HONG KONG LEGISLATIVE COUNCIL -- 15 January 1992 1

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 January 1992

The Council met at half-past Two o'clock

PRESENT

THE CHIEF SECRETARY
THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.
(Presided at the sitting in the absence of the Deputy President)

THE FINANCIAL SECRETARY
THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, C.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 MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, 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 TAM YIU-CHUNG

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

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

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.
THE HONOURABLE MRS PEGGY LAM, M.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, J.P.

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

PROF THE HONOURABLE EDWARD CHEN KWAN-YIU

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURALBE MAN SAI-CHEONG
THE HONOURABLE NG MING-YUM

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

DEPUTY PRESIDENT
THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.

THE HONOURABLE SZETO WAH

DR THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MISS EMILY LAU WAI-HING

PROF THE HONOURABLE FELICE LIEH MAK, O.B.E., J.P.

IN ATTENDANCE

MR GRAHAM BARNES, C.B.E., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR MICHAEL LEUNG MAN-KIN, C.B.E.,J.P.
SECRETARY FOR TRANSPORT

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

MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR CHAU TAK-HAY, J.P.
SECRETARY FOR TRADE AND INDUSTRY

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

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. |
| --- | --- |
| Road Traffic (Driving Licences) Regulations (Amendment of Fourth Schedule) Order 1991 | 450/91 |
| Junk Bay Water Control Zone Statement of Water Quality Objectives (Amendment) Statement 1991 | 451/91 |
| Port Shelter Water Control Zone Statement of Water Quality Objectives (Amendment) Statement 1991 | 452/91 |
| Southern Water Control Zone Statement of Water Quality Objectives (Amendment) Statement 1991 | 453/91 |

(Commencement) Notice 1991.....
463/91

Road Traffic (Amendment) (No. 4) Ordinance 1991
(Commencement) Notice 1991.....
464/91

Port Control (Public Water-Front) Order 1992..... 1/92

Shipping and Port Control Ordinance (Exemption)
(Amendment) Notice 1992.....
2/92

Fish Culture Zone (Designation) (Amendment)
Order
1992..... 3/92

Shipping and Port Control (Specification of Areas)
(Amendment) Notice 1992.....
4/92

Sessional Paper 1991-92

No. 36 -- The Open Learning Institute of Hong Kong
Annual Report 1990-1991

CHIEF SECRETARY: Good afternoon, Members. I am chairing this meeting this afternoon because the Deputy President is indisposed.

Address by Member

The Open Learning Institute of Hong Kong Annual Report 1990-1991

MR PETER WONG: Sir, as Deputy Chairman of the Council of the Open Learning Institute (OLI) of Hong Kong, I am pleased to have the honour of presenting to you the second

annual Report and Audited Accounts of the Institute for the year ended 31 March 1991 which are tabled before this Council today.

The report gives a comprehensive account of the Institute's achievements during the period in question, but I wish to highlight for you some of the major milestones of 1990-91, which was the first full year of the OLI's existence, and a year of development and growth.

The continued enthusiasm of Hong Kong citizens for degree level study by open and distance learning is evidenced by the increasing numbers of students enrolled in the Institute in the year under review: from 9 500 in April 1990 to 13 000 in October 1990. In order to cater for this demand, the Institute increased the number of course places on offer to 25 835 and employed 1 038 part-time tutors to deliver the courses. In the first academic year, all courses were offered in the English language, but plans were well advanced for launching the first Chinese courses in October 1991.

Financial sufficiency

In June 1990, the Institute moved into five floors of the Trade Department Tower in Mong Kok which enabled all but one section of the OLI to be housed under one roof for the first time. Open access student facilities including the library, which offer self study space, personal computer and science laboratories, were located at the Institute's headquarters. The Institute continues to rent from other secondary and tertiary institutions to fulfil the requirements for evening and weekend teaching and laboratory accommodation. Although conveniently situated, the premises are expensive to rent: rental of the Trade Department Tower and warehouse accounted for $13.7 million or 12% of the expenditure in the year in question.

A second major event of the year under review was the Institutional Review conducted by the Hong Kong Council for Academic Accreditation in December 1990. The report of the review panel complimented the Institute on the progress it had made towards providing a suitable distance learning environment for degree study in Hong Kong, particularly in respect of its stringent academic quality control mechanisms; and I am pleased to report that accreditation of its degree programmes is scheduled for 1992.

A further focus of activity during the year was the preparation of the Institute's Development Plan for the next five years. The plan was prepared on the basis of the Institute's commitment to offer courses leading to five Bachelor degrees -- the

degrees of Bachelor of Arts in Western Arts and Humanities, Bachelor of Arts in Chinese Arts and Humanities, Bachelor of Social Sciences, Bachelor of Business Administration with specialist strands in Accounting, Business Information Systems, Human Resources Management and Marketing, and Bachelor of Science in Applied Computing, Electronics, Engineering Mechanics, Materials and Design, Mathematics and Environmental Studies. The need to achieve financial self-sufficiency by 1993-94 dictated the Institute's proposed strategies for making higher education available to all those Hong Kong residents aspiring to it, regardless of gender, race or previous qualification, without sacrificing the level and quality of its courses or its support to students.

Government subvention to the Institute in 1990-91 covered only 36.4% of recurrent expenditure in comparison with 59.0% in 1989-90, while direct costs as a percentage of the tuition fees were reduced from 65.3% to 48%, thanks to economies of scale and tight budgetary control. To achieve this cost-effective higher education, the OLI remains under constant pressure to attract large numbers of students. It cannot however afford to replace the diminishing and ultimately disappearing government subvention by fee increases alone, and measures to seek sponsorship for various projects will be implemented in the coming years.

Academic achievement

Studying for a degree by distance learning can be a lonely process for the adult learner, and the achievement of the ultimate goal of a Bachelor degree may last up to six or more years in the future. The OLI expects its first graduates in 1993, but in 1990 it held its first Outstanding Students Awards ceremony. The wide range of educational background and occupations of OLI students and the challenges of studying with the OLI created much interest in the media which helped OLI to gain proper recognition as a full member of the tertiary institutions community in Hong Kong.

The year under review also marked the departure of the founding Director, Professor Don SWIFT and the Associate Director (Administration), Mr Gerald BURKE. The success of the Institute in its first two years bears witness to the dedication and commitment of all its full and part-time staff whose vision and hard work ensured the growth and development that have been achieved. We must pay tribute here to all the early pioneers, as the Institute faces the growing challenge of attracting and retaining good staff in an increasingly competitive environment.

Sir, I am confident that the international reputation of OLI as a provider of quality higher education in Hong Kong will continue to grow as it builds on the achievements detailed in this report.

Oral answers to questions

Traffic congestion in the northwest New Territories

1. MR NG MING-YUM asked (in Cantonese): In view of the fact that the existing road network covering the northwest New Territories and linking this part with Tsuen Wan, especially the Tuen Mun Highway and the parts of Castle Peak Road around Sam Shing Estate and Hung Shui Kiu, is frequently congested particularly during rush hours, will the Government inform this Council:

(a) whether consideration has been given to improving the traffic flow on the relevant sections of these roads through various short-term measures; if so, what progress has so far been made on these considerations;

(b) whether consideration would be given to relaxing the speed limit on Tuen Mun Highway so that the flow of traffic along this road can be improved; and

(c) what progress has been made on the feasibility study to construct the country park section of Route 3 as a longer term solution to the congestion problem?

SECRETARY FOR TRANSPORT: Sir, we are committed to improving the road system in the northwest New Territories to meet present and future traffic demands. To this end, several major road construction projects are in hand. These include:

(a) first, the final section of the New Territories Circular Road from Au Tau to Fan Kam Road, for completion by July this year;

(b) second, the Yuen Long/Tuen Mun Eastern Corridor, for completion by October 1993; and

(c) third, the Yuen Long Southern By-pass, for completion by June 1994.

This means that by mid-1994, the Tuen Mun Road will be linked to the New Territories Circular Road via new dual two-lane expressways, which will greatly increase road capacity.

In addition, a number of short-term road improvements are in hand. These include:

(a) first, widening the section of Castle Peak Road adjacent to Sam Shing Estate for completion by mid-1993; and

(b) second, introducing by stages some 20 local improvement schemes for the Castle Peak Road between Tuen Mun and Yuen Long, work on which has just started. These include road widening, traffic re-routing, junction modifications and traffic signal timing adjustments. On completion at the end of this year, these measures will relieve traffic congestion considerably, particularly in the section of road near Hung Shui Kiu.

In addition, the construction of a new dual two-lane road fronting Belvedere and Bayview Gardens in Chai Wan Kok, will relieve congestion in a section of Castle Peak Road. Work will start by the end of this year for completion in 1994.

As regards the speed limit in Tuen Mun Road, a recent review has concluded that this might be relaxed from the existing 70 km to 80 km per hour at certain sections. Detailed proposals will be put to the district boards shortly for advice.

Finally, Sir, as regards the construction of the Country Park Section of Route 3, a feasibility study was completed in early 1990, following which an alignment from Au Tau through the Tai Lam Country Park to Ting Kau was selected. The programme for constructing the road is now being reviewed in the context of the updating of the Second Comprehensive Transport Study. We also intend commissioning a financial consultancy to consider how best this large scale project may be financed, including the possibility of privatization. The results of this consultancy should be available later this year.

MR NG MING-YUM (in Cantonese): The Secretary mentioned in the sixth paragraph of his reply that the Administration intended to commission a financial consultancy to undertake a feasibility study. May I ask further if this feasibility study report

by the financial consultancy will be released when it is completed? And if it goes for privatization, will the Administration carry out a public consultation on the details of works to be undertaken and will it fully consider the views of the public before it comes to any decision?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, as regards any project that will affect any particular area, the Administration will, as a normal practice, adequately consult those affected. Wide consultations in relation to financial arrangements and feasibility will be carried out, we hope, when the financial feasibility study on the northern section of Route 3 is completed, after which we would decide whether we would proceed and if so how we are going to do it.

MR LAU WONG-FAT (in Cantonese): Sir, will the Administration consider speeding up the project of widening the section of Castle Peak Road between Tuen Mun and Tsuen Wan so as to relieve traffic congestion?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, as I have said, as regards short-term road improvements for Castle Peak Road, works on a number of projects have commenced. They include road widening, traffic re-routing, junction modifications and traffic signal timing adjustments. Furthermore, we hope that the widening of the section of Castle Peak Road between Tsuen Wan and Tuen Mun will start shortly. Subject to availability of resources, works will commence as soon as possible.

MR LEE WING-TAT (in Cantonese): Sir, the Country Park Section of Route 3 will contribute a lot in terms of traffic improvements to the New Territories West, Kwai Tsing and Tuen Wan. There are also requests made by a number of Members and residents' groups that the Country Park Section of Route 3 and the Airport Core Project be completed at the same time. Will the Administration inform this Council, apart from the need to further study the financial arrangements for the Country Park Section, what other problems it has to further look into and whether they can be resolved?

SECRETARY FOR TRANSPORT (in Cantonese): Basically, the northern section of Route 3 is outside the ambit of the Airport Core Project and should be considered separately.

Of course, what the Administration has to take into account is the financial implications as a whole and the availability of resources to undertake the project.

First of all, we need to study whether the road network of the project is feasible; second, we need to decide the financial arrangements and third, we should ascertain whether these financial arrangements are acceptable to the public. We have already come to a preliminary decision on this, that is, we will start with the mapping out of the road network. Then we will forecast the possible improvements to the traffic flow as a result of the project and finally we will have a preliminary review to see if we can have more details of the financial position before a financial study is being undertaken. We hope these steps will be completed in the next few months before a tentative decision is made.

MRS MIRIAM LAU: Sir, my question has partly been asked by Mr LAU but I would wish to follow up. Would the Secretary advise whether the Administration has any plans to widen the entire stretch of the Castle Peak Road instead of just merely sections?

SECRETARY FOR TRANSPORT: Sir, as I mentioned in my main reply, parts of this section of Castle Peak Road are being widened and certainly there are plans to improve it further, subject to funds being made available. But as I said, there are certain interim improvements which have already been put in place, such as road widening and traffic re-routing. I also mentioned that in that part of Castle Peak Road near Chai Wan Kok we are adding a new two-lane expressway for completion in about two years time. We will certainly consider whether there are other sections of the road which we could improve, and if funds are available we will certainly consider further extending the improvements to other areas.

