have been recruited to the CNCC office to cope with the workload.

The Fight Crime Committee has completed a review of the Rehabilitation of Offenders Ordinance, including the question of issuing CNCCs in relation to convictions spent under the Ordinance. The Committee recommended no change in the present practice.

MR HUI: Sir, could the Secretary inform this Council if additional staff could help to reduce the waiting time for a certificate? If so, could additional staff be deployed for the job and the full cost be recovered by increasing the fee?

SECRETARY FOR SECURITY: Sir, as I said in my main answer, I do not think that at the moment there is a need to deploy additional staff to reduce the waiting time. The overwhelming majority of CNCCs are required for emigration. That is a process that from start to finish usually takes at least a year and often considerably longer. So the time taken to issue a CNCC, which is only part of that process, does not significantly alter or affect that procedure. Certainly though, we will keep the situation under review. If the number of applications increases and if the waiting time increases, then we would consider deploying additional staff.

MRS FAN: Sir, I do not agree that it is reasonable to have an average waiting time of about seven weeks and that a certificate can only be issued normally 21 working

days after an interview. Can the Secretary explain why it takes so long to do these relatively seemingly simple things?

SECRETARY FOR SECURITY: Sir, there is quite a lot of work involved in each single application and in particular they all have to be referred to the main Criminal Records Bureau for checking. I do not think that, as I said in my main answer, there is any great demand for the time to be reduced. The police have in fact received very few complaints indeed about the time taken.

MR McGREGOR: Sir, the Secretary has referred to a problem in coping with the workload. What is the workload referred to? What is the average number of applications each month and is this average rising?

SECRETARY FOR SECURITY: Sir, the average in 1990 was about 5 500 per month. That has been fairly constant; in fact it has dropped a little bit from the second half of 1989.

MR MARTIN LEE: Sir, does the Administration accept that the actual time taken in processing an application for a CNCC in this age of computerization would be no more than five to 10 minutes and that the Government is happy with the present state of affairs only because it likes keeping the emigration figures low?

SECRETARY FOR SECURITY: Sir, I can assure Mr LEE that there is absolutely no intention of trying to use this procedure as a means of restricting or slowing up people's emigration. In fact, as I said, the emigration procedure -- certainly for the main destination countries -- is a very long procedure; it usually takes at least a year and often considerably longer. And this application for a CNCC is only part of that process and does not, I believe, significantly affect the overall time.

MR TAI: Sir, may I be enlightened on the rationale of the recommendation arrived at by the Fight Crime Committee regarding the issuance of CNCC relating to convictions which have been spent?

SECRETARY FOR SECURITY: Sir, most countries, when they are requiring prospective immigrants to complete application forms, do require those applicants to give a full and truthful account of any criminal convictions. Therefore the Fight Crime Committee felt that equally the police should give a full and complete account of any criminal convictions on the return which they make. I should say, though, that where any conviction has been spent under the Rehabilitation of Offenders Ordinance that fact also will be clearly stated in the letter issued by the police.

MRS LAM (in Cantonese): Sir, will the Government consider doubling or charging higher fees if applicants are in urgent need of CNCCs, so that the waiting time can be reduced?

SECRETARY FOR SECURITY: No, Sir, I do not think there is any such arrangement at present.

MRS CHOW: Sir, does the Secretary recognize that since the cost is fully recoverable from the people who are applying, the applicants in fact are the clients or customers of this service, and therefore their wishes as to how long they should wait should be taken into consideration? And may I ask the Secretary whether any kind of survey is intended to be conducted to find out what they think is acceptable as a reasonable waiting time as I tend to agree with Mrs FAN that 10 weeks is far too long?

SECRETARY FOR SECURITY: Sir, we will certainly look into that. As I say, we have received very few complaints and we have dealt with several hundred thousand applications in recent years. I think that is probably a fairly good indication that there is not any great dissatisfaction with the present waiting time.

Written answer to question

Basic Proficiency Test

9. MRS TAM asked: Will Government inform this Council whether the results of the

newly introduced Basic Proficiency Test are recognized by various sectors of the community, including the private sector, and whether it has any plans to review and further improve the effectiveness of the test?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, Basic Proficiency Tests (BPT) are intended to provide students with an opportunity to demonstrate their proficiency in the Chinese Language, the English Language and Mathematics, after the completion of their secondary education. Devised and administered by the Hong Kong Examinations Authority (HKEA), they aim to provide an employment qualification for students who do not intend to continue with full time academic studies after Secondary V. The material tested is drawn from the Certificate of Education syllabuses, but the emphasis is on testing practical skills and performing tasks that relate to the needs of everyday life and a wide range of local employment situations.

The HKEA, which ran the BPTs for the first time in November 1990, has yet to seek recognition of their results for employment purposes from the private sector. It intends to do so, however, after publication of the results in February 1991. It will write to major employers' organizations to seek the necessary recognition.

As to recognition of the results of the BPTs for appointment to the Civil Service, BPT holders may be appointed to Civil Service grades which do not require a full School Certificate, such as the rank and file of the disciplined services, and postmen and clerical assistants in the civilian service.

The HKEA will carry out a review of the BPTs, and of the various aspects of the conduct of the Tests, once the present series has been concluded.

First Reading of Bills

RATING (AMENDMENT) BILL 1991

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1991

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1991

PREVENTION OF BRIBERY (AMENDMENT) BILL 1991

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

RATING (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Rating Ordinance."

He said: Sir, I move that the Rating (Amendment) Bill 1991 be read the Second time.

This Bill seeks to introduce a rate relief scheme in order to cushion the impact of substantial increases in rates payments in any given year.

One effect of the general revaluation which is due to take effect from 1 April 1991 is that some properties will experience greater increases in rateable values than others. This is because rental values, on which the rateable values are based, will increase by different amounts depending upon the class of the property concerned and its location. Although the rates payable after the revaluation may not necessarily increase to the same extent as the general increase in rateable values because of the adjustments to the percentage rates charge, those properties experiencing increases above the overall average may still be faced with substantial increases in rates payments. To deal with this situation, the Bill proposes to create a mechanism in the Rating Ordinance by which a rate relief scheme may be introduced in any financial year. When circumstances are such that a rate relief scheme is deemed necessary, the new section 19(1) can be invoked. This section provides that the amount of rates payable in any prescribed year will not be greater than the aggregate of the amount payable in the preceding year plus a prescribed percentage of that amount. Both the prescribed year and the prescribed percentage will be determined by a resolution of this Council.

In determining the percentage to be charged on the rateable values in each financial year, therefore, I shall consider also the need for rate relief in that year, taking into account the magnitude of increases in rates to be payable by different rate-payers and the financial, economic and political situation at the time. If the need for rate relief can be established, I shall seek to bring the scheme

into effect by an appropriate Resolution of this Council. The procedure suggested is a better system than those employed in the past. First, the new arrangement provides greater flexibility by enabling rate relief to be introduced without the need for legislative amendments. And secondly, the mechanism will be introduced for one year at a time. This will enable the Government to review the situation on a yearly basis.

In addition to the main provision limiting rates payments, some consequential amendments are required. The new section 19(2) provides that the rate relief limit will not apply where rates first become payable in the relevant year due to an interim valuation. This will normally apply when a new building is first assessed to rates in the relevant year. Sections 19(3), 19(4) and 19(5) are technical provisions which deal with the computation of the rate relief amount where specific conditions apply.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Independent Commission Against Corruption Ordinance."

He said: Sir, I move that the Independent Commission Against Corruption (Amendment) Bill 1991 be read a Second time.

The powers of the Commissioner of the Independent Commission Against Corruption and his officers to deal with electoral offences are provided for in the Independent Commission Against Corruption Ordinance. A review has taken place of the effectiveness of these powers. The conclusions are that the powers are generally adequate; that a comprehensive review might be warranted after the 1991 elections in parallel with a review of existing electoral provisions; and that in the meantime the opportunity should be taken for clarifying some of them.

At present, not all electoral offences are consolidated in the Corrupt and Illegal Practices Ordinance. Section 12(1) of the Independent Commission Against Corruption Ordinance requires the Commissioner to deal with complaints which, in a general sense,

allege corrupt practices, and this enables the Commissioner to deal with electoral offences which are not specifically covered by the Corrupt and Illegal Practices Ordinance. However the powers given by the Independent Commission Against Corruption Ordinance need to be more clearly spelt out.

Clause 2 of the Bill extends the scope of section 10 of the principal Ordinance so as to include a power of arrest for certain suspected electoral offences detected during the course of an investigation of a suspected offence under the Corrupt and Illegal Practices Ordinance.

Clause 3 seeks to extend the scope for investigation in relation to electoral offences, so that any alleged or suspected conspiracy to commit an offence under the Corrupt and Illegal Practices Ordinance may be dealt with by the Independent Commission Against Corruption. For the sake of consistency, the proposed section 12(b)(vii) is added to enable the Commission to investigate any alleged or suspected conspiracy involving a Crown Servant to commit the offence of blackmail by or through the misuse of his or her office.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Corrupt and Illegal Practices Ordinance."

He said: Sir, I move that the Corrupt and Illegal Practices (Amendment) Bill 1991 be read a Second time.

The objects of the Bill are three-fold: first, to amend the principal Ordinance so as to extend the provisions that relate to the declaration of election expenses, to cover also declarations of donations received towards those expenses; secondly, to provide for the proper disposal of unspent or excess donations; and thirdly, to enable incumbent members of the three tiers of representative government to declare the donations which they have received in advance of an election.

The evolution of representative government, marked by the first direct election of Legislative Council Members, and the development of political organizations, must inevitably call for change in some of our election practices. Candidates will increasingly be dependent on funding, either from individuals or political organizations, to fund their election campaigns. This will be particularly so for the Legislative Council direct election, for which the election expenses limit has been set at $200,000. There is a need for appropriate measures to ensure the integrity of the electoral process, and to ensure that donations for elections are fully and publicly accounted for.

The Bill will require candidates to be accountable to the donors of their election expenses as well as to their electorate as regards the sources and disposal of their election funds. Candidates are presently required, under section 29 of the Corrupt and Illegal Practices Ordinance, to declare their election expenses, and failure to comply with this requirement constitutes an offence. Under section 29A such returns are open to public inspection. Failure to declare the source of election expenses will be made an offence with attendant penalties and disqualifications. These are provided for in clauses 7(a), 7(b) and 8 of the Bill.

Section 8B of the Ordinance provides that no candidate or election agent, and no person on behalf of a candidate, shall use money received for election expenses for any other purpose. Questions could arise as to the disposal of any unspent donations. These may arise on the death of a candidate; on his or her withdrawal from an election; when the total amount received is in excess of the permissible limit; or when there are donations surplus to requirements.

It is considered that the Corrupt and Illegal Practices Ordinance should contain a provision which would clearly set out the alternative means of disposal of any unspent or surplus donations. Clause 3 of the Bill proposes that such donations should be returned to the donor if this is both practicable and is the wish of the donor; otherwise the donations should be given to charity.

The Legislative Council, the municipal councils and the district boards are included in the definition of "public body" in the Prevention of Bribery Ordinance and a member of those bodies falls within the definition of "public servant" under section 2 of that Ordinance. By reason of section 4 of that Ordinance, incumbent members of the Legislative Council, municipal councils and district boards may not accept or solicit donations for political or election purposes. Any such donation

would constitute an advantage and, as such, its offer or acceptance may constitute an offence.

So it is clearly unsatisfactory that the payment to, or receipt by, an incumbent of election expense donations should amount to a criminal offence.

It cannot be right that a candidate who is an incumbent member -- and therefore by definition a public servant -- should not be permitted to receive a donation, whilst a candidate who because he or she is not an incumbent member and therefore (at least until his or her election) not a public servant, may do so.

To deal with this problem the Bill amends the Corrupt and Illegal Practices Ordinance so that an intending candidate may declare the source and amount of each donation made towards his, or her, election expenses in advance of an election. Such declared donations would be excluded from the application of section 4 of the Prevention of Bribery Ordinance. Clauses 7(c), 7(d), 7(e) and 7(f) of the Bill set out the arrangement for such advance declarations. Separate amendments will be introduced to the Prevention of Bribery Ordinance so as to exclude such declared donations from the definition of "advantage".

The other provisions in the Bill are consequential upon the introduction of the above measures.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

PREVENTION OF BRIBERY (AMENDMENT) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Prevention of Bribery Ordinance."

He said: Sir, I move that the Prevention of Bribery (Amendment) Bill 1991 be read a Second time.

As I have said in moving a moment ago the Second Reading of the Corrupt and Illegal Practices (Amendment) Bill 1991, an incumbent member of one of the three tiers of representative government, in receiving donations for his or her election expenses,

may be liable to prosecution because any such donations may be considered as an advantage within the meaning of the Prevention of Bribery Ordinance. I have already explained why this is unsatisfactory.

Clause 2 of this Bill seeks to amend the definition of advantage in section 2 of the principal Ordinance so as to exclude a donation which is solicited, offered, or accepted specifically for election expenses, as defined in the Corrupt and Illegal Practices Ordinance, and which is properly declared under that Ordinance.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1990

Resumption of debate on Second Reading which was moved on 17 October 1990

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

AIR POLLUTION CONTROL (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 9 January 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1990

Resumption of debate on Second Reading which was moved on 9 January 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

TOWN PLANNING (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 7 November 1990

Question on Second Reading proposed.

MRS FAN: Sir, in the past few years, there have been drastic changes in the landscape and the environment in the New Territories. The rural scene is fast disappearing and in its place are eyesores created by container storage areas, car dumps and so on. Young children are not allowed to go out on their own for fear of being knocked down by large lorries manoeuvring village roads to these storage areas. Sir, something must be done if we are to ensure that there is no further deterioration in our once scenic parts of Hong Kong. This is the intention of this Bill which seeks to extend proper town planning to the entire territory and direct the right land use to its right place.

Some people have criticized the Government for being short-sighted in not foreseeing the demand for open storage space and not taking action earlier. With hindsight, they might be right. But since the problem is there, we should face the problem squarely and solve it rather than bemoaning what could have been done. I understand that the Government has plans to make available more land to meet the demand for container storage space. This is welcomed and I hope the Government will do so quickly so as to offer relief to the industry. However, we are talking about a far more important issue which is what we would like the New Territories to become in the years ahead, a dumping ground or a well-planned part of Hong Kong?

Some people have queried the need to introduce interim arrangements now when the situation is not so bad in their view. They feel that Government should wait until the completion of the main review when all the issues, in particular, compensation,

can be resolved. However, after seeing the extent of the problem from the air, on the ground and from photographs, I am sure many of my colleagues will agree with me that the situation is of such a magnitude that immediate action is warranted to prevent it from getting worse. This view is also shared by a number of concerned organizations.

The Legislative Council ad hoc group set up to study the Bill received written submissions from 26 organizations and individuals and met with nine professional bodies and concerned organizations. The ad hoc group also took note of the contents of the written submissions received by the Administration in its consultation exercise and the Administration's response to the points made. The ad hoc group met 18 times, including five times with the Administration during a period of four months.