MR WONG WAI-YIN (in Cantonese): Sir, the use of Tuen Mun Road has reached saturation point now. Besides, after the full opening of the Lok Ma Chau Crossing last August, container-trucks frequently use Tuen Mun Road and serious traffic accidents occur from time to time. Could I ask the Administration what contingency measures will be taken if serious traffic accidents take place on Tuen Mun Road? Besides, how can the Administration inform the public of those contingency measures within the shortest time?

SECRETARY FOR TRANSPORT (in Cantonese): Basically, there are several arrangements. First, apart from Tuen Mun Road, we can use Tolo Highway at Tai Po to provide traffic relief. The main route here is to divert the traffic from Tuen Mun Road by using the New Territories Circular Road that connects traffic to Tolo Highway. Second, we will increase the ferry services between Tuen Mun and Central. Third, in view of the fact that the use of Tuen Mun Road is almost, if not entirely, saturated we hope the interim improvement measures I have just mentioned will be implemented shortly, so as to relieve the problem. But I would also like to encourage more container-truck drivers to use Tolo Highway. We are now considering whether more effective road signs, such as warning signs, should be put up. If resources are made available, we will put up some roadside warning signs as soon as possible so that truck drivers will know in advance when they can use Tuen Mun Road and when they should turn to Tolo Highway.

MR SIMON IP: Sir, would the Secretary advise whether the speed limit on Tuen Mun Road is a significant cause of congestion, and if not, whether it would be prudent to increase the speed limit which may cause more accidents and thus delay and congest further the traffic?

SECRETARY FOR TRANSPORT: I think, Sir, the simple answer is no. The speed limit is not in fact a constraint on the road capacity. I believe that because of the number of vehicles using it at certain times of the day which are not busy, there is a case for relaxing the speed limit provided that safety is not compromised. This is why we are considering relaxing it and we wish to consult the district boards first before we consider that point very carefully.

DR SAMUEL WONG: Sir, referring to the Yuen Long Southern By-pass, could the Secretary for Transport confirm whether design has been put in hand or not, and if the answer is in the affirmative, could the completion date of June 1994 be brought forward so as to ease the heavy traffic in that particular section?

SECRETARY FOR TRANSPORT: Sir, with regard to the Yuen Long Southern By-pass, we have already let the contract and in fact work has started. The completion date is the

earliest we aimed at which is June 1994.

MR MICHAEL HO (in Cantonese): Sir, the Secretary has just mentioned in his reply that a road widening project of a particular section of Castle Peak Road is now under consideration. Would the Administration also consider widening certain sections of Tuen Mun Road?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, we have also considered the possibility of widening certain sections of Tuen Mun Road; it is hoped that an additional carriageway will be provided in a particular section of the road. But the problem is that traffic congestion may further aggravate in the course of road widening and therefore careful examination is warranted before the project is given the go-ahead. Yet I can confirm that consideration is being given as to whether an additional carriageway can be provided in a particular section of Tuen Mun Road so as to improve the existing traffic condition.

REV FUNG CHI-WOOD (in Cantonese): Traffic congestion is at present very serious in the district but the relevant facilities will not be in place two or three years from now. Could I ask whether the Administration has underestimated the seriousness of the traffic congestion in the district; why a forecast failed to be conducted at an earlier time; and whether the Administration can anticipate how serious traffic congestion will be during construction period?

SECRETARY FOR TRANSPORT (in Cantonese): I have made myself clear just now by saying that we have in hand numerous short, medium and long-term measures which will ease traffic congestion on the highway. Clearly, it stands to reason that no forecast will be fully accurate and we have already done our best to improve the present situation. What we are now doing is to try every possible temporary short-term measure and aim at the earliest completion of the medium and long-term projects with the object of increasing road traffic capacity. Yet we must not forget that Tuen Mun Road is not the only route available; there are others such as Tolo Highway. Moreover ferry services are also available to help improve the situation. So Tuen Mun Road is not the only carriageway we can use.

DR CONRAD LAM (in Cantonese): Sir, traffic congestion may be brought about by vehicles running at too low or too high a speed, the latter of which may cause road accidents; vehicle breakdowns may also be a cause for traffic congestion. Could I ask the Administration whether there are effective measures to improve the situation?

SECRETARY FOR TRANSPORT (in Cantonese): This relates to a very fundamental question which involves the improvement of traffic management including road safety, regulation of traffic flow, road design and a comprehensive transport strategy, namely, how we should expand new road networks, relieve existing traffic congestion, take care of the safety of the drivers and so on. I believe the White Paper has already given a full account on this. The whole strategy is there and what need to be done is promotion of road safety education with a view to enhancing drivers' safety, stricter enforcement actions against traffic offences and arrangements of other temporary improvement measures such as diversion of traffic and so on. We hope that all drivers can co-operate by driving carefully to avoid accidents so that congestion could be relieved.

MR MAN SAI-CHEONG (in Cantonese): Given that many heavy-duty vehicles are at present using Tuen Mun Road, has the Administration considered restricting such vehicles from using the road during peak hours when congestion is most likely the case?

SECRETARY FOR TRANSPORT (in Cantonese): We have laid particular emphasis on prosecutions against overloaded heavy-duty trucks. As we all know, the police have already installed a number of weighing stations along major highways such as Tolo Highway and Tuen Mun Road. With more prosecutions taken out against these vehicles, we hope that vehicle breakdowns or other problems arising from overloading which is a cause for congestion will be minimized. We will, within a short period of time, introduce a Bill to raise the fines for vehicles' overloading in the hope that such instances will be minimized. We hope that this Bill will be introduced to this Council for consideration as soon as possible.

MR STEPHEN CHEONG: Sir, given that the Government has always indicated that the building of extra kilometres of roads to cater for increased traffic always tends

to lag behind the growth of the total number of vehicles, can the Government inform this Council what measures, if any, can be taken to tackle the root of the problem, that is, the unchecked growth of the total number of vehicles using a finite number of kilometres of the road system in Hong Kong?

SECRETARY FOR TRANSPORT: Sir, the White Paper published in 1990 set out the full strategy for tackling our transport problems in three ways, that is, building new roads and the infrastructure, providing public transport, and managing the entire system. The last mentioned way, of course, is no less important, which is how to manage the growth of vehicles so as to keep them within the capacity of our road system, bearing in mind that funds are not unlimited, that the road system cannot expand forever, that railways are very expensive to build, and that we must not let this resource be wasted by the unlimited growth in vehicles. Clearly, we need to look at ways and means of containing and restraining the growth, and of course managing the vehicles more efficiently. For example, we will shortly be using automatic toll collection at a number of tunnels in Hong Kong, trying this first at the Aberdeen Tunnel in the next few months. The purpose is to speed up the flow of traffic through these tunnels by a system which collects the tolls automatically without using manpower but using electronic means. We hope to try this in other tunnels as well, as a means of helping the smooth flow of traffic and also the entire management system. This is one of our initiatives which we will try in the very near future.

MR HOWARD YOUNG (in Cantonese): Sir, in the fifth paragraph of his main reply, the Secretary said that the speed limit in Tuen Mun Road might be relaxed from 70 km to 80 km per hour and, in response to Mr Simon IP's question, he also mentioned that speed limit did not seem to be a cause for congestion. As regards Tolo Highway, I understand that the speed limit is 100 km per hour for the section between Tai Po and Sheung Shui and the same limit applies to parts of the section between Sheung Shui and Yuen Long. Could I ask whether the upper limit of 80 km per hour is imposed just because Tuen Mun Road was completed earlier and that speed limit for Tuen Mun Road will be relaxed to as high as 100 km per hour in the future?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, Tuen Mun Road and Tolo Highway are two completely different highways. Basically the gradient and physical structure of the two roads are different. Tolo Highway is straight and level; so there can be greater

flexibility in speed limit. But in the case of Tuen Mun Road which is quite steep and winding, any relaxation of speed limit may lead to traffic accidents. So what we can do is to consider relaxing the speed limit at certain sections of the road with a lower gradient as total relaxation is impossible having regard to the difficulties which will be encountered in other sections of the road.

MR WONG WAI-YIN (in Cantonese): Could I ask the Secretary to elaborate more on his answer to my earlier supplementary question, namely, should serious accident occur on Tuen Mun Road, how will the authorities concerned inform the public not to use this congested highway or how will the public be advised against taking public buses which will use Tuen Mun Road? Moreover, in his answer to Mr NG Ming-yum's question, the Secretary has said that one of the improvement measures is to adjust traffic signal timing. At present traffic congestion at the section of Castle Peak Road between Tuen Mun and Yuen Long is due to the swift changing of traffic signals for the purpose of facilitating the movement of light rail trains; could the proposed signal timing adjustments possibly imply that the privilege for light rail transit to use that section of the road will be removed?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, regarding diversion of traffic and public announcement of traffic conditions, we have in place several detailed arrangements in the form of radio news bulletins to inform the public and the drivers of the special traffic conditions. We will be doing our best to give more coverage in this respect in the hope that drivers can be informed of the traffic congestion at the first opportunity and therefore take other routes instead. If accidents occur, emergency actions will be taken to relieve the traffic congestion with the help of the police.

Regarding traffic signal timing, our concern is how improvement can be made in terms of priority given to the use of Castle Peak Road with the object of co-ordinating traffic at road junctions where light rail trains and other vehicles meet so as to relieve traffic and ensure safety. This is our prior consideration before we would look into the adjustments of traffic signal timing under the condition that operation of the light rail system will not be affected.

Use of firearms against suspected smugglers

2. MR PETER WONG asked: Will the Government inform this Council whether the armament on our patrol boats has been used against suspected smugglers and if not whether there is any intention to do so?

SECRETARY FOR SECURITY: Sir, officers of the Marine Police are subject to Police General Orders governing the use of firearms. These provide that a police officer may discharge a firearm either to protect himself or another person from death or serious injury, or to effect the arrest of any person who he has reason to believe has committed a serious and violent crime, provided that no lesser degree of force can achieve these objects. Acting in accordance with these General Orders, police officers fired at smugglers or smugglers' boats on six occasions in 1990 and 1991.

MR PETER WONG: Sir, the Secretary in his reply said that a shot may be fired "..... to effect the arrest of any person who he (the police officer) has reason to believe has committed a serious and violent crime, provided that no lesser degree of force can achieve these objects." Can the Secretary explain why the traditional warning of a shot across the bows of a fleeing suspected smugglers' boat has not been used, but instead wait until personal life and limb of our marine police officers is threatened before small arms are used? Further, would the Secretary elucidate whether the main armament of our patrol boats was ever used in 1990 and 1991, and if so, how many times?

SECRETARY FOR SECURITY: Sir, Mr WONG has referred to the traditional firing of a warning shot but I have to say that there is no such tradition. The police have never had the practice of firing warning shots. As regards the second part of the question, I am not sure what Mr Wong means by "main armament". In the six incidents I have referred to, there have been occasions in which the police have used submachine guns and there have been cases in which the police have used shotguns, and there have been cases in which the police have fired revolvers.

MRS RITA FAN: Sir, if I understand his answer correctly, the Secretary means that the Marine Police are not supposed to fire until the other vessel, which is a high-speed vessel, rams at the police vessel, or the suspected smugglers fire at the Marine Police. Now taking into account, Sir, the fact that these vessels are travelling at a much higher speed than can ever be reached by our police vessels,

would the Secretary advise how the Marine Police can stop these vessels which are travelling so fast without any warning shots?

SECRETARY FOR SECURITY: Sir, I do not think that Mrs FAN should come to the conclusion, as she has done, regarding the circumstances in which the police would open fire. I have explained the circumstances in which the police would open fire; these do not necessarily mean that they only open fire when a police boat is threatened to be rammed or when somebody has fired at them first. There are a number of plans which the police and the Anti-Smuggling Task Force have for trying to deal with the problem of very fast speedboats but I would not want to go into the details of these here.

MR JAMES TO (in Cantonese): Sir, the Secretary mentioned in his reply six incidents in which firearms were discharged. Will the police review the adequacy of its firepower in the light of the reports on these incidents? Also, in cases other than those six where there was no discharge of firearms, did the police sound out the views of the frontline police officers to see if they think the rules governing the use of firearms are too strict?

SECRETARY FOR SECURITY: Sir, the police do regularly review the adequacy of their armaments and other equipment. There is at present no intention to make any change; neither do the police see any need to make any change at the moment to the Police General Orders governing the use of firearms.

MRS SELINA CHOW: Sir, in his answer the Secretary says, "A police officer may discharge a firearm ... to effect the arrest of any person who he has reason to believe has committed a violent crime". Now can the Secretary advise this Council whether smugglers carrying firearms and travelling in high-speed vessels, which are outlawed in Hong Kong, are considered to have committed a serious and violent crime, given the fact that these smugglers have consistently proved themselves to be cold-blooded murderers by ramming their high-speed vessels into police boats resulting in death and injury of police officers?

SECRETARY FOR SECURITY: Sir, all I can say is that it would have to depend on the

circumstances of each case. I do not think I could give a general answer on that one way or the other. The circumstances are so varied that it would have to depend on what they were in any particular case. Clearly, there have been cases when the police have felt justified in using firearms and I have explained that they have done so on a number of occasions in the last two years.

MR HUI YIN-FAT: Sir, could the Administration inform this Council why, in the face of the seriousness of such cases and the rising incidence of such cases, the police or the Secretary for Security still does not see a need to review the procedures and Police General Orders governing the use of firearms?

SECRETARY FOR SECURITY: Sir, the procedures and the tactics for dealing with the problem of speedboats are under regular review. We have made a number of changes; we have introduced new legislation in the past year; we will continue to review them. But neither the police nor the Government sees any reason at the moment to change the Police General Orders governing the use of firearms.

MRS PEGGY LAM (in Cantonese): Sir, will the Administration inform this Council of the number of police officers injured in the course of carrying out their duties against smugglers in 1990 and 1991 because they could not match the smugglers in firepower? If the answer is in the affirmative, will the Administration upgrade the armaments of the police?

SECRETARY FOR SECURITY: Sir, I do not have with me details of the number of cases of police being injured in smuggling incidents in 1990 and 1991. I will give a written reply to that. (Annex I)

MR SIMON IP: Sir, would the Secretary advise whether the Marine Police consider that they have sufficient firepower and other equipment effectively to combat smuggling, and if not, what is being done about it?

SECRETARY FOR SECURITY: Sir, I believe that the police do believe, as I have said,

that there is no reason or need to increase their armament. The police and the Government as a whole are very concerned at the problem of smuggling which appeared to have been effectively combatted last summer but which has since risen quite considerably in the last four months. We are reviewing what we can do, both in terms of tactics and equipment, to combat this more effectively. Of course we are also consistently liaising with the Chinese authorities to get them to take more effective action against these boats. The pattern has changed since last year in that boats which were previously based in Hong Kong and operating from Hong Kong are now no longer doing so; they are based in and operating from China.

MR FREDERICK FUNG (in Cantonese): Sir, the Secretary mentioned in his reply that a police officer can use his firearms only when no lesser degree of force can achieve his objects. May I know if the police have reviewed this rule? Have there been cases in which police officers were injured as a result of their inability to fire first; or cases in which smugglers managed to get away because of this restraint?

SECRETARY FOR SECURITY: Sir, I believe not. What that phrase in my answer meant was that the police have to justify the amount of force they use. They are not expected to use an excessive amount of force. Clearly, they are able to use a necessary amount of force and in that context "necessary" would mean necessary to prevent death or injury.

MR CHEUNG MAN-KWONG (in Cantonese): Sir, I find the existing rules on the use of firearms far from specific. Besides, the fact that a marine police officer has to give a report whenever he opens fire, or merely opens a firearm receptacle will discourage him from using firearms in the discharge of his duties. Will the Administration inform this Council what can be done to enable marine police officers to use firearms appropriately in the execution of their duties without undue mental stress?

SECRETARY FOR SECURITY: Sir, opening fire is of course a very serious act and has to be justified in the circumstances. It is something that all policemen face and it is something that they are trained and equipped to take a decision on. I believe that the present practice and procedures and policy, as set out in the Police General

Orders to which I have referred, have served the police and Hong Kong and everybody well. And as I have said, there is no intention of changing these Orders at present.

MR MOSES CHENG: Sir, would the Secretary please inform this Council whether relaxation of the existing rules or orders to allow the firing of warning shots would improve the effectiveness of police officers in arresting smugglers who use very fast speedboats?

SECRETARY FOR SECURITY: Sir, I believe that the conclusion of the police is that no relaxation to allow more indiscriminate use of firearms would be effective and it is not recommended by the police.

DR CONRAD LAM (in Cantonese): It seems that in his earlier reply to a Member's supplementary, the Secretary has dodged the question on the number of marine police casualties resulted from their attempts to arrest alleged smugglers. May I know if the Secretary will take any measures to achieve better result and to minimize casualties in effecting arrest of alleged smugglers?

SECRETARY FOR SECURITY: Sir, I did not dodge the question. I said I did not have the information and would provide it in writing. As regards the second part of the question, as I have said in answer to earlier supplementaries, we do constantly review the effectiveness of police equipment, tactics and other measures to combat smuggling, and we will continue to do so. Clearly, one of the objectives in reviewing procedures and equipment is to minimize the risk of injury to police officers engaged in this sort of work, though I do not believe that the risk can ever be entirely eliminated.

MR PETER WONG: Sir, it is all too apparent that smugglers take small arms fire with impunity. Is there not a compelling case for increasing the size of armaments on police vessels to make them effective deterrents?

SECRETARY FOR SECURITY: Sir, I believe that the armaments on police vessels are appropriate and adequate for the work in which they are engaged. Apart from the

normal service revolvers carried by the individual policemen, there are more powerful weapons carried on most of the larger police vessels; these include rifles, Sterling submachine guns and shotguns. And of course in any particular case the police, in prior planned operations, do, if necessary, have access to other high-powered weapons where they consider that there may be a need to use these.

MRS RITA FAN: Sir, in answer to my earlier question the Secretary has said that there have been vessels intercepted. Is the Secretary aware that these vessels intercepted were intercepted because they were suffering from engine trouble, and that when there is no engine trouble our law enforcement agents can only watch them speeding away as our law enforcement agents are prevented from making tactical use of their armament?

SECRETARY FOR SECURITY: Sir, I do not think that that is a completely accurate portrayal of the situation. Certainly, some interceptions have been made because smugglers' boats have suffered some kind of engine failure or engine malfunction, but at the same time the police have also successfully intercepted other boats.

Section 301 and Special 301 actions

3. MR NGAI SHIU-KIT asked (in Cantonese): In view of the fact that the Section 301 and Special 301 investigations conducted by the United States on trading activities of China will have profound implications on the economy of Hong Kong, will the Government inform this Council whether any action will be taken to help the industrial and commercial sectors of Hong Kong to cope with the extremely uncertain prospect in trade and steer our economy clear of sudden setback?

SECRETARY FOR TRADE AND INDUSTRY: Sir, in a situation where Hong Kong's two major trading partners are engaged in bilateral trade disputes which could lead to retaliatory action affecting Hong Kong's interests, a degree of uncertainty is inevitable.

As an interested third party we find ourselves in a particularly difficult position: we have a great deal at stake but no role in the negotiations themselves.

In spite of this, we have conveyed to the two sides our concerns, our hope that they will be able to reach an agreement, and the need to avoid harm to Hong Kong.

Specifically, on Special 301, which has been given a deadline of 16 January by the United States authorities, we have impressed upon the United States Administration the need to ensure that Hong Kong is not made the innocent victim of their differences with China. We have analysed the preliminary United States list of products for retaliation and disseminated our analysis both to those in Hong Kong having an interest and to the United States Administration. We have encouraged our private sector representatives to make their views known to the United States Administration, and I am pleased to say that many did so with their customary vigour and forthrightness in the public hearings held in Washington last week.

On Special 301, the potential danger to our economy from United States retaliation is significant but manageable in itself. The real danger lies in a downward spiral of retaliatory actions from both sides. We have therefore asked both sides to take our interests fully into account in deciding on their next course of action. Both Ambassador Carla HILLS, the United States Trade Representative, and Madam WU Yi, China's Chief Negotiator on Special 301, have indicated in public that Hong Kong's interests would be taken into account.

On Section 301, the uncertainty is of a longer-term nature because the investigation and bilateral talks between China and the United States can continue until October this year. We have no means of estimating the possible adverse effects at this stage but are monitoring the situation closely.

In short, Sir, we are fully aware of both the difficulties caused by the uncertainty and the potential for damage to Hong Kong's interests. We have been doing everything we can to minimize these, and will continue to do so in future.

MR NGAI SHIU-KIT (in Cantonese): Sir, the Secretary mentioned in the last paragraph of his reply that the Administration would be doing everything it could to minimize these effects. Can the Administration consider requesting the United States Administration to consult the Hong Kong Administration on the finalized list of affected products before announcing any punitive tariff on Chinese goods, so as to ensure that the effects on Hong Kong's businessmen are minimized?

SECRETARY FOR TRADE AND INDUSTRY: Sir, our best hope is that the two sides will be able to reach an agreement. In the unfortunate event that they cannot do so and the United States should feel obliged to resort to retaliatory measures, we would of course like to be given advance notice of the list of products which would be affected. Indeed we have already passed such a request to the United States authorities. Whether or not they will do so is of course up to them but I do not think we can ask them to consult us before they finalize the list.

MR JIMMY McGREGOR: Sir, since Section 301 action could be even more restrictive than Special 301 action, can the Government give this Council an indication of the present status of the United States Section 301 investigation on trading access problems with China? Is Hong Kong in any way involved in these investigations -- in an advisory capacity, possibly? And when will possible punitive action be taken if the United States decides on this course?

SECRETARY FOR TRADE AND INDUSTRY: Sir, as far as I know, negotiations between the two sides on Section 301 were held in November last year and since then they have not resumed negotiations on this particular subject but have instead concentrated on Special 301. To the best of my knowledge, at present there is no United States action actually taking place on this issue of Section 301. And as indicated in my main answer, the investigation and bilateral talks between the two sides can go on until October, after which I think the United States Administration will have about one month in which to decide whether or not to retaliate.

MR FREDERICK FUNG (in Cantonese): Sir, the Secretary mentioned in his reply that the Administration had conveyed our concerns to the two sides. The real danger lies in the fact that the more bitter the dispute between the two sides becomes, the greater will be the damage to us. The Secretary's reply has also indicated that the initiative we took was more on the side of encouraging our private sectors to make their views known to the United States Administration. May I ask the Secretary if the Administration has appealed to the private sectors to make their views known to the Chinese side as well, since their attempt will be fruitless if one side stands its ground?

SECRETARY FOR TRADE AND INDUSTRY: Sir, I think the private sector organizations and representatives are fully aware of the need for the two sides to compromise in order to reach an agreement and I have no reason to believe that they will not pass on their own views to the Chinese authorities.

DR HUANG CHEN-YA (in Cantonese): In view of the problems arising from Section 301, more lobbying delegations will have to be sent to the United States and China to present Hong Kong's case. Is the Administration aware that some of the businessmen who recently went to Washington alleged that the Hong Kong Administration had provided very little assistance and had not adequately played its co-ordinating role in the lobbying. Are such allegations true? In what way will the Hong Kong Administration strengthen its support for these lobbying groups in the future?

SECRETARY FOR TRADE AND INDUSTRY: Sir, first of all I would like to explain the difference between 301 and other United States actions on which we might need to do lobbying. 301 action, including Special 301 and Section 301, are actions on which the United States Administration has the sole authority to decide. The Hong Kong businessmen and private sector representatives who went to Washington last week did not go there to lobby; they went there to appear in front of a public hearing organized by the United States Administration and they did so in order to present their views on the likely effects of retaliation on the products in which they are interested. I can say categorically that there is no truth in the allegation that they were not given any assistance or adequate assistance. Before they left, actually it was the Hong Kong Government, mainly through the Trade Department, which provided all the necessary information to them on the products on the United States list. The Trade Department held many meetings with these people and also encouraged them to make representation to Washington. I can also inform this Council that after their arrival in Washington the Hong Kong Government Office in Washington arranged, on the morning of the hearing, a breakfast meeting at which these people were fully briefed on what they should say or should do whilst they were in Washington. I therefore do not agree with these allegations.

MR MARTIN BARROW: Sir, as the British Government can sometimes take a somewhat weak stand with the United States on issues of concern to Hong Kong, could the Secretary inform this Council if Her Majesty's Government is committed to pressing the United

States on these issues and what specific help they are giving?

SECRETARY FOR TRADE AND INDUSTRY: Sir, the first point I would like to make is that in matters of external trade policy the Hong Kong Government of course has full autonomy and we do exercise our own rights and obligations. But having said that, I can inform this Council that the British Government has on several occasions, through the British Embassy in Washington, expressed its concerns over the possible damage to Hong Kong of United States action against China under this Special 301 investigation.