Members generally agreed with the need to reach a decision on the Bill promptly. This is because part of the Bill, that is that part dealing with Interim Development Permission Area (IDPA) plans, is deemed to take effect on the date the Bill was gazetted. Irrespective of whether the Bill is supported or not, it will not do anybody any good to defer a decision on the Bill. This does not however mean that the ad hoc group has rushed to a decision with little regard for views expressed. All views received have been carefully discussed. Some controversial issues have been discussed more than once. Views of the members of the ad hoc group are reflected in a report to the Legislative Council In-House meeting. In view of the great variety of views expressed and discussed, it has not been possible to express individual Members' views in as detailed a form as some Members might wish since this would have made the report very bulky. However, I can assure the public that the dissenting views were adequately aired and debated both in the ad hoc group meetings and in the Legislative Council In-House meeting before my colleagues indicated their support or otherwise. No doubt such views will once again be debated today.

Sir, I now turn to nine major issues which the group has considered. These are the appropriateness of using planning measures instead of a licensing procedure, retroactivity of IDPAs, scopes of development permission areas, section 4(3) of the Town Planning Ordinance, delegation of power to government officials, penalties, the Bill and the Joint Declaration, compensation and independent appeals channel.

Planning vis-a-vis licensing

There is considerable public concern about the need for this Bill. Some believe

that the proposed course of action as detailed in the Bill is tantamount to taking away the property rights of landowners. The Administration explains that the Bill does not confiscate land rights as the refusal of planning permission does not in itself constitute an act of confiscation or extinguish all land rights compulsorily as in the case of land resumption.

The concern over property rights has brought some organizations to recommend that, to achieve the target of improving the environment, licensing should be used instead. This view is supported by some Members who feel that licensing will not only control future use of land for storage but also existing non-conforming uses. The Administration has explained to us that licensing systems are operated on a set of predetermined conditions which do not allow for the exercise of any discretion. The conditions are usually internal to the use or operation or related specifically to the premises or land in which that use or operation is located. Licensing cannot direct a right use to its right place and that it is not possible to prescribe satisfactory conditions for all the different types of land use without an effective planning control in the rural area. The Bill is aimed at preventing further deterioration and provides a statutory basis on which to promote improvements. It does not pre-empt the introduction of other control measures for existing non-conforming uses if these are considered necessary.

Some of the members of the ad hoc group are not convinced by the Administration's explanation. They do not support the Bill as they think it does not offer the appropriate measures to solve the problem. The majority of members however supported the view that town planning should be introduced first and that a licensing system could be considered for controlling existing uses in the main review.

Retroactivity

A number of submissions to the group commented on the "retroactivity" of the Bill, as applied to IDPA plans. They felt the retroactive provision of the Bill will seriously hinder development in the New Territories. The ad hoc group has been informed by the Administration that the reason for introducing the deeming provision is to prevent people from establishing undesirable "existing uses", which are permitted under the Bill, during the period between the gazetting of the Bill and enactment of the Ordinance. The "retroactive" provisions of the Bill create no criminal liability. The offences can only be committed after the legislation has been enacted and after the Development Permission Area (DPA) plans have become

effective. It is only upon a subsequent failure to comply with an enforcement notice that a criminal offence is committed and the offence only takes effect from the date of non-compliance with the enforcement notice. The majority of members think that the worry of the Administration as explained earlier is a valid one and, that if it had been allowed to happen, would have defeated the purpose of the Bill which is to prevent further environmental deterioration. They therefore accept the proposal that IDPA plans should be deemed to have effect from the date of gazetting.

Scope of Development Permission Areas

One of the strongest objections is the possibility that DPA plans can be applied to the urban area. This concern arises from the new section 20(1) of the Bill which states "In any draft plan prepared under section 3(1)(b), the Board shall designate any area of Hong Kong, as directed by the Governor, as a development permission area." It is feared that this amendment could be used for purposes not intended and could effectively be adopted for development moratorium purposes. This clearly is not what the Bill intends. The Administration will be moving an amendment in the Committee stage which will have the effect of preventing the Town Planning Board from preparing DPA plans in respect of areas already covered by draft or approved outline zoning plans.

Section 4(3)

The proposed amendment to section 4(3) has also aroused grave concern among some organizations. They are worried that removal of section 4(3) could mean that the Town Planning Board and the Administration may act negligently or even with ulterior motives and there would be no recourse to law. The proposed amendment would also remove an existing provision in the Ordinance which could influence the right of compensation under the Ordinance. The Administration has explained to us, Sir, that amending section 4(3) is to prevent the Board or the Government from being held liable for any loss or damages caused in discharging their duties under the Ordinance. There is no right to compensation under the existing Ordinance and that under English Law compensation can only be claimed if there is express provision for it in the statute. In response to the worries expressed, the Administration has agreed to drop the proposed amendment and retain the original section 4(3).

Delegation of power to government officials

Another area of concern expressed by some organizations is the proposed delegation of power by the Town Planning Board to the Director of Planning or his officers. They consider the new section 2(5) to have given excessive power to civil servants as they can virtually impose any condition in the DPA. Despite the Administration's explanation that only matters of minor or routine nature would be delegated to public officers, the group felt that this subject required further examination and a special sub-group was set up to consider the areas of responsibilities that could be delegated. The group, headed by the Honourable Ronald ARCULLI, has suggested certain amendments to section 2(5) and he will explain the rationale behind the amendment and move them at the Committee stage.

Penalties

The Bill proposes that offenders who carry out unauthorized development in a DPA are liable to a fine of $500,000 and imprisonment for one year. New section 23(6) further provides that there will be a fine of $10,000 for each day during which the offence is proved to have continued. Some submissions make the point that the imprisonment term is unnecessarily punitive for the kind of offence the Bill describes and that the maximum fine of $0.5 million is too high. In response to these criticisms, the Administration has agreed to reduce the penalty and accordingly amendments will be moved at the Committee stage in this respect. This is acceptable to most members. There are, however, objections to this, and the reasons for such objections will be revealed by individual Members during this debate.

Conflict between the Bill and the Joint Declaration and the Basic Law

In considering claims that the Bill conflicts with the Joint Declaration and the Basic Law, the ad hoc group has studied the relevant provisions of the Joint Declaration and the Basic Law and the Administration's explanation. The majority of members have concluded that the Bill does not contravene the Joint Declaration or the Basic Law.

Sir, the ad hoc group has also discussed and agreed with the Administration amendments to a number of other issues which will be raised in the Committee stage. As these are non-controversial in nature, I shall not dwell on them now.

Two other issues have also featured very prominently in the ad hoc group's deliberation. They are the question of compensation and the setting up of an

independent appeals channel. While they do not form part of the Bill, they have been raised in many submissions, and members have accordingly considered them with great care.

Compensation

Sir, so this is by far the most controversial subject.

Some organizations argue on the premises that landowners who possess land held under a Block Crown Lease can use the land for whatever purpose so long as the conditions stipulated in the lease are not violated and that if that contractual right is taken away compensation should be paid. On the other hand, there are also organizations which advocate caution and a thorough review before coming to a conclusion. Others believe that since planning is undertaken in the interests of the community, compensation for adverse effects of such plans on private property should not be payable. Some also believe that it is not acceptable that only landowners of the New Territories should enjoy compensation while others would be denied on purely geographical grounds. Moreover, the adverse or favourable effects of zoning or planning permission are very difficult to assess.

As there is no simple solution to such a complicated and controversial issue, the Administration has advised that it believes that the issue should be examined thoroughly in the main review, and the Administration intends to form an Expert Committee during the main review to look into the various facets of the matter. The issue can also be thoroughly debated in the community during that period so that different views can be aired and weighed.

Views of ad hoc group members on this subject are also diverse and mixed. Some feel that the whole question of compensation has far-reaching effects and is a matter which requires detailed study and wider consultation and therefore should be taken up in the main review. Some feel the principle of compensation for limiting contractual permitted uses as contained in the Block Crown Lease should form part of the Bill. Others feel that, as a matter of principle, town planning measures should not be subject to compensation. When the matter was discussed at the Legislative Council In-House meeting, the majority of Members agreed that the matter should be studied in detail in the main review.

Independent appeals channel

Quite a number of submissions emphasize the need for an independent appeals channel. They feel that a mechanism should be built into the structure of legislation to distinguish between the planning machinery and the approval machinery. They believe that an Independent Appeals Tribunal should be established to hear appeals against decisions of the Town Planning Board.

Members agree that, as a matter of principle, justice is not seen to be done when the body making the decision is also the body handling the appeals against these decisions. Members have also noted that there are two types of objections or appeals, namely, appeals to town plans or objection to town plans under section 6, and appeals against refusal of planning permission under section 17. For the former, members accepted the Administration's view that the matter should be carefully considered in the main review as it involves the whole structure of the town planning system. For section 17 appeals, the Administration has accepted the ad hoc group's suggestion that an independent appeals body be set up as soon as possible and well before the main review, subject to the Governor in Council's approval and separate legislation. Members believe that the establishment of the latter body will go a long way in assuring the public, and in particular, professional bodies, landowners and developers, of the Government's sincerity and commitment in ensuring the town planning decisions are not only taken in a fair and equitable manner but are also clearly perceived to be so.

In conclusion, Sir, when the Bill was being deliberated by the ad hoc group, I was keenly aware of the controversial nature of the issue and the considerable interests at stake. Each decision I described earlier was not taken lightly. Some fundamental questions have required a lot of soul-searching. I would like to place on record my appreciation to members of the group for their untiring efforts and sensible approach which contributed significantly to reducing a web of conflicting issues and interwoven interests into a set of reasonable recommendations. I am also glad that the Administration agrees with the amendments arising out of these recommendations.

Sir, the main review is long overdue. I hope the Administration will conduct the main review as quickly as possible and with an open mind. I believe this is also the wishes of many Members as well as concerned group.

Sir, with these remarks, I support the Bill subject to the amendments which will

later be moved.

MR CHEUNG YAN-LUNG (in Cantonese): Sir, first of all, I have to declare interest as one of the landowners in the New Territories.

It is to be regretted that the Town Planning (Amendment) Bill 1990 is to go through its Second Reading today despite opposition from various sectors. The Bill was gazetted in July last year without prior consultation whatsoever and a series of Interim Development Permission Areas plans were subsequently published. The Bill has occasioned strong dissatisfaction not only from landowners in the New Territories but also from certain professional bodies as well. These professional bodies include the Hong Kong Institute of Architects, Hong Kong Law Society, Royal Institution of Chartered Surveyors (Hong Kong Branch), Hong Kong Institute of Surveyors, Real Estate Developers' Association of Hong Kong and Caltex Oil Hong Kong Limited. With the land rights of the entire community of Hong Kong very much in mind, these bodies offer their fair and impartial professional opinion from an objective and well balanced perspective. All of them are of a view that the Bill would not solve problems relating to the use of "non-building" land for open storage, nor would it be able to provide positive and meaningful planning guidelines for future land use readily. I find these views pertinent and sound. Unfortunately, such objective and substantial opinion has not been duly heeded.

Sir, the ultimate purpose of this Bill is simply to implement systematic control over the use of land in the New Territories by means of town planning measures so as to improve the overall environment in the region. This should indisputably be a worthy cause. I also strongly believe that the Government is obliged to improve the environment in the New Territories for the benefit of the residents. Furthermore, I understand that "systematic planning" and "effective control" are often regarded by any government or government department as the common objectives to be strived for. However, the Administration must not act in undue haste, underestimating and overlooking as a result, loopholes, areas of inequities and inadequacies that may have arisen in connexion with the contents of the Bill. Therefore, legislative controls can only be implemented after careful deliberations. After lengthy discussion, the ad hoc group is still seriously divided in their views, indicating that the Bill is far from perfect. Now I would like to comment on the following four areas:

(1) Environmental improvement

Although the Government claims that the Bill aims at improving the environment, there is no provision in the Bill which touches on the environmental improvement measures. On the other hand, the Rural Planning and Improvement Strategy, which was introduced by the Government in April 1989 with a project estimate of $4 billion, is an environmental improvement measure. It was warmly welcomed by the New Territories residents. However, not much progress has actually been made. I understand that for the first five-year programme, the Government will only allocate $390 million for rural planning and improvement works.

The deteriorating environmental conditions in the New Territories caused by open storage are partly attributable to the slow administrative response to the present situation. Since the Melhado case in 1983, the control over the use of agricultural land through lease conditions is no longer effective. The Government has not, however, taken immediate and effective measures to plug the legislative loopholes. As a result, a large amount of uncultivated agricultural land has been suddenly and actively utilized in developments that bring forth economic benefits.

As a remedial measure, the Government now seeks to exercise systematic control on the haphazard and disorderly use of land which has degraded the environment.

It should be noted that the policy on the use of agricultural land is itself a grey area. Business contracts signed may be jeopardized with the extension of the Town Planning Ordinance to the New Territories. The economic value of land may depreciate and such loss is due to no fault of the landowners concerned. People suffer because the Government is trying to make up what it has not done in the past. It is really unfair to those affected if no compensation is offered.

The actual cause of the present situation is that the Government fails to provide sufficient land for container storage. Nevertheless, areas designated for open storage in the Interim Development Permission Area plans are still insufficient. It can thus be anticipated that this amendment Bill not only fails to achieve its objective of improving the environment in essence, but also lags behind the needs of future economic developments of Hong Kong.

(2) Effective planning control

As regards effective planning control, I think that the Committee on the Protection of Land Rights, set up by the Heung Yee Kuk, has made sound analysis. I also doubt the effectiveness of the Interim Development Permission Area plans and the Development Permission Area plans as these plans lack detailed information and it may take four years before they can be replaced by the Outline Zoning Plan. Hence, the Government is like issuing a "blank cheque", giving the Town Planning Board a free hand to designate the use of land within the Development Permission Areas during the aforesaid four-year period. Once the Town Planning (Amendment) Bill is enacted and if the Interim Development Permission Area plans are not replaced by Development Permission Area plan within six months, the following undesirable consequences will result. Without the Outline Zoning Plan, I can expect that the Government would only grant permission to a small number of applications. Such measure, to most landowners, would be tantamount to a temporary freeze. The various restrictions and penalties that come with the amendment Bill will only curb the landowners' initiative to develop their land. Therefore, I am of the view that the Bill may not be able to tie in with the planning developments anticipated by the Government. Worse still, it may hinder the development of the New Territories.

(3) The principle of compensation

With regard to the question of compensation, I think the Government has to recognize the principle that it has the responsibility to promote social prosperity. Social prosperity is defined as the continuous appreciation of the "residual value" of the society. If there is an increase in social wealth, it will be wrong for the Government to take compulsory administrative measures to render these "residual value" of the society ineffective.

In cases where the interest of the people are infringed upon due to the restriction on the use of property, it is definitely inappropriate if attention is only paid to the abstract and intangible concept of the so-called public interests with no regard to the gains and losses of individual landowners of the New Territories. If public interests are safeguarded at the expense of the interests of the minority, then the loss should be evenly borne by the public for the sake of equity. Although the restriction on the use of property is different from the confiscation of property, as far as the loss of right over the use of private property is concerned, the two are identical.