MR HENRY TANG: Sir, according to government estimates, if the United States were to carry out Special 301 actions against Chinese goods, US$200 million worth of income and up to 7 200 jobs will be affected. Will the Administration inform this Council whether, if such actions were to go ahead, it will have a contingency plan on how to minimize the impact? And moreover, considering that China's MFN status will be up for renewal in a few months, will the Administration inform us what efforts it is making in order to persuade the United States not to put any conditions on MFN so that it will not have any severe impact on Hong Kong?

CHIEF SECRETARY: I think you are widening the scope of the question with the second question, Mr TANG. But I will ask the Secretary to answer the first of the two questions.

SECRETARY FOR TRADE AND INDUSTRY: Sir, we will continue to keep the business and manufacturing sectors fully informed of any action that the United States might decide to take, and we would of course continue to do whatever is possible to assist, principally in terms of advice and facilitation. But fundamentally, the individual businesses affected will have to cope with the situation themselves. This may mean adjusting their operations, looking for new markets, relocating part of their investments and production facilities, and so on.

MR HOWARD YOUNG: Sir, in the fourth paragraph of the Secretary's reply, it is stated that the potential danger to our economy from retaliation is "significant but

manageable" in itself. Would the Secretary tell us whether the Administration has made any attempt to broadly try and quantify this danger, and if so, whether it coincides with the figures just quoted by Mr TANG?

SECRETARY FOR TRADE AND INDUSTRY: Sir, I have used the word "manageable" because, according to our analysis, if the United States did retaliate against China and did so in respect of all the products set out in their preliminary list, then the maximum loss to Hong Kong would be in the order of about 7 200 jobs and loss of income, which means loss of GDP, of about HK$1.6 billion, which is only about 0.3% of GDP. Now this is the worst case scenario; it is not going to happen because the United States authorities themselves have stated publicly that if they should retaliate, the value of the products against which retaliation would take place would be about half of that in the original list. And then of course depending on the exact products which they pick for inclusion within the final list, the potential damage to Hong Kong might be even further reduced.

MR STEPHEN CHEONG: Sir, given that Section 301 investigation is going to take some time, that 1992 is an election year in the United States, and that lobbying is a very important and accepted form of activity in the United States, what increased resources, if any, are being considered to be provided by the Administration to help representatives from Hong Kong present their case to the United States authorities as well as Senators, Congressmen and their staff?

SECRETARY FOR TRADE AND INDUSTRY: Sir, as far as Section 301 action is concerned, there is no need for us to lobby members of Congress because, as I said in an earlier reply, the decision is entirely one for the United States Administration to make. And in that respect, Sir, I believe that our existing resources are adequate for us to cope with the situation.

MR JAMES TO (in Cantonese): Sir, the Administration said that the impact of Special 301 is manageable. But when it comes to Section 301, the Administration maintains that till now it has no means of estimating its effects on Hong Kong though it will follow the development of the case. Since there is no telling what sort of actions will be taken and presently there is no way to assess the possible effects of 301

actions, may I ask the Administration whether it will separately assess the likelihood of the United States implementing each of these measures and analyse the effects each will have on our existing manpower policy such as that relating to the importation of labour?

SECRETARY FOR TRADE AND INDUSTRY: I do not think that is possible, Sir, because in the absence of any indication by the United States authorities themselves of the estimated loss to United States interests resulting from China's general trade regime it is simply not possible for us to conduct any analysis.

DR CONRAD LAM (in Cantonese): Sir, in the second paragraph of his reply, the Secretary mentioned that we had conveyed our concerns to the two sides. May I know the level or levels of contacts made, for example through the Secretary himself, the Governor, or the British Embassy that we had had our concerns conveyed to the Chinese side?

SECRETARY FOR TRADE AND INDUSTRY: Sir, I can inform this Council that we have mentioned this problem to Chinese officials on more than one occasion and that the last occasion on which I did this personally was yesterday.

MR TAM YIU-CHUNG (in Cantonese): Sir, I am very much concerned about 301 and Special 301 because should the negotiations fail, 7 200 local jobs will be affected. What does the Government have in store to deal with this? Will it put aside the expansion of the labour importation scheme?

SECRETARY FOR TRADE AND INDUSTRY: Sir, the figure of 7 200 is only the maximum possible figure. We are hoping, first of all, that the two sides will reach an agreement and that there will be no retaliation; but even if there was to be retaliation, we believe that the figure would be at least half of that, if not even much lower. And in that situation I do not think that the loss of employment would be on such a scale as to require measures over and above the provision of existing facilities which the Labour Department is responsible for, such as placement and so on.

MR NGAI SHIU-KIT (in Cantonese): Sir, as more and more Sino-US trade issues affecting Hong Kong's interests will come up this year, will the Administration inform this Council if it has any plan to set up a central co-ordinating body to bring all the existing advisory bodies and trade associations' representatives under one organization so as to put their heads together to devise ways to cope with the situation in order to avoid confusion or waste of resources?

SECRETARY FOR TRADE AND INDUSTRY: Sir, I myself, as Secretary for Trade and Industry, am the focal point for co-ordinating Hong Kong's lobbying activities in 1992 and I will of course make sure that there will not be any confusion or waste of resources.

DR YEUNG SUM (in Cantonese): Sir, Sino-US trade relations are always affected by factors like politics, human rights situation and trade deficits. Bearing this in mind and if we look beyond the issue of Section 301, will the Administration consider stepping up lobbying activities in Washington?

SECRETARY FOR TRADE AND INDUSTRY: Yes, Sir, we do have a strategy in respect of lobbying members of the United States Administration and members of Congress in Washington in relation to this year's renewal of China's MFN status, and we do intend to step up our lobbying activities.

Written answers to questions

Redevelopment of Haven of Hope Hospital

4. MISS EMILY LAU asked: The Government informed this Council on 4 December 1991 that "plans are in hand to redevelop the Haven of Hope Hospital (HOHH) into a 316-bed hospital providing services in acute, rehabilitation, tuberculosis, chest, hospice and convalescent care" and the project is scheduled to start in 1992-3. Since the HOHH has not received any instruction from the Government in planning for acute care facilities such as accident and emergency department and has not received any financial commitment from the Government, will the Administration inform this

Council:

(a) when the HOHH will be given details of the proposed changes in the redevelopment project;

(b) how much money will be allocated to this project; and

(c) when is the project expected to be completed?

SECRETARY FOR HEALTH AND WELFARE: Sir, in medical services, the term "acute" carries two meanings: one refers to the timing of onset of disease, the other refers to the intensity of medical care required.

The redevelopment of the Haven of Hope Hospital will not have an Accident and Emergency Department. It will have 30 acute beds for TB and chest patients who may require intensive medical treatment during hospitalization.

Turning to the specific questions raised, the answers, seriatim, are as follows:

(a) Plans for the redevelopment of the Haven of Hope Hospital have been developed in close consultation with the hospital administration. The hospital administration has therefore actively participated in the planning process. There is no question of the staff of the Hospital not being adequately informed of the precise scope of the project;

(b) $462 million has been earmarked for the project; and

(c) According to present timetable, the project is expected to be completed in 1996.

Loansharking

5. MR NG MING-YUM asked: Will the Government inform this Council:

(a) how it monitors the effectiveness of the policies and legislation dealing with loansharking;

(b) how many loansharking cases were reported to the police in the past three years; how many of such cases led to prosecution; how many of these prosecutions were successful and what penalties were imposed on the convicted;

(c) whether the Government has conducted any review on the effectiveness of the policies and the adequacy of resources allocated to curb loansharking activities; if so, what the detailed findings are; and

(d) what amount of manpower, support and financial resources the Government will deploy in the near future and what changes, if any, will be made to the relevant policies to deal with loansharking activities?

SECRETARY FOR SECURITY: Sir,

(a) There is no specific criminal offence of loansharking. The term is generally taken to mean lending money at usurious interest rates. As such, loansharking is an offence under section 24(1) of the Money Lenders Ordinance (Cap 163).

The Government monitors the effectiveness of this provision and its policy towards loansharking on the basis of the prevalence of loansharking cases reported and detected. We also put out publicity to advise the public not to borrow money from loan sharks and to encourage the public to report loansharking cases to the police.

(b) 223 loansharking cases were reported to the police in the past three years. From 1 January 1989 to 30 June 1991, 80 persons were prosecuted. Of the 42 persons convicted, 12 were sentenced to imprisonment of six months or less, one was conditionally discharged, eight were given a suspended sentence of imprisonment, and 21 were fined. The average fine was $5,700. Further details are given in the Appendix.

(c) Much loansharking is linked to organized crime. Triad societies are involved in fringe activities such as intimidation and debt collection. The police have initiated a study into loansharking with these particular features in mind. The

study is scheduled to be submitted to the Fight Crime Committee for discussion later this year.

(d) Loansharking activities remain a prime target of the Organized Crimes and Triad Group of the police. The study referred to in (c) above will indicate whether any operational or policy changes are required.

Appendix

Statistics on loansharking offences

| Year | 1989 | 1990 | 1991 | Total |
|---|---|---|---|---|
| Cases reported to the police | 78 | 78 | 67 | 223 |
| Until 30 June 91 | | | | |
| Persons prosecuted | 42 | 32 | 6 | 80 |
| Sentence: | | | | |
| - Acquitted | 17 | 15 | 6 | 38 |
| - Suspended imprisonment | 4 | 4 | - | 8 |
| - Conditional discharge | 1 | - | - | 1 |
| - Imprisonment | | | | |
| - Less than six months | 2 | 3 | - | 5 |
| - six months | 7 | - | - | 7 |
| - Fine | 11 | 10 | - | 21 |

Hong Kong students studying overseas

6. MR ERIC LI asked: Will the Government inform this Council of the number of students who left Hong Kong to take first degree courses in overseas universities last year and their distribution by countries?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we do not have complete data on the number of students leaving Hong Kong to study in overseas educational institutions. However, an estimate may be made based on student visa statistics provided by foreign consulates and commissions in Hong Kong.

The United States, Canada, the United Kingdom and Australia are the four major destinations which together receive over 95% of all Hong Kong students going overseas. During the 12-month period ended 30 September 1991, a total of 18 900 visas were issued for Hong Kong students to study in these four countries. According to a survey on their educational attainment, the visa recipients could be classified into three groups:

(a) 8 300 students who have completed secondary education or below and who would be enrolled in courses below degree level;

(b) 4 300 students who have completed sixth form in Hong Kong and who would be enrolled in first degree studies;

(c) 6 300 students who were graduates from tertiary institutions or post-secondary colleges in Hong Kong. About two-thirds of these were degree holders and would be pursuing postgraduate studies abroad. Others may be enrolled for advanced years of first degree courses or postgraduate programmes, depending on the admission requirements of individual overseas institutions.

The distribution of student visa recipients by issuing country and by educational attainment is as follows:

Education Attainment of Hong Kong Student Visa Recipients
(October 90 -- September 91)

| Issuing | Secondary | Sixth | Post-secondary/ | All |
|---|---|---|---|---|

| country | or below form | university | levels |
|---|---|---|---|
| United States | 700 1 800 | 3 400 | 5 900 |
| Canada | 3 300 1 000 | 300 | 4 600 |
| United Kingdom | 2 000 500 | 1 900 | 4 400 |
| Australia | 2 300 1 000 | 700 | 4 000 |
| Total | 8 300 4 300 | 6 300 | 18 900 |

The remaining 5% of students to whom visas are issued mainly attend courses in western European and other Asian countries. Reliable figures for this group are not available.

Recruitment of junior police officers

7. MR VINCENT CHENG asked: Will the Government inform this Council of the number of applications and the intake and wastage figures for junior police officers in 1991 as compared with the figures in the previous years?

SECRETARY FOR SECURITY: Sir, in 1991, a total of 9 271 applications for junior police officer posts were received. This compares with 5 109 applications in 1990.

As a result, recruitment has also improved. 1 246 officers were recruited in 1991, 45% more than in 1990. The intake each month in 1991 consistently exceeded the intake for the corresponding month in 1990.

Wastage has decreased. The number of junior police officers leaving the force in 1991 was 1 299. This represents an average of 108 officers each month, approximately 20% less than in 1990.

The past few months in particular have seen a full intake of junior police officers into the Police Training School, and new recruitment has substantially exceeded wastage. We hope that this trend will continue in 1992.

A table showing the recruitment and wastage statistics for 1989, 1990 and 1991 is at Annex.