Some think that social benefits brought about by planning decisions have to be

paid at a price. The question is who is going to pay that price. The Bill, without any compensation provisions, only seeks to increase the power of the planning authority. This is not fair. Under the Block Crown Lease, landowners of the New Territories have the legitimate right to use their land freely. The Bill, if enacted, will in effect put a freeze on landowners' right to freely use their land and thus they should be entitled to compensation. However, the Administration argues that according to the amendment Bill, landowners have not been stripped of their rights of land ownership and are therefore not entitled to compensation. I do not think this argument stands. At present, there are only two pieces of freehold land, belonging respectively to St John's Cathedral and the University of Hong Kong, that are wholly owned by the landowners. If the above mentioned argument is to be invoked, compensation would only be given if these two pieces of land are compulsorily resumed. Since the signing of the Peking Convention, all lands are held on leases. As no one owns any land, naturally there is no case of people's ownership being taken away. Does that mean that the Government, in resuming leased land, is not required to pay any compensation? This is of course not the case. As long as the Government intends to deprive the landowners of their rights, compensation has to be given. Ownership should include the rights to use and develop the land.

The Government keeps on saying that the compensation problem will be examined in the main review to be conducted in April this year. I really wonder why the Government has to rush the Bill through without even deliberating on the principle of compensation. One cannot help feeling that the Government is "playing foul".

(4) The problem of setting up an Independent Appeal Tribunal

Lastly, regarding the proposal of setting up an Independent Appeal Tribunal, although the Government has now indicated that an independent appeal channel will be established as soon as possible before the main review to deal with appeals under section 17, it insists that the appeal channel handling objections under section 6 shall be dealt with in the main review. For cases under section 6, the affected landowners will receive no compensation and cannot raise their objections through an independent appeal channel. This is unreasonable and unfair.

Sir, in view of these remarks, I think that unless major amendments are to be made, this Bill should be shelved and the main review on Town Planning Ordinance should be carried out immediately.

Sir, with these remarks, I do not support the motion.

MR MARTIN LEE: Sir, the Bill before us is an important and necessary measure to prevent further deterioration in the environment of the New Territories. As convenor of the OMELCO Standing Panel on Environmental Affairs, I am very concerned that we take urgent action to preserve our open spaces and natural resources against pollution -- car dumps, open storage areas, and so forth.

Sir, it is important to emphasize that this Bill is only an interim measure before the comprehensive town planning review that is to take place next year. During that review, we must devise policies that will provide for controlled growth in the New Territories while at the same time protecting the few open spaces and green areas that we still have. For, it is only through careful planning and zoning that we will be able to ensure that our land is put to its optimum use for the benefit of all our citizens.

In the aftermath of the Melhado decision in 1982, land development in the New Territories has proceeded in an uncontrolled and haphazard manner. Many of the provisions in this Bill should have been implemented a decade ago, and the failure of the Government then to enact statutory controls has resulted in the present chaotic situation. Up to this day, I am still unable to understand why no action had been taken by our Government after an adverse decision in the Melhado case.

Nevertheless, I would like to commend the Administration for its determination to forge ahead with this Bill despite the strong political pressures it has received from within and outside Hong Kong. At times, the very vocal opposition came close to intimidation. Yet, the Administration persevered. It carefully and patiently explained why the Bill was good policy and eventually won widespread support from the people of Hong Kong.

I believe, Sir, that the United Democrats of Hong Kong is the only political group in Hong Kong which has publicly supported the main provisions of the Bill from start to finish, although we proposed certain amendments to it. We are happy to see the support which the community has now given to the Bill, and we look forward to working with the Government on other issues which will benefit the people of Hong Kong.

Sir, many points have already been dealt with by my honourable colleague, Mrs

Rita FAN, the convenor of the ad hoc group, and I will not reiterate them. I would like to discuss only four matters: the Bill's compatibility with the Joint Declaration and the Basic Law, the right of appeal, the penalties for violations of the Bill, and public participation in the planning process.

The first question is whether any aspects of this Bill violate the Joint Declaration or the Basic Law. Those who claim such a breach exists point to Annex I, Section VI of the Joint Declaration, which states:

"Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law."

The language in Article 105 of the Basic Law is virtually identical to this provision of the Joint Declaration.

It is claimed that this Bill contravenes the Joint Declaration and the Basic Law in two ways. The first is the promise that "rights concerning the ownership of property ..... shall continue to be protected by law."

Essentially, this provision in the Joint Declaration and the Basic Law envisions that the current legal framework in Hong Kong regarding property rights shall continue. An essential and long-standing component of our legal framework, which is consistent with that of all common law countries, is that the Government has the right to regulate the use of land in the public interest. For right of the property owner to use his or her land is not unlimited; rather, land use must be consistent with regulations legally enacted by the Government.

It is plainly wrong to interpret the relevant provisions of the Joint Declaration and the Basic Law to mean that the Government cannot pass any law which affects any existing right to use land, for that would mean that the Government would never be able to zone new areas of land or alter zoning regulations. Sir, I submit that such an interpretation is untenable in law.

The second alleged contravention is the promise that compensation shall be paid for "lawful deprivation." It is claimed that the restrictions in this Bill will deprive landowners in the New Territories of certain development rights and that they

should thus be compensated. Deprivation, however, cannot be read to mean any limitation on development rights, for such an interpretation would mean that current zoning restrictions in urban areas of Hong Kong are likewise in violation of the Joint Declaration and the Basic Law in that the restrictions "deprive" property owners of their rights to develop their land in any way they like.

According to the practice accepted by all common law countries, legally enacted restrictions on land use do not necessarily constitute deprivation. A deprivation necessitating compensation occurs only when the Government actually resumes land under the Crown Lands Resumption Ordinance, and the definition of what constitutes a "resumption" is a well-established legal concept in Hong Kong.

The mere contention that the Bill violates the Basic Law, moreover, raises an important point. The Basic Law at this time has no legal effect; it does not become the law of Hong Kong until 1 July 1997. Any attempt now to use the Basic Law as a weapon to attack proposed legislation before this Council is both dangerous and irresponsible.

We must also remember that after 1997, it is the courts of Hong Kong Special Administrative Region (HKSAR) which will be responsible for interpreting the Basic Law within the limit of autonomy of the HKSAR. Although Article 158 of the Basic Law also grants the power to interpret the Basic Law to the Standing Committee of the National People's Congress, the New China News Agency (NCNA) branch in Hong Kong has no authority whatsoever to interpret the Basic Law. Hence, for the NCNA branch in Hong Kong to attempt to pre-empt the Hong Kong court by putting its own interpretations on the Basic Law deals a grave blow to the integrity of the Basic Law itself and violates the very foundations of the policy of "one country, two systems."

Sir, I would hope that in the future, no particular group within Hong Kong will invite the NCNA to interfere in the internal matters of Hong Kong, for such interference by representatives of the People's Republic of China (PRC) Government will only damage Hong Kong. If groups of disgruntled citizens begin now to go to the NCNA to invite PRC intervention in local Hong Kong issues, then I ask what will become of our promised high degree of autonomy after 1997? For the sake of Hong Kong, we must be masters of our own house and learn to settle our own affairs without inviting outside interference.

The second question concerns the right to appeal from a denial of permission to develop property within a Development Permission Area. Under the current law, members of the Town Planning Board who have participated in the decision in the first instance are not prevented from hearing an appeal against that decision. Such a dual role contradicts the principles of justice and impartiality. Though an appeal to the Governor in Council is possible, such an appeal is discretionary, and it is impractical for the Governor in Council to be responsible for handling such appeals.

Hence, I urge the Administration to fulfil its promise to this Council and establish an independent appeal body as soon as possible and allow an aggrieved party to appeal as a matter of right. This independent appeal body should be chaired by a legally qualified person, for example, a District Judge. In addition, members of the Town Planning Board who have participated in the initial decision on an application should be barred from hearing an appeal therefrom.

The third question, Sir, relates to penalties. The original Bill provided for a maximum penalty of a fine of $500,000 and imprisonment for one year and a daily fine of $10,000 for each day during which the offence is proved to have continued. Because of objections from the Heung Yee Kuk, the Government agreed to reduce the penalties by removing imprisonment completely and reducing the fine to $100,000, while maintaining the daily fine of $10,000. Sir, in discussing the penalties, it is important to bear in mind that the penalties represent the maximum which a court can impose, and that they are intended only for a worst-case scenario, such as a flagrant abuse by a repeated offender. Indeed, the courts will not impose any custodial sentence unless it is absolutely necessary and the imposition of fines has failed to deter. As for daily fines, they are very rarely imposed because of the practical difficulties in its enforcement.

Let us look now at a really bad case of a landowner who infringes the law by using his land to store containers so that it constitutes a danger to his neighbour in times of heavy rain. Even if he repeatedly causes flooding and massive damage to his neighbour's land, a magistrate would be powerless to punish the persistent offender by sending him to prison. Would there not be an uproar in the community if this were to happen?

Sir, I do not insist on the maximum period of imprisonment of one year; for I think six months would do. But there should be a power given to the courts to imprison a persistent offender in the worst-case scenario.

Let me just give an example to Honourable Members to illustrate my point. Section 32(3) of the Buildings Ordinance provides: "No person shall obscure or deface any street name or building number." And section 40(1C)(b) provides that "any person who contravenes section 32(3) shall be guilty of an offence and shall be liable on conviction to a fine of $2,000.00 and to imprisonment for six months."

If a court has power to imprison someone for having defaced a building number for six months, can it really be suggested that there should be no imprisonment at all for a persistent offender under section 23(6) of this Bill who causes massive damage to his neighbour's land?

So the final matter concerns public participation in the planning and zoning process. It is important during the comprehensive review next year and during planning efforts in the future that there be adequate avenues for public participation. The public should have the right to make their opinions known on planning and zoning matters, because these matters affect them and the Town Planning Board and Government need to listen carefully to these opinions.

Sir, for these reasons and with some reservation on the matter of penalties, I support the Bill subject to the proposed amendment.

MR BARROW: Sir, may I thank Members for allowing me to speak out of order.

This Bill is important to the whole community and to the tourism industry which fully supports its passage.

The Tourist Association constantly receives a litany of complaints from visitors regarding the appalling scenes of discarded rubbish throughout Hong Kong's rural areas. This runs the gamut from hamburger wrappers to wrecked cars and containers. These are indeed a blight to our countryside.

The association is in the midst of making a major marketing effort to encourage visitors to Hong Kong to stay an extra day. Key elements in this programme are tours by motor coach and on foot to Hong Kong's many rural parts. It is quite counter-productive for visitors to be faced constantly with eyesores in the environment. We often hear the comment "Why can't Hong Kong clean up its environment similar to what Singapore has done?" There is no valid reason, Sir, why we cannot,

provided legislation is passed and enforced, setting forth proper planning.

Sir, with these remarks, I support the motion.

4.40 pm

HIS HONOUR THE PRESIDENT: There are still a large number of Members who wish to speak. Members might like a short break at this point.

5.06 pm

HIS HONOUR THE PRESIDENT: The Council will continue with the debate on the Town Planning (Amendment) Bill.

MR POON CHI-FAI (in Cantonese): Sir, all along, the Administration has not laid much emphasis on town planning measures and community building work in the New Territories. As a result, our rural areas have been in want of good planning and adequate community facilities. It was not until recently that the Administration expedited some measures to improve the rural environment and community facilities and extended the application of town planning control to cover the whole of the New Territories. Undeniably, all these measures will help improve the quality of living of the residents in the New Territories. As a matter of principle, the inclusion of rural lands under town planning control will enable the use of these lands in a more effective and reasonable manner and improvement will also be made to our rural environment. These are reasonable proposals and they deserve our support. However, before the official passage of the Town Planning (Amendment) Bill, we have to consider whether the Bill is adequate and well-considered. And we have to determine whether the Bill is in accordance with the principle of equity and whether it will be detrimental to the legitimate rights of the public. Before there are solutions to these fundamental problems, I do not think there is any need to pass the Bill hastily.

Sir, it is obvious to all that the amendment Bill is far from adequate and has given rise to a number of contentious issues. In fact, the Town Planning (Amendment) Bill only introduces control over the future land use but evades the existing problems of severe environmental pollution, silting up of rivers and undesirable land use.

It merely provides for enforcement measures against unauthorized developments within a Development Permission Area but makes no reference to those non-conforming developments outside the Development Permission Areas. The Bill is therefore unable to improve the situation or resolve the problems. Furthermore, should compensation be made to legitimate landowners when their rights on land use are adversely affected by the Bill? If so, what implications will it have on the financial commitment of the Administration? Should compensation be made in respect of those lands in urban areas where restrictions have been imposed by the Ordinance in the same way as compensation is to be made in respect of the lands in the New Territories? Is it fair to the landowners whose rights have been undermined by the Town Planning (Amendment) Bill if no compensation is to be made? Can we ask owners of land or property to accept unconditionally derogation from their legal rights merely on the grounds of social needs or the overall interest of the community? In order to comply with the principle of equity, should reasonable compensation be provided for the land or property owners affected while property tax or rates of land or premises whose value has gone up due to improvements in community facilities be raised as a kind of repayment to the community? These questions remain unsettled and call for careful consideration before a final decision can be made.

Sir, the main review on the Bill will be conducted this April and the Administration announced on 27 July last year in the gazette that the "Interim Development Permission Area Plans" would take effect from the gazetting date. It is an offence to undertake developments in the gazetted areas without prior permission. To a certain extent, this measure has imposed control against the abuse of land. Should we pass the Town Planning (Amendment) Bill in a hasty manner under such circumstances when the various issues mentioned above are still outstanding or should we decide on the enactment of the Bill after a conclusion has been reached in the main review and the above issues have been resolved?

Sir, in conclusion, I agree to and support the fundamental principle and spirit of the Town Planning (Amendment) Bill. However, I will abstain from voting for the Bill because it has been steamrolled in a hasty manner without any improvements being made to its contents.

MR TAI: Sir, may I first declare my direct and indirect interests in land in the New Territories and speak against the Town Planning (Amendment) Bill.

The spirit of this legislation aims, firstly, to improve the environment of the rural areas in the New Territories, and, secondly, to provide long-term planning for the future development in the New Territories as well as regulating long-term land use by ensuring future development in the New Territories, for our new towns and adjacent rural areas come within orderly development and such development accords with our needs and aspirations.

The size of the New Territories is roughly more than eight times that of Hong Kong and New Kowloon; over 60% of all land in the New Territories will be affected by this legislation, that is, all the land in the New Territories aside from new towns and the land comprised in the islands.

A substantial amount of representations has been made to the ad hoc group during the process of legislation, and of all the representations made, eight district boards in the New Territories and the Heung Yee Kuk -- being the statutory advisory bodies charged with the duty to advise on local affairs -- advised against this Bill. Some may argue that members of these statutory bodies may have vested interests. However, if we look at the membership at large, they comprise members from all walks of life. Overall, these bodies are the proper forum to collect public opinion, not to mention that the representations made by various professional bodies also tend to advise against this Bill, as mentioned by the Honourable CHEUNG Yan-lung.