Annex

Junior police officers recruitment and wastage statistics

| Year | No of applications | Intake | Wastage |
|---|---|---|---|
| 1989 | 6 324 | 1 237 | 1 568 |
| 1990 | 5 109 | 862 | 1 611 |
| 1991 | 9 271 | 1 246 | 1 299 |

Chater Road pedestrian precinct

8. MRS PEGGY LAM asked: Will the Government inform this Council what measures will be taken to rectify the unsatisfactory situation in the pedestrian precinct in Chater Road which has been turned into a hawker bazaar on Sundays and holidays, with large crowds of people gathering and even blocking the flow of visitors?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the main priorities of the Urban Services Department in Chater Road, Chater Garden and Statue Square areas on Sundays and holidays are directed at keeping the area as clean as possible during the day, mounting large scale clean-ups after the crowd has dispersed, and helping to keep pedestrian passageways clear of obstruction caused by hawking activities.

Because there may be up to 20 000 people collected in these areas at these times, the Department deploys three times as much manpower and other resources in preventing obstruction by hawkers on Sundays and public holidays than on weekdays. The staff are deployed on patrol from before 8 am in the morning until after 9 pm in the evening

every Sunday and public holiday. The areas of patrol extend from the Star Ferry Concourse and Connaught Garden in the north to Queen's Road Central and beyond in the south, and from Chater Garden in the east to Peddar Street in the west. Particular attention is paid to locations where pedestrian traffic is relatively busy. The patrols disperse any illegal hawkers found trying to trade and, if the warnings are not heeded, arrest the hawkers and seize the goods. In addition, joint raiding operations with support from the police are mounted from time to time.

In 1991, the Urban Services Department made 327 arrests in the area in question for hawking without a licence. In each case, the goods were confiscated. There were also 437 cases of seizure of goods without arrest during the same period. In addition, the Department issued 245 summonses against persons found hawking inside the Urban Council pleasure grounds in the vicinity. These measures have gone some way towards easing the hawking problem.

Education is also important. Over the past year, the Urban Council has organized jointly with the Philippines Consulate and voluntary groups a number of community involvement schemes to launch clean-up campaigns in this area. The Urban Services Department will continue to disseminate warnings against illegal hawking, in English, Tagalog and Chinese, through broadcast vans and notice boards set up in prominent locations. The Department is considering whether to increase such warning messages.

Backlog of priority projects endorsed by Social Welfare Advisory Committee

9. DR LAM KUI-CHUN asked: Will the Administration inform this Council when and in what order the backlog of priority projects endorsed by the Social Welfare Advisory Committee will be implemented?

SECRETARY FOR HEALTH AND WELFARE: Sir, of the priority projects endorsed by the Social Welfare Advisory Committee, the following will be implemented shortly:

(a) the first phase of the expansion of the Community Service Order Scheme, which will be implemented in early 1992;

(b) the provision of eight additional home help teams, which has been included in the "working targets" and will be implemented in 1992-93; and

(c) the provision of three additional infirmary units, which has been included in the "working targets" and will be implemented in 1992-93.

Three other projects have been accorded priority, but no definite implementation dates have been set. They are:

(a) the provision of a medical officer visit service for infirmary units in care-and-attention homes,

(b) the provision of occupational therapists for infirmary units in care-and-attention homes, and

(c) the provision of two additional outreaching social work teams a year.

Additionally there are other projects of a legislative nature which are being considered in the context of new or amending legislation. These include provisions for updating and amending the Protection of Women and Juveniles Ordinance (Cap 213) and provisions for maintaining the standard and control of residential care homes for the elderly. It is our aim to introduce the relevant legislation to the Legislative Council during the current Session.

Tung Chung New Town

10. MR FREDERICK FUNG asked: In the light of the Government's recent request for the Housing Authority to allocate funds to finance the infrastructural projects (including site formation, road works and school facilities) in the Tung Chung New Town in the next 10 years, will the Government inform this Council:

(a) whether the Government has changed its established policy of financing infrastructure in the new towns by passing the financial commitments in this regard directly onto the public housing tenants and flat-owners of the Home Ownership Schemes from whom the revenue of the Housing Authority derives; and

(b) whether the Housing Authority, if required to allocate funds to finance infrastructural projects in the new towns, will be reimbursed part of the proceeds from land sale in new towns for use as funds to increase its production of public housing units?

SECRETARY FOR THE TREASURY: Sir, the Government has not changed its policy of financing infrastructural development in the new towns. However, we have always taken the view that, if the Housing Authority were to begin obtaining surpluses in excess of what it requires to support immediate needs and planned development within existing policies, then it would be in the interests of co-ordinated development that these surpluses should be used to fund social and engineering infrastructure related to housing development. The Financial Secretary is empowered under section 13(2) of the Housing Ordinance (Cap. 283) to require these surpluses to be returned to General Revenue, but the Government is as keen as the Housing Authority to see excess funds used to enhance the provision of housing-related infrastructure when it is appropriate to do so.

In response to part (a) of the question, we have recently put to the Housing Authority proposals that they should undertake a small number of specific, housing-related infrastructural projects. The reason behind this is that the Authority is programming its housing development in these areas for earlier completion than the Government is programming the necessary social infrastructure. By inviting the Housing Authority to undertake these works, we are offering it the opportunity to co-ordinate all the housing and housing-related infrastructural development in the areas in question. In this way, the Housing Authority will be able to ensure that it is able to provide not only housing, but a proper community infrastructure within its programmed timeframes, something that cannot be assured with the Government's current timeframes and availability of resources. It is entirely up to the Authority to decide whether it wishes to accept this invitation. The Authority is already aware that, if it does so, it will be necessary to fund this development from its own resources.

The funding of these housing-related infrastructural developments will not add to the financial burden of public rental housing tenants. These tenants enjoy heavily-subsidized housing and, regardless of the Authority's decision, will continue to do so. Similarly, the prices of Home Ownership Scheme flats are fixed with the criterion of affordability being one of the factors taken into consideration. We do not envisage any change in the method of calculating affordability levels.

Turning to part (b) of the question, I mentioned earlier that the Housing Authority has been invited to undertake the development of some housing-related

infrastructure. There is no question of the Government requiring the Authority to undertake these works.

Under the Joint Declaration the part of land sales income which is retained by the Hong Kong Government is deposited in the Capital Works Reserve Fund by which all public works programmes are funded. As stated earlier it is because the Government's and Authority's programmes of work do not coincide that the Authority has been invited to consider financing certain housing-related infrastructural works to avoid a delay in its own construction programmes.

The case of Lorrain OSMAN

11. MR JIMMY McGREGOR asked: Will the Government advise this Council of the present position regarding the extradition to Hong Kong of Lorrain OSMAN and provide the following information:

(a) when is it expected that Mr OSMAN may arrive in Hong Kong to face criminal charges, and what avenues of appeal are still open to him;

(b) will the Hong Kong Government continue to seek his extradition given that he has already spent over six years in a British prison;

(c) what is the cost of this case to date that has had to be paid from Hong Kong public revenue; and

(d) how any other criminal proceedings in Hong Kong against other defendants are being held up pending Mr OSMAN's extradition, and how serious are any such cases?

ATTORNEY GENERAL: Sir,

(a) Mr OSMAN's sixth application for a writ of Habeas Corpus was found to be an abuse of process and dismissed by the Divisional Court in England on 14 November 1991. His application to the Divisional Court for leave to appeal to the House of Lords was rejected on 28 November 1991. On 11 December 1991 he filed a petition in the House of Lords for leave to appeal to the House of Lords. It is likely that this

will be considered by the Lords within the next few weeks. It cannot be predicted at this stage as to when Mr OSMAN will be returned to Hong Kong or what further legal proceedings he may bring.

(b) The Hong Kong Government will continue to seek Mr OSMAN's extradition. Mr OSMAN faces charges of a serious nature. As I said in this Council on 30 May 1990, it is Mr OSMAN's own use of the appeal channel which has resulted in the extradition proceedings being prolonged.

(c) The cost thus far of the extradition proceedings is approximately $15.8 million. It should be borne in mind that the Hong Kong Government has been awarded costs in a considerable number of applications and appeals brought by Mr OSMAN, including the six Habeas Corpus proceedings. Strenuous efforts are being made to recover those costs.

(d) Mr OSMAN is co-accused with Mr George TAN in respect of serious allegations of fraud and corruption arising out of funding of the Carrian Group by Bumiputra Malaysia Finance Limited. Inorder for them to be tried jointly, it is essential to have Mr OSMAN returned to Hong Kong.

Shortage of judges

12. MR PANG CHUN-HOI asked: Will the Government inform this Council:

(a) of the average time required for cases to be heard in courts at different levels;

(b) of the number of persons being detained for more than two months while awaiting trial during the past year;

(c) whether the current waiting time reflects the shortage of judges;

(d) if so, what measures the Government will take in the next few years to improve the situation; and

(e) if not, why the time required for court cases to be heard cannot be shortened?

CHIEF SECRETARY:

(a) The average waiting times in 1991 were :

| | (days) |
|---|---|
| Court of Appeal | |
| Criminal | 90 |
| Civil | 87 |
| High Court | |
| Criminal | 268 |
| Appeal from Magistracies | 131 |
| Civil | 256 |

| | (days) |
|---|---|
| District Court | |
| Criminal | 165 |
| Civil | 198 |
| Magistracy | 52 |
| Labour Tribunal | 26 |
| Small Claims Tribunal | 49 |
| Coroner's Court | 43 |
| Obscene Articles Tribunal | 21 |
| Lands Tribunal | 82 |

(b) In the period 1 July 1990 to 30 June 1991, 333 persons were detained for more than two months while awaiting trial in the High Court. This represents 58% of the total number of accused persons dealt with in criminal cases in the High Court in that period. In the same period, 38 persons were being detained for more than two

months while awaiting trial in the District Court. This represents 2% of the total number of accused persons dealt with in criminal cases in the District Court. No person was being detained for more than two months while awaiting trial in the Magistrates Court.

(c) The waiting time for trials in the High Court is not satisfactory, and does reflect a need for additional High Court Judges. The principal reason for the deterioration of waiting times for criminal trials in the High Court has been the significant increase in the number of criminal cases set down for trial in the last five years and the increasing complexity of cases, both criminal and civil, generally. The figures are:

| | |
|---|---|
| 1987 | 234 |
| 1988 | 296 |
| 1989 | 387 |
| 1990 | 356 |
| 1991 | 419 |

The establishment of judges and magistrates in the other courts is considered satisfactory.

(d) Given the inadequacy of the High Court Judges, a proposal for the creation of three additional High Court Judge posts will be submitted to the Establishment Sub-Committee of the Finance Committee of the Legislative Council in the near future. The establishment of judges and magistrates will continue to be closely monitored by the Administration and the Judiciary.

As a further step to speed up the judicial process, the Judiciary is conducting an Information Systems Strategic Study to suggest ways in which modern technology may be used to increase the efficiency of the judicial system. The study will be completed soon.

(e) See reply to (d) above.

Wanted criminals among Vietnamese boat people

13. MRS PEGGY LAM asked: Will the Government inform this Council

(a) whether there are means to identify from the screened-out Vietnamese boat people stranded in Hong Kong those who are criminals wanted by the Vietnamese Government;

(b) if so, whether the Government will make arrangements for those wanted criminals amongst the boat people to be repatriated to Vietnam as soon as possible, so as to stop them from taking refuge in Hong Kong; and

(c) if not, whether the Government will send the personal particulars of the boat people to the Vietnamese Government for vetting, so that the wanted criminals identified can be repatriated to Vietnam as soon as possible, thus promoting co-operation between the two Governments in their fight against criminals and alleviating the burden on the detention centres in Hong Kong?

SECRETARY FOR SECURITY: Sir, we have no reliable means of identifying those among the Vietnamese migrants in our detention centres who may have committed crimes in Vietnam. We do not have an extradition agreement with Vietnam, nor are we likely to be ready to conclude one in the near future. In these circumstances, we do not solicit information from Vietnam about those in our camps who may have committed crimes in Vietnam or have been convicted of crimes there.

Under the Statement of Understanding signed by Britain, Hong Kong and Vietnam on 29 October 1991, all screened-out Vietnamese migrants will in due course be repatriated under the Orderly Return Programme. Our intention is that all Vietnamese illegal immigrants, including fugitive offenders from Vietnam, should be repatriated to Vietnam as soon as possible.