All in all, I can safely say that residents in the New Territories approve the spirit of this Bill. Being a representative from that part of the community, I can say that it is in the New Territories' interest to have clean, healthy as well as orderly development to meet the demands and aspirations of the residents. Personally, I consider that as one of the priorities I work in this Council for. But from the list of events in the past years, the number of infrastructural projects taken place as well as the shortcomings in the present Bill, I have great reservation as to the possibility of achieving and attaining the objectives of the Bill. It is but an attempt to brush the problem under the carpet by using this legislation as disguise.

With the increasing economic activities in China, as well as the relocation of our manufacturing activities in the Pearl River Delta, re-export and export trade have become the dominant part of economy in Hong Kong. This has led to Hong Kong becoming the No. 1 container port in the world in terms of trade volume and to extensive construction activities going on both in our new towns and urban areas, not to mention the associated amount of infrastructural projects over the years. These activities

entail pressing demand for reasonable price of land for storage of building materials, equipment for our construction sector as well as container parking space, container storage, lorry parking space and general storage for manufactured goods from China awaiting shipment through Hong Kong. We take pride in being the No. 1 container port in the world and take pride in the pace of development over the years. We enjoy the benefit of our growth but never, never had we, between the 1970s and 1980s, made any allowance for the negative side-effect of this development.

The negative side-effect, which is what this legislation claims to deal with, is long overdue. On various occasions over the years I have requested the Administration to consider the provision of suitable land for storage of container and open storage to meet the pressing market demand, and to provide suitable road networks to cater for the increasing trade and re-export activities between Hong Kong and China. The Administration has over the years refrained from so doing for reasons that it would be against the non-intervention policy to assist any particular trade or business. The Administration has all along, since the mid-1970s, been well aware of the demand for land for the purpose of general storage from the economic forecast of year-by-year increasing re-export activities, and the consequences of lacking a long-term regulatory system dating from the early 1980s since the Melhado case. However, they just take comfort from the gain and neglect the associated problems. Now they try to brush the problem under the carpet only by way of future planning control, bearing in mind, Sir, that existing use of land for general storage under sections 20 and 21 of the Bill is not under the control or regulated by means of any administrative measures.

In percentage terms, 80% of the land capable of being used as open storage come within this category and they are not regulated. The demand for land for storage has now reached saturation point. Even from the Administration's reply to the ad hoc group's questions, a future planning supply of approximately 20% of existing open storage of land will satisfy future demand for the years to come.

I fail personally to see any marked improvement by virtue of this Bill. This is only a portrait of a rosy picture. Environmental problem could not be resolved by legislative nor administrative means alone without commitment of necessary funding to go hand in hand with it. And the Administration is procrastinating in the provision of funds to achieve this end.

In 1989 the Rural Improvement Strategy was presented by the Administration to

this Council and to the various district boards in the New Territories outlining the determination of the Administration to improve the environment and road network of the rural areas in the New Territories in respect of drainage, access and so on. The Government intimated that about $4 billion will be earmarked for this purpose over a period of 10 years. Up to now, and until 1994, only $360 million approximately is available for projects spreading over five years, not to mention that the substantial part of these projects falls within new town developments such as Tin Shui Wai.

We all know and have seen that squatter areas in the urban areas during the 1960s posed also environmental and health problems. But we provided people with adequate housing, either temporary or permanent, before we took enforcement action. The provision of public and temporary housing also cost us a lot. The existence of illegal hawkers presented us with similar problems, but we took appropriate measures by provision of licences for them to trade in particular spots in an orderly manner.

The Administration dare not prohibit all general storage use in New Territories land by legislative means because they know this will have a serious economic consequence on our economy and also hinder seriously our construction activities. Yet they come to this Council with a half-hearted approach and half-cooked measures. The lack of consultation by the Administration by taking retroactive measures also bears criticism. It has been the practice of the Administration to consult Heung Yee Kuk since its inception, especially on land matters in the New Territories, and with the establishment of the district boards, it has been the practice to consult them on matters which have profound bearing on the district. The excuse of the Administration for failing to consult these bodies is that landowners will landfill their land if they are aware of the retroactive measure contained in this legislation, thereby defeating the object of the legislation.

But then, may I ask, is the Administration aware of the problem long existing since the late 1970s and what steps has the Administration been taking over these years to mitigate or to resolve the problems? If there is such great urgency and secrecy to deal with the problems, why not take appropriate measures by then? One can argue that there is an ad hoc group on this Bill and representations can be made to the group. If this is the case, why is it that the practice of consultation with the Heung Yee Kuk and the New Territories district boards on land matters continues? Why in many cases prior to the introduction of legislation on matters concerning finance, health, education and labour consultations with the appropriate bodies were

made before the process of enactment? By the presentation of the Rural Improvement Strategy to the Heung Yee Kuk and the district boards and by the long established consultative practice, there is a legitimate expectation that regulatory and retroactive measures as proposed in the Bill should be the subject of consultation with these statutory bodies. If one aims to defeat the opportunity to consult in accordance with the long established practice, this would be a case of infringing the principle of natural justice and of mala fides on the part of the Administration.

The parallel example I can think of is the recent "loudhailer" case. The defendants infringed an old unused law. Previous infringements of this law had not been prosecuted. The question is why prosecution should be instituted? It was held by Court of Appeal that there was a legitimate expectation by the defendants that they would not be dealt with under our criminal law. In instituting prosecution, it is a breach of natural justice.

The other aspect of the Bill which bears criticism is section 20 of the Bill. For over 25 years we have in the New Territories developed various new towns. Yet planning for the rural areas and the urban fringe areas has been neglected. With the passage of the Bill we are presented with plans of circles encompassing hundreds of hectares of land labelled as Interim Development Areas. This will be carried forward for six months, then again gazetted as Development Permission Areas without detailed zoning to provide certainty as to the usage of land for a further three years or maybe four if according to section 20(4), not to mention that the Administration has from years back conceived the idea of extending the Town Planning Ordinance to the rural areas and the urban fringe areas and a task group has been formed some years back to look into the matter and has presented to the Administration its recommendations. Surely one would have thought that the proposed Outline Zoning Plan for the rural areas would be on the drawing board by then. Why it still takes three or four years more to have detailed zoning plans? There is a saying that when there is a will, there is always a way. If we could achieve the completion of an airport and its associated infrastructure within 10 to 12 years, why it should take about three or four years just to prepare plans for our rural districts? The determination and the will of the Administration to achieve that objective as stated in the Bill is called into question.

The other area which calls for improvement relates to the question of appeal procedure under the Town Planning Ordinance and the question of compensation. These issues have been looked at since the 1970s and recommendations have recently been

made to the Administration by the task group. Again, the Administration has procrastinated in living up to the issues involved and I understand that consultation will begin on those issues for a more substantive revision in the future years relating to our Town Planning Ordinance. Nonetheless, faith in dealing with the matter is called for. Since the Administration is well aware of this contentious issue, why take a piecemeal approach to revise the Town Planning Ordinance?

Relating to the question of compensation, I would say that land held under the Block Crown Lease affected by this Bill forms one of the most contentious issues which has been strongly put by the New Territories sector. I have the following observations.

Firstly, the only lawful purpose of land held under the Block Crown Lease, apart from land which has been conferred with building status, is for agricultural and open storage, and limitation of any of such use would be considered prohibitory.

Secondly, the issue of compensation arising from such limitation has long been noted, or if not, should be well contemplated by the Administration. This issue should have been dealt with by this Bill, rather than taking a piecemeal approach to consider this particular issue at a later stage during the main revision.

Thirdly, one should consider the difference between the restrictive effect in dealing with town planning matters in the urban areas as against the prohibitory nature of the limitations on the lawful use of land under the Block Crown Lease. The contractual rights between the Crown and the Crown lessee shall be well considered. It is well established and considered fair and acceptable by the New Territories sector that any change or modification of the Block Crown Lease condition regarding usage of land entails payment of large sums of land premium by the landowners to the Government. The question of fairness is raised if legislative measures prohibiting the lawful use of land held under the Block Crown Lease are introduced. It all hinges on the principle of mutuality and fairness.

Fourthly, what most landowners ask for is not the amount of compensation but the establishment of the principle and avenue to claim for compensation; the liability and quantum are to be determined by an independent body acting in a judicial capacity which will rule on the prohibitory effect of the Bill which has rendered the land virtually incapable of being put into any economic use. The Administration has in this issue over-inflated the amount of compensation which the Government may be liable

to pay out. As I have stated earlier, only a limited amount of land will be affected by this Bill because land in the existing use for open storage will not be affected and not every piece of New Territories land is capable of being used for open storage.

In the urban area people's savings and investments take the form of foreign currency, stocks, cash in the bank and purchase in property, but in New Territories, it is investment in land. There still exist small segments of people whose livelihood depends on meagre rental income from land and it is that group of people whose livelihood will be severely affected by the prohibitory nature of this Bill. This is what I am worried about.

Permit me, Sir, to comment on a number of questions raised by Mr Martin LEE regarding the Joint Declaration. As I see it, Sir, the Joint Declaration provides rights concerning the ownership of land which shall continue to be protected by law and that any lawful deprivation shall be compensated for. We are not asking for compensation in respect of development rights. What we are asking for is a crude contractual right dating back from the date of the lease. We all know and accept that any change in development potential under the Town Planning Ordinance should not be the subject matter of compensation, but what we are talking about is the right of lawful use which has been deprived of by the virtue of this Bill.

The second area I will go into which has arisen out of Mr LEE's speech is the question of involvement of the People's Republic of China and the question of intervention. Though I am not a party and I have not been involved in the representation, as far as I know, representation has been made by Heung Yee Kuk to the Government, Her Majesty's Government as well as the People's Republic of China. If one thinks of the Joint Declaration, Sir, as an agreement between two sovereign states whilst the people of Hong Kong, who are the real ones to be affected, were never involved or are never a party to that agreement, and if one detects there is a possibility of departure from what is contained in the Joint Declaration, whom should one turn to? If one sees that the People's Republic of China after 1997 will try to manipulate the future Special Administrative Region Government and enact legislation contrary to the spirit of the Joint Declaration, I would advise him to go to Her Majesty's Government to seek redress. But in the present case I do not think that the Kuk's action by making representations on aspects of the Joint Declaration constituted interference with Hong Kong's domestic affairs.

With these remarks, Sir, I oppose the Bill.

MR LAU WONG-FAT (in Cantonese): Sir, first of all, I must declare that I am a landowner of the New Territories and the chairman of the Heung Yee Kuk.

I believe that many of us are heavy-hearted because of the outbreak of war in the Middle East and the strained Sino-Hongkong relationship. Though the overall situation makes us worry, we should discharge our duties and adopt a pragmatic approach as usual in the careful deliberation of the Bill.

The Town Planning (Amendment) Bill is undoubtedly a controversial Bill with far-reaching implications. Although the Administration and the Legislative Council ad hoc group have put forward a number of amendments to the provisions, some key issues still remain unresolved. Under such circumstances, the Bill contains serious flaws and requires further examination. However, throughout the whole legislative process, the Administration has given us the impression that it is wilfully rushing through the Bill without regard to whether the Bill itself is in order.

We are puzzled and do not understand why the Administration has to pass this much controversial Bill in such a great hurry. It is improper to pass the Bill hastily because many provisions are still debatable. It is even more unreasonable to rush through a legislative procedure ahead of the main review which has been under preparation for a long time and will start in two months' time. Enactment of law is a serious matter and a piece of legislation so enacted is definitely not meant to be short term. Unless the Administration is not sincere in carrying out the main review, otherwise the Town Planning (Amendment) Bill should be shelved and a decision on the provisions be deferred until the main review is completed. By doing so, the confusion caused by a frequent change of legislation can be avoided and those affected will probably receive a fairer treatment.

The intention of the Bill as announced is to improve the rural environment. If the issue is to be viewed from this perspective, there is no pressing need to pass the Bill as 85% of the land in the New Territories suitable for open storage have already been used for such purpose and the Bill has no binding effect on existing usage. So there should not be any imminent danger of further degradation of the environment even if the Bill is shelved.

The aim of the Bill is not as simple as it appears. In essence, it involves

complicated and important constitutional and fundamental problems among which the question of compensation is a key issue. In spite of its lengthy study and consideration, the views of the Legislative Council ad hoc group on this issue are still gravely divided. Under the principle of natural justice and equity, the question of compensation must be considered alongside with the Bill and should not be dealt with separately. It is totally unacceptable that the Administration should refuse to consider the question of compensation now on the pretext that it will be studied in the main review. Law enactment is a serious and important process during which all factors have to be taken into account thoroughly and carefully. It should not be conducted in a piecemeal manner or by circumventing certain key issues selectively simply to facilitate the passage of the Bill.

Sir, to pass the Bill without addressing the question of compensation is tantamount to denying the right of landowners to receive fair treatment when they are affected by government measures. Unless the Administration has presumed that no compensation would be offered after the main review, how can it be considered legally justified for landowners to suffer losses before the main review is completed and before the introduction of another new amendment Bill? Considering the retroactivity of the provisions in relation to the "Interim Development Permission Areas", I would like to know whether the landowners affected can seek compensation from the Administration to cover their losses in the preceding period if the main review concludes that compensation should be made.

On the question whether compensation should be made, some feel that since there is not any provision for compensation in the original Town Planning Ordinance applicable to urban areas, for equity reasons compensation should not be payable in the Ordinance applicable to the New Territories. Such deduction appears to be reasonable.

Yet in fact, it is a fallacy. No compensation is payable under this outdated Ordinance does not mean that it is reasonable to deny compensation, nor does it imply that no amendment can be made. Furthermore, to treat the urban areas and the New Territories alike is to ignore the unique historical background of the latter.

Unlike the Hong Kong Island and Kowloon, the New Territories are leased land and the land policy is thus different. I wish to take this opportunity to briefly introduce the history of land use in the New Territories. Before the United Kingdom leased the New Territories in 1898, there was no restriction on the right to use the

land by landowners in the New Territories. The lease for the New Territories did not contain any provision to change this entitlement. Since 1898, the Hong Kong Government has adopted a prudent policy to preserve as far as possible the customs and traditions of residents in the New Territories. Sir, in the year 1900 the then Governor, Sir Henry Arthur BLAKE, referred to this issue in his speech as follows, "Your (residents of the New Territories) commercial and land interests shall be protected and your customs and good traditions will not be interfered." Today, 90 years later, I submit that the Hong Kong Government should continue to respect and keep this promise.

In view of the abovesaid historical background, the Sino-British Joint Declaration awards different treatment to the land lease of the New Territories. The use of private land in the New Territories is based on the terms of the Block Crown Lease which is a contractual agreement between the landowners and the Government. Under the conditions of the Block Crown Lease, landowners in the New Territories can use their land for open storage purpose. This Bill virtually deprives landowners of the contractual right they are originally entitled to in using their land. The request by the affected landowners for compensation is fully justified and reasonable. Our colleague, the Honourable Andrew WONG, who is conversant with the constitutional system of Hong Kong, has expressed his incisive and expert opinion on this issue to the Legislative Council ad hoc group.

At present, developers and landowners have to pay premium to the Government for any change in land use if they want to enhance the economic value of their land. On the basis of the principle of fairness, the Government should pay compensation if restriction on the use of private land causes financial loss on the part of landowners. If the Government is allowed to get all the benefits while the interests of private citizens are not properly protected, it will be nothing short of an oppressive rule in which "the officials can do any outrageous acts at will while citizens have to abide by strict rules".

As regards the setting up of an independent avenue for appeal, it is regrettable to note that although there is overwhelming support for the proposal, the Administration still refuses to give due recognition to this issue in the Bill. Even if the proposal is to be implemented in future, we will probably have to wait for quite a long while. As no immediate measures have been provided to solve the imminent problem, the affected landowners have been denied of a timely and fair protection of their property right, though such protection is the most important element in a

capitalist society under the rule of law.

The Hong Kong Government has all along advocated the policy to rule by consensus. However, in its handling of the Town Planning (Amendment) Bill, I cannot see any traces of attempts to rule by consensus.

Four professional bodies, namely the Hong Kong Institute of Architects, Hong Kong Law Society, the Royal Institution of Chartered Surveyors (Hong Kong Branch) and Hong Kong Institute of Surveyors have shown deep concern about the Bill. In a joint letter recently submitted to the Members of this Council, the four professional organizations have advised that the Bill can hardly alleviate the existing and potential problems caused by open storage in the rural areas. Nor can it provide any guidelines for the future use of land. Instead, a licensing system will be more effective in improving the environment of rural areas. It has also been pointed out by the four organizations that the Government has overlooked some important constitutional and fundamental problems and that the Bill should be withdrawn unless major amendments are to be made. The expert opinion and consensus of these four organizations on legal and land matters are highly representative. I believe my colleagues should fully respect and give consideration to their opinion when making decisions on the Town Planning (Amendment) Bill.

Heung Yee Kuk is the statutory advisory body in New Territories affairs. However, to the regret and discontentment of the Kuk and the landowners in the New Territories, there was no prior consultation on this issue and the opinion subsequently expressed by the Kuk was not given due attention. They originally planned to launch a large-scale protest rally to express their strong dissatisfaction about the Bill. Nevertheless, in view of the fact that the relationship between China and Hong Kong has yet to be improved and that the international political scene is unstable, the Heung Yee Kuk has decided, in the overall interest of the territory, to shelve these protest activities for the time being to avoid causing any adverse effect on the community. However, it does not mean that Heung Yee Kuk and the landowners have wavered in their stand against the Town Planning (Amendment) Bill. Heung Yee Kuk will continue to object strongly to the unreasonable provisions of the Bill.

Sir, with these remarks, I oppose the Town Planning (Amendment) Bill.

MR EDWARD HO: Sir, I must first declare my considerable interest, though not

necessarily pecuniary, in the Town Planning (Amendment) Bill 1990. As an architect, I am involved in some projects that may lie within an Interim Development Permission Area. As an individual, I have served on the Town Planning Board and chaired an advisory group to advise the then Secretary for Lands and Works on the overall review of the Town Planning Ordinance. The advisory group completed its work in January 1989.

The Town Planning (Amendment) Bill 1990 has evoked a huge volume of comments from the community. The purpose of the Bill was professedly to deal with the Government's perceived environmental problems caused by storage of containers and other materials, open air workshops and car dumps in the New Territories. The Legislative Council Brief stated that "as a major step to improve the rural environment and to control the open storage problem, the Government considers that there is an urgent need to amend the Ordinance to extend statutory planning jurisdiction to the entire territory and to introduce a system of development control in selected areas".

That purpose is a worthy one. I have long advocated extending the Town Planning Ordinance to cover the entire territory. But, unfortunately, the actual content of the Bill contained a number of issues of fundamental and far-reaching implications -- implications that extended way beyond the original ambit which was for the control of immediate environmental problems.

In addressing the problem of open storage on agricultural land in the New Territories, the Administration included in the Bill attempts also to remove the liability of the Town Planning Board and the Government for any loss or damage suffered as a result of their negligence or omission -- section 4(3); to widen the power of the Director of Planning and public officers -- section 2(5) and section 25; to limit the period by which an aggrieved person may appeal under section 17 to 30 days -- section 17(7); to impose immediate restriction on land use by means of Interim Development Permission Areas and Development Permission Areas in all parts of the territory including those already covered by Outline Zoning Plans -- section 20(1); and to empower the Authority to enter land or premises without warrant or notice for the purpose of inspection -- section 22(1)(a).

Thus, we should not be surprised at the considerable objections from not only interested bodies such as the Heung Yee Kuk and the Real Estate Developers Association, but professional organizations such as the Hong Kong Institute of Architects and the Hong Kong Institute of Surveyors. All of these organizations were in favour of

measures to control the environmental problems and to extend statutory planning controls to the non-urban areas. What they objected to was how these control would be brought about.

The Administration claimed that the reason why the Bill was introduced all of a sudden and without prior consultation of any kind was because of a sudden surge of undesirable usages of agricultural land. This may, to some extent, be true. But, the fact is that the proliferation of open storages, especially empty containers storage, was due to a lack of comprehensive planning of infrastructure to keep pace with the fast development of our container terminals.

Thus, the landowners in the New Territories are fulfilling a real need that the Administration has failed to provide. Furthermore the irony is that the present Bill makes no attempt to control existing uses and solve present problems whilst the present demand may have largely been met since further demands may not be as great as in the past few years due to a general slowdown of economy. The questions are therefore: how much the Bill can solve our environmental problems? And is there such an urgency that statutory planning controls have to be implemented in the manner envisaged?

The problem of going ahead with the present Bill is that planning controls will be carried out initially by the designation of Interim Development Permission Areas, when planning decisions are left solely to the Director of Planning, and subsequently by Development Permission Areas when planning decisions will be made by the Town Planning Board, who will still essentially rely on the recommendations of the Administration. The problem is that, unlike the urban areas, there will not be a set of Outline Zoning Plans, at least not for many years, that the Board and the public can rely on: the Outline Zoning Plans being statutory plans that have gone through a due process of public exhibitions and hearings of objections.

If the Administration were keen to control the environmental problems that they now aim to do, it could do the following:

Firstly, it can allocate sufficient land for container storage near the urban areas so that market forces will render it uneconomically viable for them to be on private agricultural land dispersed in the New Territories.

Secondly, it can bring forward the main review of the Town Planning Ordinance so that

all the issues relating to it can go through the necessary consultation. The advisory group that I mentioned at the beginning of my speech completed its work in January 1989 and there is no reason why consultations could not have taken place already in the past two years, and no reason why it cannot now take place.

Thirdly, at the same time, Outline Zoning Plans should be prepared for all areas that have not been covered so that they would be available as soon as statutory planning controls are extended to such areas. With Outline Zoning Plans, property owners would be able to see the kind of economic value that would be attached to their land and some of the objections raised by leaseholders in the New Territories may become hypothetical.

Fourthly, a licensing system can be devised as a short-term measure to control environmental problems. Although I am convinced that a licensing system cannot replace a land use planning control system as a permanent solution, I still believe that it can serve to control environmental problems relating to nuisance, safety, hygienes and drainage in the intervening period before total planning controls are enforced by Outline Zoning Plans. More significantly, licensing system can also bring about improvements to existing nuisances that the Bill is not able to achieve.

Through the sustained efforts of members of the ad hoc group under the able leadership of the Honourable Rita FAN, the Administration has conceded to a number of important points brought forward by the group, and a large number of amendments will be tabled at the Committee stage. As a consequence of these amendments, many of my previous concerns which are shared by the professional institutions have been removed. For instance, the liability of the Town Planning Board and public officers will remain as before; the power of the Director of Planning and public officers will be confined to only those stipulated in the Bill as amended; the Development Permission Areas will not cover those areas that have already been covered by Outline Zoning Plans; and the Administration has agreed to establish an independent appeal tribunal other than the Executive Council under section 17 of the Town Planning Ordinance as soon as possible and before the main review of the Town Planning Ordinance in 1991.

Sir, despite these fairly major concessions by the Administration, I find it difficult to support the Bill. Because of the tremendous economic values attached to land use in Hong Kong, town planning decisions have enormous financial impacts on property owners. Nevertheless, if any community is to improve its quality of

environment, the rights of individuals have to be subject to the interest of the community as a whole. Likewise, planning can also enhance the interest of other individuals. Thus, planning decisions carry important responsibilities, and changes in the planning system or in administrative control procedures should be carried out in the most careful manner. I am not convinced that such care has been exercised by the Administration in putting forward the present Bill. Neither am I convinced that the Administration has done its best administratively to have avoided the environmental problems and that those problems cannot be solved in a more satisfactory manner.

Thus, inasmuch as I wish to see statutory planning controls extended to the entire territory as soon as possible, and inasmuch as I wish to see the removal of environmental nuisances from the New Territories, I consider the measures put forward to be in the wrong manner and with the wrong timing to solve the very problems that could have been avoided by the Administration.

With these remarks, Sir, I do not support the Bill.

6.00 pm

HIS HONOUR THE PRESIDENT: It is now six o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be completed.

Question proposed, put and agreed to.

MR ARCULLI: Sir, firstly I would like to declare my interest before speaking on the Bill before the Council today. I have to declare my interest as shareholder and director of several property companies. Secondly, my firm is actually acting for a client that made a representation to the ad hoc group in respect of the present Bill and lastly, as honorary legal adviser to the Real Property Developers Association which also has made a representation to the ad hoc group on this Bill. That having been said, I would like now to deal briefly with two matters. Firstly the matter

of delegation of power and secondly the matter of compensation. The Town Planning Amendment Bill also has attracted more than its fair share of controversy during the present Session and to draw your attention to those two matters I would say this as follows.

The proposal to delegate power to government officials has caused some concern, as you heard, to a number of organizations. Under the proposed section 2(5) of the Bill and I quote: "The Board may delegate any of its powers and functions, other than those under sections 4(2), 6, 8 and 17, to a committee appointed under subsection (3), the Authority, a public officer or class of public officer." These concerns were essentially that the existing section 2(5) of the Bill does not appear to differentiate the extent to which any delegation, whether to a committee of the Town Planning Board or the Authority or a public officer or class of public officers, can be effected and might therefore give the Director of Planning or his officers excessive powers in that they could, for instance, virtually impose any conditions in the Development Permission Areas. Furthermore the proposal to allow three appointed members, together with one appointed official member and the chairman or vice chairman, to carry out a large portion of the functions of the Town Planning Board has also been criticized as inappropriate because it might encourage exchange of interests and lobbying.

In response to these comments, the Administration explained that what was intended to be delegated to committees or public officers included the power to prepare a draft plan, amend a draft plan and grant or refuse an application for permission. Subject to agreement by the Town Planning Board, matters of minor or routine nature would also be delegated to public officers. The Administration stressed that these committees would be appointed by the Governor and drawn from members of the Town Planning Board.

As a result of this explanation, members of the ad hoc group were of the view that there was room for improvement in this regard and the ad hoc group agreed that the matter should be looked into further by the Law Draftsman, the Honourable H.K. CHENG, the Honourable Edward HO and myself. The approach was thus to redraft section 2(5) of the original Bill so as to stipulate what the Town Planning Board could delegate instead of what it could not delegate. At a meeting subsequently held with members of the Law Draftsman's division a proposed new section 2(5) was put forward by the Administration which was refined into the new amendment which I shall move at the Committee stage. The ad hoc group believes that the proposed amendment will

thus limit the scope of the delegation and thus meet the concerns expressed and yet will not in any way hamper the effectiveness of the Town Planning Board in the administration of town planning strategy.

I would like now to say a few words on the issue of compensation. On the face of it there seems to be little by way of argument that can be raised to object to compensating owners whose properties are affected by town planning measures or legislation. But the issue is not that simple. Firstly there is a difference between confiscation of all rights and restriction of rights. The Bill does not seek to confiscate all property rights of owners of land in the New Territories. It seeks to limit contractually permitted uses so as to prevent further serious environmental problems in the New Territories.

Secondly whilst the question of compensation has been addressed we should not just look at properties in the New Territories but also in the urban areas for it would be extremely difficult to justify any basic difference in treatment which automatically leads to the third point, and this is how much money or its equivalent we are talking about.

Other thorny issues facing us include the eligibility and nature of compensation, the method of quantifying loss, and changes in market demand for land for a certain purpose. And the most important of all is where we can get the money to pay the compensation if money is to be the only form of compensation. Sir, I do not want to leave this complex issue without some comment on one factor which I believe in no small way contributed to the problem in the New Territories and that factor is supply and demand. Without a demand for land for container or other forms of storage or car dumps, no amount of effort by owners to use land in the New Territories for such purposes would have led to the present situation. What I am therefore saying is that there may well be fair criticism for the lack of adequate planning in this area and if we are now to "interfere" with market forces we must at least plan for it as best we can.

Sir, these matters, I believe, warrant careful consideration by the Administration and I expect that they will be properly addressed in the overall town planning review which I hope will commence as soon as possible. Sir, everything said and subject to the proposed amendment, I support the Bill.

MRS FONG: Sir, during my two and a half years of membership on the Town Planning Board and my recent participation in the deliberations of the ad hoc group studying the Town Planning (Amendment) Bill, I have become increasingly convinced of the importance of maintaining the independence of the town planning process. The Town Planning (Amendment) Bill presented today is a first step towards increasing the effectiveness and integrity of the Town Planning Ordinance, and as such is long overdue.

The need for this amendment Bill is clear. We can no longer afford to turn a blind eye to the developments in the New Territories. The construction of new towns and the growth of industry in the area have effectively erased the dividing line between what were formerly considered rural and urban areas. The New Territories must be considered as much an area in need of urban planning as any other part of Hong Kong. Thus it is absolutely necessary that the town planning process is extended to cover the New Territories as is provided for in this amendment Bill.

I must emphasize that the passage of this amendment Bill can only be understood as an initial step towards fully addressing the current problems of the town planning process. The existing Ordinance has its weaknesses. They must be attended to and I sincerely urge the Administration to press ahead with the overall review designed to increase the effectiveness of the Town Planning Ordinance. Further, I would urge the Administration to put in measures to control existing usages which are considered environmentally hazardous to the public at large.

Finally, I would like to voice my support for the ad hoc group's recommendation that an appropriate avenue of independent appeal, apart from recourse to the Governor in Council, should be instituted as soon as possible. While I support the strengthening of the Ordinance, I realize that town planning decisions depend much on the particulars of specific cases and that the right to and integrity of detailed review hearings must be protected. A forum not involved in the original town planning decisions must be established to ensure that appeals receive impartial reviews.

Sir, I am strongly in favour of strengthening the Town Planning Ordinance and I support this amendment Bill.

MRS LAM (in Cantonese): Sir, private property rights should not be infringed upon though public interests must be safeguarded. When drafting the Town Planning

(Amendment) Bill, the legislators must direct their efforts towards striking a balance between these two principles.

Due to historical factors, the vast stretch of land in the New Territories is only under the control of Block Crown Leases. All along, the Government has assumed that the Block Crown Leases are valid contracts, under which the landowners can only use their land for agricultural purposes. Nevertheless, in a judicial case in 1983, the court ruled against the Crown and held the view that only clamorous, noisome and offensive trades cannot be operated on the land under Block Crown Leases, and that no unauthorized buildings should be erected on the land. The importance of this judicial precedent is that so long as landowners in the New Territories do not use their land for the above four purposes, they are free to convert their land use in any way.