Exchange of criminal intelligence with China

14. MR JAMES TO asked: Will the Government inform this Council:

(a) whether Hong Kong has any reciprocal arrangement with Mainland China for the supply or exchange of crime information and personal data on suspected criminals and prisoners; if yes, what types of information are involved;

(b) under what circumstances and conditions the Government agrees to supply or

exchange such information; whether these circumstances and conditions will also apply to other citizens who have not committed any crime;

(c) whether the Government will notify the persons concerned; if so, through what channels the notification will be given; and

(d) to what extent the Government will take into account the provisions relating to privacy in the Bill of Rights in the exchange of information?

SECRETARY FOR SECURITY: Sir,

(a) Hong Kong has no formal bilateral arrangements with the People's Republic of China governing the exchange of the kind of information referred to. However, both Hong Kong and the People's Republic of China are members of Interpol and information passes between the two sides through this channel. Under the Interpol arrangement there is no obligation on members to comply with requests received from others. The types of information exchanged through Interpol include documentary evidence such as medical reports, physical evidence such as weapons and statements by consenting witnesses.

(b) We are concerned to ensure that mainland residents who commit serious crimes in Hong Kong do not evade justice simply by returning to the mainland. So as a general rule, we are prepared to supply information when requested by the Chinese authorities in cases where they have arrested a mainland resident for serious offences committed in Hong Kong; such as murder or armed robbery.

(c) The persons concerned are not notified by the Hong Kong authorities.

(d) In providing information we take care to ensure that we act in accordance with the laws of Hong Kong, including the Bill of Rights.

Flyover project in Sai Kung

15. MISS EMILY LAU asked: In view of the concern expressed by Sai Kung District Board (SKDB) members over the slippage in the flyover project designed to improve traffic flow between Hiram's Highway and Clear Water Bay Road, will the Government inform

this Council:

(a) what has happened to the assurance given to SKDB Traffic and Transport Committee on 13 January 1989 that the flyover would be built by mid-1991;

(b) whether the project has been indefinitely shelved, and if so, why; and

(c) when will construction commence?

SECRETARY FOR TRANSPORT: Sir, this flyover originally formed part of the first phase of a package of measures to improve traffic flow on Hiram's Highway and Clear Water Bay Road. Other works in the first phase, including the construction of a climbing lane between Wo Mei and Clear Water Bay Road, are now nearing completion.

The flyover, however, had to be excluded from these works because of strong local objections to its expected impact on the Tai Po Tsai burial ground. A revised proposal for the flyover, avoiding the burial ground, was presented to the Traffic and Transport Committee of the Sai Kung District Board at its January 1989 meeting. The committee accepted the new proposal and was advised that this could be completed by mid-1991 provided no new objections were received.

Additional funds for the revised proposal had to be sought. However, in 1990, a bid for funds to cover the increase in cost did not succeed and, in 1991, the balance of funds for the flyover was diverted to other more urgent projects.

The project is now in Category C of the Public Works Programme with an estimated cost of $61m. If it succeeded in gaining high priority and was funded, the earliest that the flyover could be completed would be 1995.

In the interim, improvements have been made to conditions at the junction of Hiram's Highway and Clear Water Bay Road. These include lowering the speed limit, better traffic signs and an improved road surface.

Bedspace apartments

16. MR HUI YIN-FAT asked: Will the Administration inform this Council:

(a) of the progress of the action plan to resolve the problem of bedspace apartments, in particular the timetable for legislation to regulate the operation of such apartments since the motion debate on the subject held in this Council on 27 February 1991; and

(b) whether the actions taken are effective in achieving the intended results?

SECRETARY FOR HOME AFFAIRS: Sir, the key factor in any successful action plan is the setting up of sufficient urban hostels for those to be decanted from overcrowded bedspace apartments. Towards this end, the City and New Territories Administration (CNTA) and the Social Welfare Department have made concerted efforts to secure suitable premises for use as singleton hostels.

The first of a series of hostels targetted at able-bodied lodgers in existing bedspace apartments was opened in October last year in Wan Chai in premises made available by the Tung Wah Group of Hospitals. The second hostel is being set up in Kwun Tong in flats made available by the Hong Kong Housing Society. It will be operational in a couple of months. In addition, a flat in a private residential building in Yau Ma Tei has been purchased with money donated by the Chinese Temples Committee. Renovation plans for this flat are being drawn up.

The Agency for Volunteer Service is the management agency for these hostels and for those to be set up in premises secured by CNTA.

As regards the elderly lodgers in bedspace apartments, the Housing Department has offered premises at Cheung Sha Wan Estate and Siu Sai Wan Estate for use as hostels for them. The premises at Cheung Sha Wan Estate have been allocated by the Social Welfare Department to the Salvation Army to operate the hostel, which will come into operation in April or May this year. The premises at Siu Sai Wan Estate will also be allocated by the Social Welfare Department to a non-government welfare organization to provide a similar service in about August or September this year.

The Royal Hong Kong Jockey Club has generously donated $15.6 million towards the capital costs for setting up these hostels for the elderly lodgers.

The action plan is making headway in relieving the problem of overcrowding in bedspace apartments. However, it is still early to assess its effectiveness,

particularly as singleton hostels in areas where they are most needed, such as Yau Ma Tei, Sham Shui Po and Mong Kok, are yet to be opened.

Government's intention to subject bedspace apartments to licensing once there are sufficient alternative accommodation available for the displaced lodgers was set out in the motion debate on 27 February 1991. As I expect that the decantation exercise will be reasonably completed in about two years, I will seek to introduce the necessary legislation for a licensing scheme into this Council in mid-1993.

Solvent abuse

17. MR GILBERT LEUNG asked: In view of the death of a schoolboy from sniffing of lighter fuel gas, will the Government inform this Council:

(a) whether there are any statistics relating to solvent abuse such as sniffing volatile solvents from gases; if no, whether the Government can provide any estimated figures;

(b) whether legislative control will be introduced requiring the inclusion of bilingual warning labels and indication of proper usage for the sale of lighter gas refill canisters (or other gases with similar volatile solvents); if not, please give the reasons for not doing so; and

(c) whether and how a publicity campaign will be conducted to make known the harm of solvent abuse?

SECRETARY FOR SECURITY: Sir, according to information received by the Government's Central Registry of Drug Abuse from a wide range of reporting agencies, no cases of abuse of lighter fuel gas were reported in 1989; two cases were reported in 1990; and, apart from the case referred to in the question, no other cases were reported in the first nine months of 1991.

A total of 19 cases of abuse of other organic solvents, all of them involving the substance commonly known as thinner, were reported in the past three years. All 22 known solvent abuse cases in the last three years involved young people under the age of 21. Most were reported by outreach social workers.

As regards the second part of the question, at the conclusion in November last year of an enquiry into the death of the 13-year-old boy who had died as a result of sniffing lighter fuel, the Coroner's Court suggested that:

(a) canisters of lighter fuel should bear a label, both in English and Chinese and in clear and bold words, on the dangers of abuse, pointing out that it could be fatal and should be kept away from children; and

(b) the sale of canisters of lighter fuel should be restricted.

The Director of Electrical and Mechanical Services, who is the Gas Authority, is conducting a detailed study of the full record of the Coroner's Report, including the suggestions for the inclusion of a bilingual warning label and restrictions on the sale of refill canisters. He will make his recommendations after consulting the Gas Safety Advisory Committee.

As regards the third part of the question, although the abuse of solvents is low, both the Government and the Action Committee Against Narcotics are concerned about the problem. We publicize the dangers of this form of abuse through drug education talks given to secondary school children (which are being extended to Primary Six students next year) and displays at anti-drug exhibitions, carnivals and other publicity events and functions. Organic solvents, including lighter fuel gas, are also included as common drugs of abuse on a poster recently put on public display. We have also produced a Drug Education Teaching Kit, incorporating video tapes, reference materials and follow-up lesson plans, which aims to make young persons more aware of the harmful effects of abusing psychotropic and other substances, including organic solvents. We have recently issued a Guidebook on Drug Abuse for professionals involved in the fight against drugs. A separate section is devoted to organic solvents. We will continue to direct our publicity campaign against abuse of all substances, including solvents.

Employment of officers relieved from Home Ownership Scheme conveyancing duties

18. MRS SELINA CHOW asked: In view of the recent transfer of Home Ownership Scheme (HOS) conveyancing work from the Registrar General's Department and the Housing Department to private solicitors firms, will the Government inform this Council:

(a) what savings are envisaged as a result of the transfers, in terms of officers previously undertaking HOS conveyancing duties; and

(b) what measures have been taken to ensure that those officers previously undertaking HOS conveyancing duties remain productively employed?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir,

(a) To answer this question, it is necessary to go back a little in history. The Home Ownership Section of the Land Office of the Registrar General's Department was set up in June 1978 with an establishment of 19 staff to deal with the execution, stamping and registration of assignments built under the HOS.

The workload of the section has increased significantly since 1978 owing to an increase in the number of HOS flats put up for sale: 13 718 flats were offered for sale in 1991 as compared to 8 373 in 1978, an increase of 63.8%. In addition, the section has been assigned ancillary work which was not envisaged when it was set up in 1978 and for which no additional staff has been provided.

Despite this, there has not been any increase in staff resources. On the contrary, the existing establishment of the section is now only 16 as against 19 in 1978, a reduction of 15.8%. The resultant effect is that the section has not been able to complete the work in time.

As a stringent time schedule had to be met for the sale and execution of assignments of HOS flats and an increasing number of HOS flats were being put out for sale, some 16 officers of the Housing Department were loaned to the HOS Section of the Land Office to assist in the work of execution of assignments during the period from November 1989 to December 1991 as and when considered necessary by that department. Despite this arrangement it was still not possible for the Land Office to handle the total volume of the work and backlogs resulted. It was ultimately decided to contract out the arrangements for execution of the assignments to individual purchasers to private solicitors firms. The contracting-out commenced with Phase 13B flats in October 1991. The Land Office continues to prepare all legal documentation for each HOS court, in addition to the backlog of work.

The "savings" therefore take the form of relieving the HOS Section from the huge volume of work and backlogs, which would otherwise call for the addition of permanent staff resources. Also, with the transfer of conveyancing to the private sector, the Housing Department staff on loan to the section were returned to their own department in December 1991.

(b) There is no lack of work for the existing staff in the HOS Section. At present, they are actively engaged in:

(i) preparatory work relating to 3 180 Phase 13A assignments which will be executed in 1992-93. These assignments are dealt with by the HOS Section because agreements for sale and purchase were signed by purchasers as long ago as June 1991 when they were informed that the Land Office administrative fee would be charged;

(ii) clearing backlogs of work, as at the Annex; and

(iii) completing the receipt clauses in about 7 500 assignments of HOS flats built under Phases 12A, 12B and 12C. It is estimated that about 7 500 receipt clauses can only be completed in 1992-93.

In the longer term, consideration will be given to contracting-out the remainder of the non-administrative aspects of the conveyancing work detailed above to private firms. This however will have to wait until after it is proved that the initial contracting-out of the bulk of the conveyancing is working smoothly.

Annex

Backlogs of work as at 8 January 92

| Activity | Average monthly intake | Average monthly output | Existing backlog |
|---|---|---|---|
| (i) Drafting, engrossing and arranging execution of assignments for the Housing Authority | 57 | 35 | 196 |

| | | | |
|---|---|---|---|
| | to buy back HOS flats from owners | | |
| (ii) | Drafting, engrossing and arranging execution of assignments for the resale by the Housing Authority of HOS flats in (i) | 39 | 40 79 |
| (iii) | Scrutinizing draft assignment from owners of HOS flats to other family members | 24 | 18 132 |
| (iv) | Scrutinizing variations to draft Legal Charges from the standard form requested by certain banks | 2 | 2 0 |
| (v) | Scrutinizing draft staff Housing Loan Mortgages | 26 | 27 13 |
| (vi) | Scrutinizing draft replacement Legal Charges on change of employment by owners | 20 | 15 107 |

Counselling services for candidaties failing enrolment at local tertiary institutions

19. MR ERIC LI asked: The Secretary for Education and Manpower indicated in his reply to my question in this Council on 18 December 1991 that 18 629 candidates who met the minimum entry requirements for admission to degree courses in three of our tertiary institutions in 1990-91 failed to be enrolled. In this connection, will the Government inform this Council whether the Government provides any counselling

services for these candidates on further studies and careers which match their qualifications in order to fully develop their potential; and if so, what are they?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, in the reply I gave to Mr LI's question on 18 December 1991, I said that of the total 23 056 applications received in 1990-91 by the Hong Kong University, the Chinese University of Hong Kong and the Baptist College, 18 629 applications (not candidates) were unsuccessful. Prior to the introduction of a joint admission system in 1991, candidates applied separately to individual institutions and most applied to more than one. Thus the total number of applications received by all UPGC-funded institutions always exceeded the number of eligible candidates. By the same token, the number of candidates failing to gain a degree place would be substantially less than the figure of 18 629 referred to above, particularly if we were to take into account the number admitted by the two polytechnics.