Since the 1983 case, there appeared in the New Territories many uncontrolled, haphazard and disorderly phenomena: open storage areas proliferate; containers can be used legally as offices so long as they are "placed on" and not "fixed to" the ground, and so on.

Statistics show that between January 1989 and January 1990, the area of land in the New Territories used for open storage purposes increased by 35% and that for holding containers doubled. As a result, the already narrow roads became even more congested with traffic, problems of air and noise pollution were aggravated, and the storage of heavy goods caused the land to subside, leading to the deterioration of drainage blockage. The platforms of the storage areas often caused flooding in the adjacent sites on rainy days. As far as we know, there are at present, about six to seven types of objects placed on agricultural land. Apart from containers, there are old cars, scrap iron, miscellaneous goods, plastics, chemicals and construction materials. These objects not only seriously polluted the environment and affected the ecology, but also damaged the original appearance of the natural environment. The local people's quality of life has been affected and even their safety is in jeopardy.

I used to visit the New Territories several decades ago and had taken quite a number of photographs there. Even now I often let my sons and grandchildren have a look at these photographs. They would ask me, "Is this Hong Kong? Is this New Territories?" These places have disappeared. They no long exist any more.

As chairman of the Environmental Campaign Committee, I feel strongly that such a situation is absolutely intolerable. If the Government allows the environment damaging behaviour to continue and turn a blind eye to it, how can it be accountable to the public at large?

Looking from the social angle, the chaotic development of land in the New Territories has affected the increasing number of residents moving into the new towns. In order to maximize the benefits obtained from their land, some landowners give no consideration to such social prices as environmental pollution, traffic congestion and chaotic development. Such acts are bound to infuriate the public at large, to the detriment of the establishment of a harmonious society.

Some people consider that in order to cope with the above situation, the Government can promptly reinforce the existing environmental protection laws or set up a licensing system to regulate the use of land for open storage purpose, and that it is not necessary to enforce provisions of the Town Planning Ordinance. However, I do not agree to these views. In my opinion, licensing open storage areas cannot solve the problem because it cannot replace overall regional planning. A licensing system would not lead to a rational distribution of those storage areas. It will not be able to offer a comprehensive solution to the incompatibility between environmental protection and land use problems, which can only be solved by planning.

Sir, some landowners think that the Town Planning (Amendment) Bill 1990 infringes upon their property rights. I would like to comment on their view.

The right to decide on how one's land should be used is no doubt part of a property owner's right, but property right itself is also governed by law. As it has not been expressly provided in the laws of Hong Kong that the right to decide on land use shall be subject to no restriction, the Bill before us today is, in my view, not contradictory to existing laws on property rights.

As regards the judicial precedent of 1983, it only indicates that existing legislations do not impose restrictions over land use in the New Territories, that is, the landowners can make their own decisions on land use. However, this freedom can be regulated by the institution of subsequent legislations. Under such circumstance, land use can be regulated by enacting new laws. In other words, it is not a legal issue but a matter of government policy. The Legislative Council has the right to enact new laws to regulate land use for the sake of public interest. Landowners who use their lands for improper purposes are in fact infringing upon the

interests of residents in the vicinity. Their behaviour, apart from spoiling the environment, will also cause a fall in overall land price.

The problem is that the Bill cannot solve the existing problem of open storage and even affirms the existence of open storage areas. The Government should, in its overall review, work out a timetable for a review of the situation by stages, so as to ensure that the existing open storage and car dumping areas will not pollute the environment in the vicinity and create noise nuisance.

Sir, the Bill has caused a lot of arguments since its publication. One of the controversial issues is the question of compensation. The Government has suggested that this question should be examined in the forthcoming overall review. I am of the view that the question of compensation, which bears on principles and resources, is so complicated that it calls for careful consideration and discussion. I fully agree with the Government's suggestion in this regard.

Sir, with these remarks, I support the motion.

MR LAM (in Cantonese): Sir, may I declare interest as a landowner in the New Territories.

Under the present circumstances, I have a premonition that the Town Planning (Amendment) Bill 1990 will be passed. However, the passage of the Bill does not mean that it wins unanimous support. Therefore, at this crucial moment, being prompted by a sense of responsibility, I cannot refrain from expressing my opposing view.

Sir, I can point out directly that the Town Planning (Amendment) Bill 1990 can neither improve the environment nor promote developments in the New Territories. There is in fact no urgent need for the Bill. Since no urgency is involved, a buffer period should be provided so that the rights and interests of all concerned can be considered in an overall review. As we all know, this Council has all along been trying its best to avoid making arbitrary decisions and taking peremptory actions.

The social environment of the New Territories is rather special. Relying entirely on a perceptive approach without an indepth study will afford little insight into the actual state of affairs. Since the Town Planning (Amendment) Bill 1990 touches upon the legal rights of the New Territories landowners in the use of land

and affects the rights of property owners in the urban area as well, it is no good making reckless decisions on such an important issue. At present, opposing voices can be heard throughout various districts in the New Territories and among professional bodies.

As we discuss the Town Planning (Amendment) Bill 1990, I think attention should be paid to some historical facts which the Honourable LAU Wong-fat has pointed out. In 1900, the then Governor of Hong Kong, Sir Henry Arthur BLAKE, made a statement with an undertaking about the New Territories. I think the undertaking should remain valid as Hong Kong is still under British rule. During this period, no alterations should be made to the undertaking to result in the deprivation of the residents' traditional rights and interests.

Sir, in section 13 under Part II of the New Territories Ordinance (Chapter 97) implemented in 1910, it is stipulated that "In any proceeding in the High Court or the District Court in relation to land in the New Territories, the court shall have power to recognize and enforce any Chinese custom or customary right affecting such land." The ruling of the Melhado case given by our Court of Appeal in 1982 concerning land under Block Crown Leases still upheld the rights conferred by Crown leases. However, the Town Planning (Amendment) Bill 1990 violates historical facts. The Interim Development Permission Area Plan now published comes close to freezing the legal rights of the New Territories landowners in using the 15 000-odd hectares of land held by them under Crown leases. Thus, whether in the light of land leases, Hong Kong laws or court rulings, I cannot go against the wishes and rights of a vast number of villagers and echo other people's views in supporting the passage of the Bill.

I shall be greatly disappointed and regretful if the Bill is to be passed even amidst protests from hundreds of thousands of villagers.

Sir, with these remarks, I oppose the motion.

MRS LAU: Sir, I have no difficulty in supporting the spirit of the Bill which is aimed at improving the rural environment and controlling the open storage problem in the New Territories. However I do find it difficult to endorse a piece of legislation which in my view is not only ineffective in addressing the root of the problem but also produces inequitable results.

The Bill as drafted condones existing non-conforming uses. This means that car dumps, container storage and other forms of open storage which presently exist on some 385 hectares of land in the New Territories, however disorderly and objectionable they are or may become, will be tolerated and may continue. The remainder of land users who have not been quick enough to have already jumped on the bandwagon to abuse the environment are however caught. This in my opinion is the fundamental flaw of the Bill. Why should culprits be allowed to go scot-free while law-abiding citizens are shackled. The Administration advocates the planning system alleging that it directs the right use to its right place. But how can the system be effective if the existing wrong use is allowed to stay put in the wrong place? It is quite clear to me that the Bill will not be able to entirely solve the existing environmental storage problems in the New Territories. At best it may be able to prevent the situation further deteriorating but the damage already done, and which threatens to continue, cannot be reversed.

As I see it, the problem can only be solved by regulation of both existing and future usage of land coupled with comprehensive overall planning control of the entire territory. Comprehensive land planning requires careful consideration which takes time. Understandably interim measures are necessary. But the development permission process, applied on a piece-meal basis to chunks of land which actually are not the current source of the problem, is clearly not only unfair but ineffective. Much has been said about a licensing system. I accept the Administration's argument that licensing cannot be a substitute for a planning system, but there is no reason why licensing should not supplement planning and be used as an interim regulatory measure pending the introduction of comprehensive planning. By imposing licensing requirements, not only could future changes of land use be regulated but existing non-conforming uses could also be placed under proper control. The Administration sees the problem of non-conforming uses as a big issue but has nonetheless refused to address it under the present Bill. With this lacuna still existing, I regret that I cannot give the Bill my whole-hearted support and I shall abstain from voting.

MISS LEUNG (in Cantonese): Sir, as a university lecturer and researcher in urban geography and town planning, I welcome the Town Planning (Amendment) Bill 1990 presented to this Council by the Administration, which proposes to extend the application of the Town Planning Ordinance to the whole of the territory including the rural areas and to introduce a system of controlled development in certain areas as appropriate. Although the amendment proposals might give people the impression

that "it had been a long time coming" -- it was not until widespread environmental degradation had been caused through indiscrimate use of land in rural areas which had pushed the public to the limits of their tolerance that steps were taken to introduce the present Bill -- yet the proposals would at least serve to show the Administration's determination to resist further degradation of various aspects of the environment arising from indiscriminate use of land in the rural areas.

Sir, the development of rural areas has followed a disorderly course. Because of lack of effective control of land uses and environmental planning, owners have been quick to exploit this and convert speedily, freely and indiscriminately large tracts of agricultural land from their original uses to open storage for containers, inflammable and chemical substances, dumped vehicles, loose parts and accessories and other materials. All this has brought serious problems to the neighbourhood. Such uncontrolled and unplanned storages not only constitute eyesores but also pollute agricultural land, streams and watercourses, create noise pollution, cause traffic congestion, heighten the chances of fire and substantially degrade the environment. This unnatural course of development has all along been deplored by the public. The health, well-being and interests of residents and farmers in the affected areas have been seriously jeopardized through no fault of their own.

Faced with this obvious and long-existing problem, the Administration has been dilatory in devising effective measures to resist the gross degradation caused by conversion of land from its original agricultural use. To this, I cannot help expressing my puzzlement and regret.

Sir, I believe that the proposals contained in the present Bill to address the existing problem can adequately prevent the continuation of indiscriminate land uses in rural areas and the further degradation of various aspects of the environment. We must resolutely adopt measures of controlled and planned development to address the problem. Only in so doing will the environment of the rural areas be improved. This, however, cannot be accomplished through licensing. Of course, to positively improve the overall environment of the rural areas and the quality of life of the residents and farmers there, the Administration must expeditiously devise an overall long-term development strategy and to lay down an outline zoning plan as the basis for development of the rural areas.

Because the reality of the situation so dictates, the present Bill can do no more than proposing, in a rather negative way, that the Government shall tolerate the

continued operation, without the need to apply for permission, of the various open storages which exist as on 17 July 1990 -- the date the present Bill was gazetted. Therefore the serious problem caused by existing open storages will not be resolved or alleviated after enactment into law of the present Bill. This will be most discouraging. However, I will not, as a few of my learned colleagues have done, take this as an excuse to withdraw my support for the Bill or to abstain from voting on it. I should like to urge the Administration to expeditiously carry out a study as to what practicable measures to take to resolve this intolerable problem. The Administration should adopt development control measures to reduce to an acceptable level the damage and nuisance caused by these so-called open storages so as to effect improvement to land uses in the affected rural areas and also to the environment.

Furthermore, I would suggest that the Administration should provide as much land as possible in suitable locations for storage of containers to alleviate the present shortage of container storage space.

Lastly, Sir, I think that in the course of the forthcoming review of the Town Planning Ordinance there would seem to be a need to consider retitling the Ordinance as "Town and Country Planning Ordinance" so that the Ordinance will have a title which properly and accurately reflects its expanded scope of application covering both urban and rural areas.

Sir, with these remarks, I support the motion.

MR McGREGOR: Sir, I declare an interest as a consultant to a company which advises many other companies on development matters and this may include land issues in the New Territories.

I am sure my honourable friend, Mr Martin LEE, will be glad to learn that two political parties have both supported this Bill and at the same time. So we can consider that the United Democrats and the Hong Kong Democratic Foundation have together scored a double first.

I wish to express my admiration and respect for the Honourable Mrs Rita Fan, the convenor, who shepherded this controversial legislation through a most difficult gestation period in this Council. As an active member of the ad hoc panel which considered the draft Bill and during many argumentative hours and anxious

consultations, I can say that the convenor displayed the right mix of charm, determination, knowledge, tact and bloody-mindedness to ensure that we have a Bill which will not please anybody fully but which can probably be reluctantly accepted by all -- except perhaps the Heung Yee Kuk whose views on one or two points seem set in concrete.

During my long working life in Hong Kong, I have always found that almost nothing gets done without compromise. This Bill is no exception and many, many hours of discussion were spent in seeking to establish acceptable compromises. We have listened to agonized protests and appeals from those who thought that their legitimate and vital interests were being denied or removed. We listened to many appellants who demanded that they be allowed to continue to use their agricultural land for such storage purposes as they wished or, alternatively, that they be compensated for any additional legal restriction that might be applied, through this legislation, on the uses to which their land areas might be put. Others were deeply concerned that the Government seemed to be moving into comprehensive land planning for the entire New Territories under the pretext of dealing with environmental damage. Anxiety has been expressed over the legal and administrative procedures under which appeals can be made by those affected by land planning and land use decisions made under this legislation. And so on and so on ad infinitum.

The panel worked hard to understand the issues, the intentions of the Government, the concerns of those affected and the many submissions made to us. The Bill being considered today is the result of that very detailed and dedicated process.

I wish to place on record a few of the principles and points that guided me in my own participation in the work of the ad hoc group.

I consider that for many years the New Territories has been, and is increasingly, in large part an extension of the urban areas, so much so that much of our future infrastructural, commercial, and industrial development will take place in the New Territories. Hong Kong is no longer composed of separate urban and rural environments but has become essentially a very large urban conurbation. In these circumstances land planning and land use throughout Hong Kong should be dealt with on an equitable and equal basis. This legislation will largely do so, in my view.

If the extension of land planning to the New Territory is the basic intention of the Government, and I think it is, they should have come out to say so specifically

from the beginning and should not really have used the environmental issue to get to the wider concern.

Land planning is in the interest of all the people of Hong Kong and must be a central responsibility of the Government. This is the only way by which Hong Kong, in future, can be developed comprehensively as a single territorial entity with land planning rules and procedures common to the entire land area.

I do not believe that landowners whose land has not been resumed by the Government should be entitled to monetary compensation as a result of land planning or land use decisions which have been taken by the Government and supported by advice from the appropriate board and which the landowners believe have reduced the value of their land holdings. Such planning decisions are made in all countries and do not normally attract compensatory payments. They should not do so here especially given the fact that such payments would have to be made from the public purse. In other words, should compensation be introduced as a feature of this Bill, the bulk of the Hong Kong public, through their tax payments, would have to subsidize a relatively small number of landowners to the tune of billions of Hong Kong dollars. There is no such provision for the urban areas which have long been subject to land planning and land use control and supervision.

At the same time, the Hong Kong Government, once it has the powers conferred by this legislation, must do all it can to ensure that applications made for new land uses in the New Territories are dealt with expeditiously and that developments already in train are not delayed or unreasonably refused. Many millions of dollars have already been spent by companies intending to construct commercial and recreational facilities in the New Territories. These will facilitate services and provide much needed entertainment for large numbers of people. They should be given the necessary assurances as quickly as possible.

I am glad that the Government has entered into a commitment to provide, before the main land planning review is completed, a new avenue of appeal for those who believe they have been wrongly treated by the Town Planning Board in refusing them planning permission. This concession has been mentioned by other Councillors; so I will not dwell on it except to say that it seems to me right that those who made the decisions should not be those who decide on the response to appeals against them.

In passing, it is also quite clear that the Government has failed to recognize

that greater land areas are required for the storage of shipping containers and as car dumps, waste metal and paper dumps and so on, going far beyond the land provided by the Government in or near the urban areas for these purposes. Necessity has caused much of this problem and opportunism has done the rest. The Government must surely re-examine its land planning parameters for this kind of storage and provide planning permission for further controlled development of storage areas.

There is no doubt that for many years the environment of the New Territories has been mercilessly abused for purely commercial gain. There is also no doubt that the Government must now do what it can to protect the people of Hong Kong from further environmental damage. It can only do so through legislation which allows comprehensive land planning to proceed without delay. The main review of the Town Planning Ordinance to be conducted by the Government will, in my view, show that the extension of legal control over land use to the New Territories has been dangerously late in the day.

We in this Council have a duty to secure, as far as we can, the lives and livelihood of future generations of Hong Kong people. That responsibility certainly includes the physical environment in which they will live and work and which, hopefully, they will enjoy.

Sir, I support the Bill.

MR SIT (in Cantonese): The Town Planning (Amendment) Bill 1990, which comes before this Council today for Second Reading, is considered one of the most controversial Bills in recent years, and reminds me of the debate on the Public Order (Amendment) Bill that took place about four years ago on 11 March 1987 in this Chamber. At that time, the Government disregarded public opinion and, under the pretext of public order, forcibly passed, through the mode of "counting fingers", section 27 of the Public Order Ordinance, which met strong opposition, thus seriously undermining freedom of the press and freedom of speech. In other words, it deprived the people of Hong Kong of part of the human rights under the Human Rights Convention. At the time a few Honourable Members' reputation rocketed, because they had the courage to make some fair remarks, and they won the admiration and support of the general public.

The present situation of the Town Planning Bill is similar to that of the Public Order Bill in 1987. The Government, under the banner of "protect the environment and

improve the rural areas", is conducting another naked plunder of the legal right of land use from landowners. At the same time, by making use of the so-called "Interim Development Permission Areas" mechanism, more than 14 000 hectares of New Territories land have been frozen, but in the Town Planning (Amendment) Bill before us today not a word is mentioned on the reasonable compensation to be paid to those who are thus affected. If this Council is to pass the Town Planning Bill today, it will be tearing up its hypocritical mask. In substance, it is making illegal the original legal right of land use through legislative procedure. The original legal land users will not only suffer economic losses but will also have to endure the sanction of the law. We have to search our conscience and ask, what really is "natural justice" and what is "ownership"? One of the most important principles of a capitalistic society is "protect and safeguard private ownership". However, if this Town Planning (Amendment) Bill is passed, then although the Hong Kong in which we live is called, on the face of it, a society of democracy and of the rule of law, it is in fact a society in which the majority bullies the minority, the strong dominates the weak; to put it simply, a society of brute force in which a large number of people suppress a small number.

When the Government was selling this Bill, it made full use of the contradictions between urban and rural areas which had existed since time immemorial, and presented to the public a false image which seemed correct but in fact was wrong. The Government considered that those who objected to the Bill were mainly a handful of New Territories squires and prominent landowners, such as the Honourable LAU Wong-fat and the Honourable CHEUNG Yan-lung and that the multitude of villagers of the New Territories (whom the city dwellers call "country hicks") had, during the process of the Government's development of New Territories new towns, amassed untold wealth, and are living in European style houses and driving prestiged cars. Therefore they should be grateful and try to repay, and should not raise too many objections to the Town Planning (Amendment) Bill; they should defer to the overall interests of the six million people of Hong Kong, thus sacrificing the "part" for the sake of the "whole".

Yet have Honourable Members of this Council really understood the social development process and the economic situation of the New Territories? Of course, in the process of development of the New Territories, a small number of New Territories villagers had the good fortune of becoming rich, but their wealth did not come from stealing or robbery, which I trust the public know very well. Most people are mainly small farmers, who hold a few pieces of unproductive land left to them by their fathers

or elder brothers, and earn a living for their families through farming. With the urbanization of the New Territories, in order to meet the normal demand for water of all the people in Hong Kong, most of the water for agricultural use was diverted during the 1950s and 1960s into catchment areas and reservoirs. This had forced the abandonment of farming of the fields which then began to lie fallow. During these years many New Territories farmers had to leave their own homes, away from their wives and children, and went to Chinese restaurants in Europe where they worked for more than 10 hours a day to make a living. They re-enacted a modern "selling the piggies" drama. Subsequently, the villagers began to raise livestock (for instance a few chickens and pigs) on the land which they legally owned to earn a livelihood. The Government again, for the reason of protecting the environment, drew up the Waste Disposal (Livestock Waste) Regulations, and designated Livestock Waste Prohibition Areas, and put an end to the manner in which New Territories villagers could earn a living. Seen from the abovementioned historical perspective, can Honourable Members, as city dwellers, really blame the New Territories villagers for disregarding the overall interests of Hong Kong? Are villagers really selfish? In the past process of the development of the New Territories, what we saw was that the Government had reaped enormous profits by a variety of means ranging from cajolery to coercion. On the other side of the scale, has it done anything to positively improve the life of the New Territories residents, particularly those in the remote rural areas? Of course some people would defend this by saying: "Has not the Government set up the Rural Development Committee?" If Honourable Members have an opportunity to read the reports of the committee's work, they will know what actually it is about. For this reason, I shall not discuss it further here.

The world shipping industry entered the era of containers from the 1970s, and consequently Hong Kong has become one of the important shipping centres of the world. The demand for land to store containers is growing. Since there was a serious shortage of land to store containers because of the Government's inability to supply it in sufficient quantity, the shipping circle became interested in uncultivated farmland which was accessible in the New Territories. Through leasing, such land was converted for use as open storage where containers were placed. The villagers were thus fortunately able to use their legal right of land use, and collect some $8,000 to $10,000 in rent from land which was not allowed to and could not be farmed. In this way they can earn a livelihood for their families and enjoy a small share of Hong Kong's prosperity as a world shipping centre. However the good luck is not to last. Now the Government, wielding the banner of environmental protection for the overall interests of all Hong Kong people, is seeking to make illegal the legal right

of land use. The nature of this incident is even more serious than when agricultural water resources were cut off and diverted into reservoirs.

During that time, the Government resorted to administrative means, not legislative process. Whilst the livelihood of those involved as a result was affected, they were not deprived of their legal right of land use and the Government's administrative means only affected some of New Territories villagers and did not extend to property owners in all Hong Kong, Kowloon and the New Territories. However the implications of the Town Planning (Amendment) Bill being debated today are far and wide. It is legislation both unfair and illogical. This is because when the Government explained why no compensation in any form would be paid to those who were affected on passing this amendment Bill, the main excuse given was that the question of compensation was extremely complicated and could not be understood even when disclosed; also the amounts involved were enormous and therefore the Government asked that the amendment Bill be passed first before considering the question of compensation. This is an "execution before reporting" and "sentencing before conviction" method. It is a "legislative principle" which puts the cart before the horse and is hardly convincing.

Now allow me to analyse the Government's major argument that the Town Planning (Amendment) Bill 1990 has to be passed urgently to see if this is really justified. The Government's consultative paper on town planning gave two reasons:

(1) The situation in which New Territories agricultural land is turned into open storage is deteriorating rapidly. As the development of this type of land is confused and unplanned, this has not only degraded the environment, blocked river courses, but also congested traffic and damaged village roads.

(2) Government considers that the Ordinance has to be amended urgently in order to extend the jurisdiction of the Ordinance to cover the whole territory, and to implement development control in selected areas as a major step to improve the rural environment and to control the problem of open storage.

Now my views on these two points are as follows. First, on the degradation of the environment and blockage of river courses alleged by the Government. How has the environment been degraded? How many cases of flooding have there been arising from blockage of river courses? How many cases have there been arising from the problem of open storage? The Government and the Planning Department never published

such data for the information of the public. Only after repeated demands from Honourable Members did the Government Policy Branch concerned provided the following:

"From 1987 up to November 1990, government departments in the New Territories had received 1 666 complaints of flooding, and it was quite possible that several complaints had been made in one case."

Therefore, if one case of flooding had been made to several government departments, for example, the City and New Territories Administration, Buildings and Lands Department, Royal Hong Kong Police Force, Environmental Protection Department and the Regional Services Department, then the number of cases of complaint during the three years was about 333. If so, how can one talk of degradation of the environment? Furthermore, had we been a little more observant, we would have known that most of the flooding was caused by blockage of river courses as a result of the Government carrying out numerous road works and building new towns in the New Territories.

Of course when we make a trip to the New Territories, we can hardly see the pastoral scenes of the past, such as the rural villages of Nam Seng Wai or buffaloes drawing the plough! All we see are containers or vehicle scrap yards, and we miss all the more the serene rural villages of the old days. However let us not forget that the containers and scrap yards, just like the paddy fields, vegetables and flowers we used to see, in fact have nothing different if we look at them from the economic angle. They represent how people make their living. Visually, though, containers can never be as pretty as farmsteads and criss-cross paths, but please remember, they are not against the law. In the same way, just because we are displeased with the unsightly concrete jungles in the urban area, we cannot demand that they be levelled and be planned anew. This is the inevitable consequence when the New Territories society is marching towards urbanization, and in a free and democratic society, we cannot, just out of a yearning for the old rural scene, compel others to continue to live the life of "buffaloes ploughing the field, horses drawing the carts" to satisfy our visual desire.

Many friends who are concerned with the environment and who love nature jumped with joy when they heard that the Government was determined to improve rural environment. They thought that once this amendment Bill was passed, the open storage question which had been the "eyesore" to these good people would be resolved. This is only a false image, because the Town Planning (Amendment) Bill has already exempted from the scope of control under the Bill land which has been used as open storage

at present. According to government data, such land is approximately 385 hectares, about 85% of land available for open storage use in the New Territories. In other words, only about 64 hectares of land used as open storage will possibly be affected! In actual effect, therefore, what is the use of improving rural environment as publicized by the Government?

From the above analysis, people may form a rather worrying view which includes:

First, Government, in seeking to pass the Town Planning (Amendment) Bill 1990 urgently, cannot effectively achieve its objective of improving the rural environment.

Secondly, in view of the fact that basically there is little New Territories land left which can be used for open storage -- only about 60 hectares -- it is very easy to identify land that can be developed for this particular use. In other words, the target land being monitored should be clearly and easily zoned. Why then should Government wish to include more than 10 000 hectares of New Territories land in the "Interim Development Permission Area", thus illegally freezing enormous quantities of land belonging to private landowners. To quote an example, will it be possible to store containers on Kwun Yam Shan in Sha Tin?

Thirdly, the government consultative paper has revealed "a fox's tail" -- an ulterior motive -- by saying that the Government has to amend the Ordinance urgently so as to extend planning control to the whole of Hong Kong. There is a Chinese saying: "When Xiang Zhuang was performing the sword dance, his aim was to kill Liu Bang". Therefore if this amendment Bill were passed, it would not only deprive New Territories landowners of the legal right of land use "with naked weapons", but would also make one suspicious and have reason to believe that it would further extend the legal basis for the Government to plunder people's property without paying compensation to cover the urban areas in Kowloon and Hong Kong.

Sir, as a representative of the Kowloon South constituency, I cannot help raising my guard against this Town Planning (Amendment) Bill because within my constituency, that is, Mongkok, Yau Ma Tei and Tsim Sha Tsui, the Land Development Corporation is in process of acquiring land under the banner of improving community environment. Companies which are acquiring land on behalf of the Land Development Corporation are offering to the residents, whose properties are their targets of acquisition, prices which are not on par with but far short of market prices. This has caused strong

resentment from the residents in the districts concerned, and I have received many complaints from the residents in this respect. Before establishing the compensation principles, if the Town Planning (Amendment) Bill 1990 were passed just like the Public Order (Amendment) Bill a few years ago, then property owners in urban areas in Hong Kong and Kowloon would absolutely have reason to be worried. In particular, the medium and small owners, whose properties are located in areas within the scope of the Urban Renewal Scheme of the Land Development Corporation and the Metroplan, will possibly become the targets in the next raid. Although some government officials had pointed out that the "Interim Development Permission Area" mechanism would not be introduced into the urban areas, yet having regard to the facility with which an official can go back on his word and the fact that word of mouth can constitute no proof, the Government might somehow come round again with a legal backing. What can be done then! Just as the saying goes "a tyrannical regime is ever ready to invoke the law to kill people soundlessly like a scythe through grass."

Sir, finally I wish to speak on the question of compensation. The Government and the organizations concerned have openly stated time and again that the question of compensation would involve spending taxpayers' money and therefore should be considered with care. One cannot object to this, but some people go a step further by saying that the main objective of this Bill is to eliminate the danger posed by containers in open storage to the residents nearby and to improve the rural environment. Therefore for the overall interest of the people, no arrangement may be made to compensate those particular people who are thus affected. This is the rule of game of the so-called the minority obeys the majority. However had Government in the past been really acting with impartiality and safeguarded taxpayers' money? If we are not forgetful, I wish to point out one fact, which is that the Finance Committee of the Legislative Council allocated $1.95 billion of taxpayers' money to Mobil Oil on 19 July 1989 as compensation to move its storage tanks on Tsing Yi Island. At that time the Government's reason was to eliminate the danger caused to residents near the storage tanks. In other words, it was to improve the environment. Why then should the Government have adopted double standards on the same thing, that is, improvement of the environment? We could pay to a company without hesitation $1.95 billion. Was the compensation for moving the storage tanks of Mobil Oil not based on safeguarding the interest of the majority? As a matter of fact, if the Government considers that the philosophy of the Town Planning (Amendment) Bill is correct, and enacts it as law after three Readings, it might just as well be possible to reverse the legality of the use of land occupied by Mobil Oil's storage tanks. By making illegal the right of land use, no compensation would have to be paid. Would that

not have saved $1.95 billion in public funds? If Honourable Members think otherwise then this Town Planning (Amendment) Bill 1990 will be tantamount to an attempt by Government to tie an elephant with a straw. When I was younger, I thought this was a remote possibility, but today I think the Government can do it. The Government can do this through the legislative process and with the support, through "counting fingers", of Honourable Members. This is really a supreme irony of the modern democratic society!

Sir, we know that every one loves blue skies and white clouds, green mountains and emerald waters, just as every one wishes to live a life of abundance and extravagance. However if this is done through pillaging and harming others to benefit oneself, this will be reprehensible from the point of view of social justice.