On the question of counselling services, the Government provides each secondary school with a careers master/careers teacher to advise students on further studies and career planning.

For students who met the minimum entry requirements for degree courses but failed to get enrolled in such courses in any of the publicly funded tertiary institutions, the alternative options included further study at degree level at the Open Learning Institute and at non-degree level at institutions such as the polytechnics, the approved post-secondary colleges, and the Colleges of Education. These options would have been made known to them through their careers teachers. Overseas study opportunities would also have been introduced as another option for students whose families can afford the cost. As for those wishing to enter employment, counselling on career choices based on their individual interest and ability would have been given. They would also have been advised on how to improve themselves through part-time continuing education.

The careers teachers are backed up in their delivery of counselling work by both the Education Department and the Labour Department, which organize frequent training in careers counselling skills for them. The teachers are also sent up-to-date information on careers and further study opportunities.

Students who need further help can obtain counselling and advisory services from

the Careers and Guidance Services Section of the Education Department. In the year 1990-91, 2 700 Form VII students received individual counselling.

Dangerous slopes

20. MR ALBERT CHAN asked: Will the Government inform this Council what criteria are being adopted for designating dangerous slopes; whether different criteria are being applied in designating dangerous slopes affecting squatter areas, residential developments or roads in general; and if so, to what extent they are different and why?

SECRETARY FOR WORKS: Sir, a slope affecting a residential development or a road is designated as dangerous by the Geotechnical Engineering Office where it has an inadequate margin of safety as determined by a quantitative stability assessment, or by visual criteria, and where slope failure would involve a significant risk to life. Existing slopes and retaining walls which are found to be unsafe are rectified under the Government's long-term Landslip Preventive Measures Programme. The programme also includes stabilization of some unsatisfactory government slopes and retaining walls, the collapse of which could indirectly cause loss of life by major disruption to essential services, or lead to major economic disruption. In addition, a great deal of stabilization work has been done in association with new government projects and by the private sector.

The criteria adopted for designating dangerous areas occupied by squatters are based on the general geotechnical characteristics of the affected hillsides, as measured in terms of topographical, geological and hydrological properties. To explain the reasons for the different criteria, it is necessary to describe the history of the Government's preventive action in squatter areas over the last decade.

For decades, squatter dwellings have been commonplace on steep hillsides, which are prone to landslips during intense rainstorms. Even small landslips in crowded squatter settlements can cause casualties, as was evident in 1982, when 26 people lost their lives in squatter settlements during the severe May rainstorm. Many of the victims were occupying flimsy wooden huts struck by debris from small landslides in adjacent earthworks or whose foundations were swept away by debris-laden flood water.

A study subsequently carried out by the Geotechnical Control Office revealed that there were about 57 000 squatters living on steep hillsides in the urban area which were especially vulnerable to landslips during heavy rainfall. These slopes could not be rectified under the Landslip Preventive Measures Programme because the majority of the squatters needed to be cleared before the necessary large scale works could be carried out. These clearances could obviously only be undertaken within the capacity of the Government's housing programme.

Very significant improvements in squatter safety from landslides have now been achieved. The Housing Department's squatter clearance programme has resulted in almost all of the hillsides which are especially vulnerable to landslips having been cleared in the urban area over the past seven years. The Geotechnical Engineering Office is now carrying out studies of landslip hazards to squatters in some of the less dangerous hillsides in the urban area and in the New Territories, and squatters vulnerable to landslip hazards are cleared on a need basis.

Although landslip hazards to squatters have been greatly reduced in recent years, the Geotechnical Engineering Office recognizes that there may continue to be casualties from landslips as long as any squatters live on slopes. Accordingly, the Government's Landslip Warning System is in use again this year to provide adequate warning of the probable occurrence of landslips on steep hillsides, and to urge squatters to be concerned for their safety and to take refuge in the temporary shelters provided by the Government.

First Reading of Bills

MAGISTRATES (AMENDMENT) BILL 1991

ROAD TRAFFIC (AMENDMENT) (NO. 5) BILL 1991

TELEVISION (AMENDMENT) (NO. 2) 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

MAGISTRATES (AMENDMENT) BILL 1991

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

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

The purpose of this Bill is twofold:

- first, to enable a computerized system for the issue of summonses to be introduced into the Magistrates Courts; and

- secondly, to empower the Governor to refer a criminal case or a matter arising in such a case which has been decided by a magistrate, to a judge of the High Court for reconsideration.

At present the processing of summonses in magistracies is done manually. In 1990, over 300 000 summonses were issued. In many magistracies, a delay of several weeks can elapse between the receipt of a complaint and the issue of the summons. The amendments proposed will enable summonses to be issued by computer and processed by magistrates or by authorized officers. It is anticipated that the introduction of a computerized system will greatly reduce the waiting time for the issue of summons and will enhance the efficient administration of justice.

The Bill will also empower the Governor to refer any decision of a magistrate in a criminal case to a judge of the High Court for his consideration. At present he has no such power. This is anomalous since the Governor already has power to refer High Court and District Court cases to the Court of Appeal. Such references are usually made on my advice. A common situation giving rise to a reference is where fresh evidence comes to light after conviction which suggests that the conviction might be unsafe. This power of reference provides the only means whereby possible instances of injustice can be rectified after all channels of appeal available to the person convicted have been exhausted. I might add that it is not the purpose of reference to seek an increase in a sentence already imposed.

Where a reference is made it will be the courts that will determine the outcome.

The reference will be treated as an appeal and the court's determination will be based entirely on the merits both as to conviction and sentence.

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

Question on the adjournment proposed, put and agreed to.

## ROAD TRAFFIC (AMENDMENT) (NO. 5) BILL 1991

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Road Traffic Ordinance."

He said: Sir, I move that the Road Traffic (Amendment) (No. 5) Bill 1991 be read a Second time. The main purpose of the Bill is to provide for the private management of government vehicle examination centres. The opportunity is also taken to improve certain administrative practices relating to vehicle examinations.

Under the Road Traffic Ordinance, the Commissioner for Transport may designate any place as a vehicle examination centre. There are six such centres operated by the Government at present. These are used to examine annually all public service vehicles and goods vehicles manufactured before 1983, to ensure that they are roadworthy.

We intend to contract out the management of the newest of the Government's vehicle examination centres, at Kowloon Bay, in order to achieve greater efficiency and cost effectiveness in the use of such facilities. This centre is used for the annual inspection of goods vehicles and public service vehicles.

Clause 6 of the Bill provides for the private management of a government vehicle examination centre under a written agreement, and subject to such terms and conditions as the Commissioner for Transport may specify. To safeguard the public interest, the Commissioner is empowered to give general directions to the private operator concerning the operation of the centre and to suspend or revoke his appointment if necessary. Inspection fees will continue to be set by the Government, but will be collected by the private operator.

Clauses 2 to 5 of the Bill seek to improve certain administrative practices in

the operation of vehicle examination centres. These include the publication of notices in the press requiring the production of vehicles for examination as an alternative to serving such notices in writing. They also include the serving of suspension of vehicle licence orders and vehicle repair orders on the person who produces the vehicle for examination, as an alternative to serving such orders on the owner.

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

Question on the adjournment proposed, put and agreed to.

TELEVISION (AMENDMENT) (NO. 2) BILL 1991

THE SECRETARY FOR RECREATION AND CULTURE moved the Second Reading of: "A Bill to amend the Television Ordinance."

He said: Sir, I move the Second Reading of the Television (Amendment) (No. 2) Bill 1991. The purpose of this Bill is two-fold. Firstly, it gives the Broadcasting Authority the discretion to waive the residence requirements for principal officers of television stations licensed under this Ordinance. Secondly, it allows such stations to super-impose advertising materials on the screen in certain circumstances.

Section 10(e) of the Television Ordinance states that the principal officers of a television company, including the officer responsible for the selection of programmes, shall be a person who satisfies the requirements of paragraph (b) of that section as to residence. Paragraph (b) states that such a person is to be ordinarily resident in Hong Kong and to have been so resident for at least one continuous period of not less than seven years. Similar requirements are not found in the legislation governing satellite television and radio broadcasters.

The Broadcasting Authority has reviewed this provision and has concluded that it is not only too rigid but is also inequitable. To exclude overseas staff from key posts of a television company would deprive it of new and innovative programme concepts and techniques. They should not be hindered by such restrictions, and should

instead concentrate their efforts on recruiting staff of the highest calibre, wherever they are to be found. The present amendment proposes to give discretion to the Broadcasting Authority in applying the residence requirements for the principal officers of a television company. Other provisions in the Television Ordinance which ensure that the control of television companies rests in Hong Kong hands are not affected by this amendment.

I would now like to turn to the second amendment in the Bill. The Bill proposes amendments to the Ordinance to allow "teloping" as an alternative to conventional advertising. "Teloping" is an industry term referring to the super-imposition on the screen of material not related in subject matter to the programme being shown at the time. It normally takes the form of words or characters being run across the bottom of the screen whilst a programme is being aired. Members may have already seen teloping in the form of essential information, announcing special news items or programme changes, super-imposed on the screen by our TV stations from time to time, but the current legislation does not provide for teloping for advertising purposes. There have been complaints concerning the showing of advertisements on TV during live programme such as sports, thus disrupting the programmes to the annoyance of viewers. Allowing the teloping of advertising material would not cause such disruption but would still enable the TV stations to exercise their right to carry advertising. This is clearly in the overall interests of the viewer.

To guard against abuses, the Bill requires the TV licensees to seek the prior approval of the Broadcasting Authority which may control the amount of such advertising by the application of a Code of Practice. Furthermore, any such advertising broadcast will count towards the maximum limits on total advertising in any hour or 24 hour period as specified in section 24(1)(a) and (b) of the Ordinance. This will ensure that teloping as advertising does not lead to an increase in the total amount of advertising to be broadcast.

Clause 2 of the Bill amends section 10(e) of the Ordinance to give the Broadcasting Authority the discretion in applying the residence requirements for the principal officers of a television company, on a case by case basis.

Clause 3 of the Bill amends section 23 of the Ordinance to allow advertising material to be broadcast during a programme by teloping or other techniques with the permission of the Broadcasting Authority.

Clause 4 of the Bill makes a minor consequential amendment to the Television (Advertising) Regulations.

Sir, I move that the debate on the Second Reading of this Bill be adjourned.

Question on the adjournment proposed, put and agreed to.

LEGAL PRACTITIONERS (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 18 December 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).

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 11 December 1991

Question on Second Reading proposed.

MR DAVID LI: Sir, as convener of the ad hoc group established to study the Dangerous Drugs (Amendment) (No. 2) Bill 1991, I would like to discuss briefly for Members' consideration the scope, intent and implications of this Bill.

This Bill seeks to provide the Director of Health with discretion to give unregistrable medical practitioners operating in exempted clinics permission to supply, possess and procure 11 benzodiazepene drugs. These drugs comprise minor tranquillizers.

This Bill was made necessary by the recent changes to Part I of the First Schedule to the Dangerous Drugs Ordinance. These changes re-classified these drugs as dangerous drugs, with effect from 18 January 1992. Without this Bill, unregistrable medical practitioners would be denied access to the 11 benzodiazepene drugs which

are commonly used in the treatment of patients.

An ad hoc group comprising seven Members was formed to study the Bill, which was introduced into this Council on 11 December 1991. The group held two meetings, including one with the Administration, and received a written representation from the Association of Medical Practitioners of Societies' Clinics Limited.

After their deliberations, Members of the ad hoc group unanimously agreed to endorse passage of the Bill. Key among the group's considerations were:

First, that the number of unregistrable medical practitioners has been declining steadily, from more than 400 in 1963 to about 165 today;

Second, that the 11 drugs specified in the Bill are commonly used in the treatment of patients; and

Third, that the Administration has provided assurance that the use of these drugs by unregistrable medical practitioners and exempted clinics will be closely monitored by the Director of Health.

Understandably, this Bill has raised some concern over the status of unregistrable medical practitioners vis-a-vis their registrable counterparts. This, however, is well outside the scope of this Bill and merits separate review by the Administration.

With these remarks, I support the Bill.

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).

THE PRINCE PHILIP DENTAL HOSPITAL (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 18 December 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).

Committee stage of Bills

Council went into Committee.