I am not conversant with composing poems and couplets, but I know the enactment into law of the Town Planning (Amendment) Bill is a foregone conclusion. I have read a doggerel in a book Pseudo Freedom by a modern Chinese author, the late Mr LU Xun, and I thought it was well written. I venture to show off my unworthy skills before the experts by quoting this poem to conclude the debate today. It goes like this:

A foremost scholar with a doctorate
Discards human rights to speak of regal powers.
Courts of kings have been slaughter grounds since time immemorial;
This truth has now been borne out by experiments.
Human rights and enlightened rule are both renewed,
In gratitude to the monarch he reports to His Majesty,
A tyrannical regime is ever ready to invoke the law,
To kill people soundlessly like a scythe through grass.
The gentleman is conversant with all books of the sages,
Scholar's principles have never been without followers.
With the same mind was Mencius centuries ago,
Who taught people to eat meat but stay away from the kitchen.
A speaking parrot is more venomous than a snake,
Boasting of meagre merit no larger than a drop of water,
So that he can sell his honour to the mighty,
No extravagance it is to throw away five thousand (dollars).

Sir, as I consider that the principles of this Town Planning Bill are both deceptive and unfair, I oppose the Bill. Thank you.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I would like to thank the Legislative Council ad hoc group, and in particular, its chairman, Mrs Rita FAN, for their support and their hard work on the processing of this Bill.

Sir, I have, on a number of occasions, explained in this Council why these measures need to be introduced now. The majority of the ad hoc group has also accepted that there is a pressing need for this legislation now before widespread environmental degradation and growth of incompatible land uses in the rural areas render future remedial planning very difficult and costly. I would remind the hesitant that there is still plenty of Sai Kung and Tai Po and islands left to be ruined if he wants it that way.

The Administration, nevertheless, was required, before details of the Bill were discussed, to convince the ad hoc group that planning controls on the rural areas were genuinely required, that the general approach to control through a modified planning permission system was a right and necessary one, and that such controls, including those involved in the Interim Development Permission Area system were needed immediately. The ad hoc group, apart from the submissions made to it during the course of its deliberations, was also made aware of the different views put to the Administration during the course of the formal consultation on the Bill. Mrs FAN's speech in this Council shows both how conscientiously the ad hoc group undertook its responsibilities and also how well it, or at least most of it, comprehended the complexity of the difficult issues involved. I am most grateful to her for her very full exposition of these main issues which spares me the need for much elaboration.

The Bill has aroused much interest from many quarters, and many important issues have been raised. One of these concerns compensation. Let me emphasize that the Government has always recognized that this is a very important part of the Town Planning Review, but it is a very complicated issue involving a delicate balance between the exercise of property rights and the need to promote community interests. The Administration has explained to the ad hoc group the many facets of this issue which require serious and comprehensive debate, for example, the legal basis in the common law for compensation, the extent to which the value of land is created by public investment, the extent to which the value of land is determined by plans and planning decisions, and the need to ensure that planning remains affordable to the community as a whole. The group has accepted that there can be no early conclusion to the

discussion on this issue and noted the Administration's intention to have the subject deliberated in the forthcoming full review of the Town Planning Ordinance. The details of the procedural measures, to which Mrs FAN referred, on how the full review will be taken forward will be announced soon, after the Administration has consulted the Executive Council on the issue.

Another major area of concern is the present appeals system under the Town Planning Ordinance. The current Ordinance has been criticized because it provides for the Board to hear objections to its own plans and to conduct its own reviews of its refusals of planning applications. The Administration accepts as a matter of principle the need for a hearing which is not just fair but seen to be fair for persons aggrieved by the Town Planning Board's decisions. We recognize the importance of an appeals body which can serve as an arbiter between the Board and those whose interests are affected by those decisions. Changes to the existing section 6 objection procedure for the preparation of plans would however require a radical reappraisal of the entire plan-making and approval system and it has been agreed with the ad hoc group that this should best be addressed in the overall review of the Ordinance. On the other hand, the early establishment of an independent body to replace the Governor in Council's role under section 17(7) as the final appeals body to deal with refusals of planning permission is practicable. Accordingly the Government has agreed in principle to introduce in this legislative Session, ahead of the overall review, a separate amendment Bill to provide for a new independent appeals body for section 17(7) appeals. The powers, composition, membership and procedures of the appeals body will be examined further in the drafting of the separate Bill.

I appreciate Members' concern that the main review of the Town Planning Ordinance should be given real priority. The programme is for a consultative document to seek public views on the main review to be published around April this year. Allowing six months for the public to comment on the document, the Administration aims to submit its final proposals to the Executive Council in December this year. This review exercise will not be an easy one, not least the problem of existing uses will loom large, but I can assure Members that every effort will be made to complete it with efficiency and thoroughness.

This Bill, like any legislation, will be judged on its results -- that is, what will or will not happen in consequence of it. It is of course partly about what we hope will not happen, that is, incompatible uses lumped next door to each other and

the gradual desecration of both the rural living environment and of the more scenic rural areas. But it is also about what we hope will happen, the proper planning and servicing of rural development schemes. Both the Administration and the Town Planning Board fully understand their responsibilities in this regard and I am confident that landowners and developers will speedily appreciate that this is a better and more decisive framework in which to plan development. We are already considering how the administrative Interim Development Permission Area Plans can be improved as they are turned into the draft statutory Development Permission Area Plans. On present projections I expect that we should be able to include upwards of 10 areas for low density residential development; and in addition around five or so areas where applications for the zoning of comprehensive development areas, again primarily for low density residential development, could be considered. In addition the 30 Interim Development Permission Area plans published so far have made provision for 240 hectares for "open storage" use, of which only 20 hectares are being used for the purpose. In other words, 220 hectares of land within the Interim Development Permission Plan areas are available for the future use of open storage, representing an expansion allowance of 60% on existing open storage areas. We shall proceed as soon as possible to replace the Development Permission Plans with the fully detailed Outline Zoning Plans, so that the statutory planning system can indeed give them maximum guidance for development in the New Territories.

Sir, a number of my non-Government colleagues have mentioned the amendments which they or I will be moving at Committee stage. I confirm that all these amendments have the agreement of the Administration.

Sir, with these amendments, I believe we now have a Bill which will satisfy most of the concerns expressed.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bills

Council went into Committee.

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1990

Clause 1

FINANCIAL SECRETARY: Sir, I move that clause 1(1) be amended as set out in the paper circulated to Members.

This simple amendment is necessary to reflect the timing of the enactment of this Bill. When enacted, it will be entitled the Inland Revenue (Amendment) Ordinance 1991.

Sir, I beg to move.

Proposed amendment

Clause 1(1)

That clause 1(1) be amended by deleting "(No. 3) Ordinance 1990" and substituting "Ordinance 1991".

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Clauses 2 and 3 were agreed to.

AIR POLLUTION CONTROL (AMENDMENT) BILL 1990

Clauses 1 to 10 were agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1990

Clauses 1 to 13 were agreed to.

TOWN PLANNING (AMENDMENT) BILL 1990

Clauses 2, 5, 9 and 10 were agreed to.

Clauses 1, 3, 6 and 7

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The minor amendment under clauses 1(1) is a drafting amendment for clarity. The amendment to clause 3 clarifies the definition of unauthorized development to include such development carried out in contravention of the plan prepared under section 20(5), and a consequential amendment is made by deleting section 20(5)(a).

Amendment to clause 6 is the result of a misconception in many quarters that the amended section 4(3) was a move by the Administration to try to remove existing rights of citizens to litigate or such legal remedy against the Board's or Government's wrongful action and rule out any consideration of compensation. This was never the Administration's intention. Deleting the proposed amended section 4(3) would not result in the Board or Government being held liable for its acts (except malicious or unreasonable acts). Retention of the existing section 4(3) would not mean that compensation is payable for properties affected by zoning/designations other than those set out under section 4(1)(b). Therefore, it was agreed that the replacement of section 4(3) should not proceed.

Amendment to clause 7 extends the period allowed for appeal to the Governor in Council from 30 days to 60 days.

Proposed amendments

Clause 1(1)

That clause 1(1) be amended by deleting "1990" and substituting "1991".

Clause 3

That clause 3 be amended --

In paragraph (a) of the proposed definition of "unauthorized development" by adding

"or described in section 20(5)" after "area".

Clause 6

That clause 6 be amended by deleting paragraph (b).

Clause 7

That clause 7 be amended by deleting "30 days" and substituting "60 days".

Question on the amendments proposed, put and agreed to.
Question on clauses 1, 3, 6 and 7, as amended, proposed, put and agreed to.

Clause 4

MR ARCULLI: Sir, I move that clause 4 be amended as set out in the paper circulated to Members for the reasons stated by me in the Second Reading debate.

Proposed amendment

Clause 4

That clause 4 be amended by deleting the proposed section 2(5) and substituting --

"(5) The Board may delegate any of its powers and functions --

(a) under sections 3, 4(1), 14A, 5, 7(1) to (3), 16 and 20(1) to a committee appointed under subsection (3); and

(b) to a public officer or class of public officer in respect of an application for --

(i) a minor amendment to a permission previously granted under section 16; and

(ii) permission for development within a development permission area on condition that the development is discontinued and the land reinstated, as directed by the

public officer, within 6 months after the permission is granted.".

Question on the amendment proposed, put and agreed to.

Question on clause 4, as amended, proposed, put and agreed to.

Clause 8

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I move that clause 8 be amended as set out under my name in the paper circulated to Members. The minor amendments to section 20(5) are drafting amendments for clarity, other amendments to clause 8 include several new subsections. One is a new subsection (1A) under section 20 to clarify that once land has been included in an Outline Zoning Plan or a Development Permission Area plan, it cannot be included afterward in a Development Permission Area plan. This, as Mrs FAN mentioned earlier, was to meet fears that it was intended to use the Development Permission Area system in the existing urban areas.

Another addition is subsection (4A) under section 20 to clarify that once an Outline Zoning Plan replaces a Development Permission Area plan, the Development Permission Area plan ceases to have effect.

There have been comments from some quarters that the penalties proposed under clause 8 are too harsh and after discussions with the ad hoc group, it was agreed to reduce the fines to $100,000 and to remove the imprisonment penalty. The proposed sections 20(6), 21(2) and 23(6) are accordingly amended.

Amendments to the proposed sections 23(3) and (4) are to set out more clearly the Planning Authority's discretionary powers in the setting of conditions for reinstatement. The period of compliance with the notice is now clearly specified to be not earlier than 30 days after service of the notice and any condition imposed by the Authority will not be more harsh to the person served with the notice than a total reinstatement of the land "to the condition it was immediately before the development permission area became effective".

Proposed amendment

Clause 8

That clause 8 be amended --

(a) In the proposed section 20 by adding after subsection (1) --

"(1A) The Board shall not designate as a development permission area any area that is or was previously included in a plan under this Ordinance, other than a plan prepared under section 25.".

(b) In the proposed section 20 by adding after subsection (4) --

"(4A) Except as provided in subsection (5)(b)(i) and in the definition of "unauthorized development" in section 1A, where land that is within a plan referred to in subsection (1) is included in a plan prepared under section 3(1)(a), the plan referred to in subsection (1) ceases to be effective in relation to that land.".

(c) In the proposed section 20(5) --

(i) by adding "that is" after "Where land";

(ii) by deleting paragraph (a);
(iii) in paragraph (b)(i) by deleting "is" and substituting "was"; and

(iv) in paragraph (b)(iii) by adding "either before or after the land was included in the plan prepared under section 3(1)(a)" at the end.

(d) In the proposed sections 20(6) and 21(2) by deleting "$500,000 and imprisonment for 1 year" and substituting "$100,000".

(e) In the proposed section 23(3) --

(i) by deleting "specified in such" and substituting "not earlier than 30 days after service of the"; and

(ii) by adding ", more favourable to the person served," after "other condition".

(f) In the proposed section 23(4) --

(i) in paragraph (b) by deleting "1990" where it appears twice and substituting "1991"; and

(ii) by adding ", more favourable to the person served," after "other condition".

(g) In the proposed section 23(6) by deleting "$500,000, imprisonment for 1 year" and substituting "$100,000".

Question on the amendment proposed, put and agreed to.

MRS FAN: Sir, I move that the clause be further amended as set out under my name in the paper circulated to Members.

Section 22(1) is amended to the effect that the Authority cannot enter land or premises for checking whether there is or has been unauthorized development unless there is a magistrate's warrant.

Section 22(3) has been expanded so that a magistrate's warrant can be applied for inspections in respect of any premises and not merely domestic premises.

A new section 23A is added to give any person aggrieved by the Director of Planning's reinstatement notice the right to apply to the Secretary for Planning, Environment and Lands for a review.

The purpose of the new subsection 25(4) is to ensure that no more interim development permission area plans will be prepared after the Bill has come into operation.

Sir, I beg to move.

Proposed amendment

Clause 8

That clause 8 be further amended --

(a) In the proposed section 22 --

(i) by deleting subsection (1) and substituting --

"(1) The Authority may, without warrant or notice but at a reasonable time, enter land and any premises on it for the purposes of --

(a) posting a notice under section 23; and

(b) verifying that an unauthorized development has been discontinued or any steps taken or land has been reinstated as required under section 23."; and

(ii) by deleting subsection (3) and substituting --

"(3) If a magistrate is satisfied from information on oath that there are reasonable grounds to believe that there is or has been unauthorized development and it is necessary to enter the land or premises in order to ascertain whether there is or has been unauthorized development, the magistrate may issue a warrant authorizing the Authority or any person authorized in writing by the Authority to enter the land or premises.".

(b) by adding after the proposed section 23 --

"23A. Review of Authority's decision

(1) Any person aggrieved by a decision of the Authority under section 23(3) or (4) may, within 30 days after service of the notice under section 23(3), apply in writing to the Secretary for Planning, Environment and Lands for a review of the Authority's decision.

(2) The Authority and the applicant are not entitled to be present during the review but the applicant shall be given copies of any material provided to the Secretary by the Authority and the applicant shall be given a reasonable time to provide further particulars in response to the material provided.

(3) After considering the application and all submitted materials the Secretary may confirm or reverse the Authority's decision or make any decision the Authority could have made under section 23(3) or (4).

(4) Where an application for review is received pursuant to this section the decision under section 23(3) or (4) that is under review is suspended in its operation until the review is disposed of.".

(c) In the proposed section 25 by adding after subsection (3) --

"(4) The Director of Planning shall not prepare a plan under subsection (1)(a) or cause a notice to be published under subsection (1)(c) after the commencement of the Town Planning (Amendment) Ordinance 1991 (of 1991).".

Question on the amendment proposed, put and agreed to.

Question on clause 8, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

AIR POLLUTION CONTROL (AMENDMENT) BILL 1990 and

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1990

had passed through Committee without amendment and the

INLAND REVENUE (AMENDMENT) BILL 1991, the original short title of which is the INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1990 and the
TOWN PLANNING (AMENDMENT) BILL 1991, the original short title of which is the TOWN PLANNING (AMENDMENT) BILL 1990

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 30 January 1991.

Adjourned accordingly at twenty-one minutes past Seven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.