LEGAL PRACTITIONERS (AMENDMENT) (NO. 2) BILL 1991

Clauses 1 to 4 were agreed to.

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1991

Clauses 1 to 13 were agreed to.

THE PRINCE PHILIP DENTAL HOSPITAL (AMENDMENT) BILL 1991

Clauses 1 to 3 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

LEGAL PRACTITIONERS (AMENDMENT) (NO. 2) BILL 1991

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1991 and

THE PRINCE PHILIP DENTAL HOSPITAL (AMENDMENT) BILL 1991

had passed through Committee without amendment and 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.

Member's motion

COMPREHENSIVE REVIEW OF TOWN PLANNING ORDINANCE

MR EDWARD HO moved the following motion:

"That this Council supports the Comprehensive Review of the Town Planning Ordinance and urges the Administration to take into careful consideration the views of Members of this Council and the public in drafting the new planning legislation to ensure that it is relevant and beneficial to the changing social, economic and political environment of Hong Kong."

MR EDWARD HO: Sir, I rise to move the motion standing in my name on the Order Paper.

The consultative document for the Comprehensive Review of the Town Planning Ordinance was published in July 1991 and the consultation period was to end on 30 November 1991. This was subsequently extended to 11 January 1992. In order to gain a better understanding of the proposals contained in the consultative document, an ad hoc group of the Legislative Council was formed in October 1991. The group met 10 times, received submissions and met with representatives from a number of professional bodies and interested groups. As convener, I am most grateful for the dedicated efforts of members of the ad hoc group in studying and analysing the consultative document, but since the purpose of the group was not to arrive at consensus or even majority opinions, I do not on this occasion speak on behalf of the group.

The consultative document is the result of a comprehensive review of the Town Planning Ordinance, and a wide range of changes to the Town Planning Ordinance have been proposed. Many of these proposals would have far-reaching financial and social

implications, and before final proposals for legislation are put to this Council, the Government should take into careful consideration opinions expressed on the subject by Members of this Council and the public.

The Town Planning Ordinance has remained in its present form with few fundamental changes since it was enacted in 1939. Few would disagree that, since that time, Hong Kong's social, economic and political environment has changed drastically and that a comprehensive review is now overdue. Most visibly, what has changed is the physical dimension of Hong Kong as a city, in terms of population, density and development. As a result of decades of intensive development, Hong Kong will now have to deal with environmental problems associated with such changes. The more prosperous society that we have today also heightened people's aspirations for a better quality of life, and be involved in issues perceived to have an effect on that quality.

It should be remembered at the outset that the Town Planning Ordinance does nothing more than providing a legal framework for the preparation of town plans, processing planning approvals, and possibly enforcement: it is ultimately the content of the plan that will determine whether it can promote the orderly growth of a city so that its people can live and work in an ideal environment, and people and goods can move about efficiently to facilitate trade, commerce and industry.

On the other hand, an unsuitable set of legal framework will adversely affect the quality of the town plans, and inhibit development.

The Constituency that I represent is most concerned that the Town Planning Ordinance must achieve the right balance: the balance between individual rights and public interests, between public participation and efficiency, between flexibility and certainty, between authority and the abuse of powers. In my speech, I shall be examining the various proposals in the consultative document to see whether such kind of balance can be achieved.

The plan-making process

Planning in Hong Kong is carried out on three basic levels: territorial, sub-regional and local district planning. The consultative document only deals with outline zoning plans (OZP) and development permission area (DPA) plans. It is not right that the public should only be consulted at the local district level. The public's input at the territorial and sub-regional plans level would facilitate the

understanding and acceptance of Outline Zoning Plans at a later stage.

Contents of statutory plans

It is essential that details of what is and what is not permitted in any given plan should be clearly stipulated to provide certainty to landowners, developers and the public at large. Using this approach, I propose that the schedule of Notes attached after OZP's should contain two columns listing uses always permitted and uses always prohibited. If the plans define developments which are always permitted, special planning approvals need not be obtained. Any use not within these two columns: developments that fall into areas of special control, or designated developments requiring environmental protection assessments, would need planning applications.

Under paragraph 3.4 in Chapter 3 of the consultative document, it was suggested that express provisions should be incorporated in the new Ordinance to confirm the Board's powers to control all the relevant elements of development to be embraced by the term "types of building", notably plot ratio, site coverage, building height, location, flat size, floor area, spacing, character, external appearance and use of buildings. This power is too wide-ranging: it would be dangerous to give the Board power to determine even such things as character and external appearance of buildings. These matters should be left to the professionals designing the buildings, while plot ratio and site coverage should be stipulated in regulations as they directly affect the development rights of the land owners. This point will be discussed further later on in my speech. In essence, the Planning Board should only be dealing with land planning and not micro planning pertaining to building designs.

The Planning Board

Of necessity, the Planning Board will have to be vested with powers the exercise of which will have far-reaching impact on the physical development and many other aspects of life in the community. In order for it to be seen to be independent of the Planning Authority, it should be chaired by a non-government member. Its membership should also be composed of a mix of government officials, nominees from the Legislative and the Municipal Councils, district boards, professionals nominated from the relevant professional institutions and individually appointed members.

New plan-making process

Exhibition of draft plan

It has been proposed that, during the two-month exhibition period of the draft plan, the issuance of the planning approvals would be withheld. Also, planning approvals would be withheld for objection sites during the proposed nine-month period of consideration of such objections.

It is accepted that the freezing of development for objection sites would safeguard development from going ahead even though there were objections. On the other hand, this procedure can cause unnecessary delay which can have serious financial consequences such as in the case of frivolous or malicious objections. The Government should examine whether the nine-month period of consideration and hearing of representations can be shortened. Where objections are of a similar nature on a given site, then group hearings should be held in order to minimize delay.

Planning applications

At present, there is little public involvement in the planning application system. It is accepted that individual planning applications can affect the public. On the other hand, the public would only be adversely affected by "bad neighbour" type of developments, that is, refuse collection points, massage parlour, funeral parlour or developments which would pose environmental problems. Therefore, only planning applications for this type of development should be publicized so that the public can be given an opportunity to submit their views on the applications directly to the Planning Board. The rest can be dealt with by the Planning Board in the usual manner.

"Bad neighbour" development should be set out in the form of regulations to be made by the Governor in Council. This would circumscribe the degree of discretion that can be exercised by the Planning Board and would reduce the time needed to decide every time whether an application would require public notification. Thus, public participation is addressed without the loss of efficiency and certainty.

The planning permission system

When we discuss the planning permission system, we should remember that, broadly speaking, there are two major categories of such systems practised in well-developed countries: the permission through zoning control system, and the comprehensive

permission system. Hong Kong uses the zoning control system. This form of control provides a reasonable degree of certainty to landowners and developers.

This system allows certain developments to proceed without special planning permission as long as they comply with and are compatible with the zoning of the outline zoning plans. This has resulted in an efficient system which facilitates the fast growth of Hong Kong. The clear-cut zoning enables a higher degree of consistency yet with flexibility being maintained. Through the enactment of the Town Planning (Amendment) Ordinance 1991, the Ordinance is now extended to cover the whole of the territory, and OZP's will be prepared for those areas that have not been so covered.

The planning certificate

As I have suggested earlier in discussing contents of statutory plans, it is better to improve on the zoning system so that the OZPs give the maximum amount of information as to what is allowed and what is not allowed. If this can be clearly defined, a Planning Certificate System need not be introduced. Under the current system, where building plans are processed under the central processing system of the Building Authority, the Authority co-ordinates the requirements of different government departments including the Planning Department and can disapprove the building plans where they contravene the Town Planning Ordinance.

Thus, the planning certificate does not add to the degree of control by the Planning Authority, as it is being already consulted in the present system. In the case that sketch or concept plans would be submitted for planning certificates, then it is difficult to see how such certificates can be issued as, at this stage, detail designs are not done and calculations of plot ratio, site coverage and so on cannot be undertaken. Therefore a planning certificate based on sketch or concept plan would only be academic and does not give real assistance to the potential developer.

I am concerned that the Planning Certificate System would add another layer of bureaucracy to the development process. I am more concerned that we should not move towards the comprehensive permission system as practised in the United Kingdom. Under that system, all applications are considered on their merits and before the decision of the Planning Authority is known, a landowner or property developer cannot be certain of what will or will not be permitted. It is instructive to note that the Planning and Compensation Act 1991 in United Kingdom has received the Royal Assent

on 25 July 1991, and under the new Act, all local Councils will be required to prepare local plans covering the whole of their areas and that planning applications shall conform as far as possible to development plans; thus they are moving closer to our system.

The Planning Certificate System has aroused some strong reactions from the developers, the architects and the surveyors. Many of them fear that the Planning Authority would use this "weapon" to impose its subjective planning and aesthetic judgements on building volume and design. These fears may be unfounded; the Planning Certificate System can be an effective tool for planning administration, especially for areas outside of the OZP areas for special planning approvals and for enforcement. Yet, the case for its introduction is not sufficient to offset the potential problems of such a system.

Density control

It has been suggested that development density control stipulations in the Building (Planning) Regulations 19 to 23 should be transferred to the new Planning Ordinance. This would consolidate control matters in one Ordinance. Planning matters would then be considered by the Planning Authority, side by side with the Building Authority that would then be involved in only the safety and sanitation aspects of the building design. Although I have no basic "in principle" objection to this proposal, it is essential that the present approval system, the central processing system operated by the Building Authority, should be retained, as the system has worked well in the past, is efficient and well understood by professions practising in the field.

Regulations setting out maximum plot ratio and site coverage for density zones 2 and 3 areas and for other special control areas should be set out as well. Density control affects directly individual interests and property rights. They should be debated and decided by the Legislative Council and should not be left to the discretion of the Planning Board.

Compensation and betterment

Of all the topics in the consultative document, this is the most controversial: it is argued whether private interest should be subordinated to public interest. It is acknowledged in the Law Society's representations that the general rule is that

"legislation does not normally give rise to a right to compensation in the absence of express provision". It went on to say that "if it were not so, most legislation would be very expensive since a large proportion of legislation affects somebody's rights, with financial consequences". In Hong Kong, where the Government is also the landlord, the right to compensation (or the lack of it) is less well-defined.

Under the present system, there are broadly speaking two types of leases: the unrestricted lease where express development rights have not been provided and the lease that provides express development rights. For the unrestricted lease, it is difficult to argue that development has not been subject to control, for instance, under legislation on environmental protection, building safety and sanitation, fire safety, planning and the like.

For leases that expressly provided certain development rights, the Government, as the landlord, has the obligation to respect its contractual obligations when such development rights have been reduced through legislation. In the case of the reduction of development rights by the statutory OZP on certain newly auctioned properties in Kwai Chung where the lease provided express rights, the Special Committee on compensation and betterment has suggested that "there clearly are problems" and the particular case is being dealt with by the Government.

Where individual rights are subordinated to serve public interest, it is important to establish who should determine "public interest". I believe that the Legislative Council should be the body to determine "public interest". Therefore, all decisions that affect public interest should be debated in the Legislative Council, and such matters as plot ratios and site coverages that directly affect an individual landowner's development rights should be stipulated in legislation. These matters should not be decided at the discretion of the Planning Board.

Where developments have been sterilized because of the fact that the site has been zoned as Government/Institution/Community (GIC) or open space, then after a reasonable period of time, there should be some form of mandatory resumption. The present system of freezing development for such sites for an indefinite period of time and that compensation only takes place by administrative measures is clearly unfair to the property owners.

On the subject of compensation, it is clear that the Government will have to consider compensation to be paid for in certain circumstances. Indeed, this has

already been provided for under different Ordinances such as in the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance and the Road (Works, Use and Compensation) Ordinance and so on. Where compensation is required, it does not have to be purely in cash; it can be in such forms as partial exchange of development rights, bonus plot ratios, or land exchange. This would mitigate the effect on the public purse, and would avoid the inability to implement planning improvements due to lack of funds.

Areas of special controls

I support the designation of Special Design Areas to enhance civic design and to conserve areas of special architectural, or historical interest. Those designated would require special controls and such controls should be exercised outside of the Planning Board by a special committee comprising architects, planners, professionals and experts from the relevant fields to ensure that there is proper input.

Due to the time limitation, it is quite impossible to cover all of the subjects in the 114 pages of the consultative document. We are all too aware that the social, economic and political environment has changed drastically, and is changing at an ever faster pace. The consultative document would have achieved its purpose if it has stimulated constructive comments for Government's careful consideration so that the new planning legislation will not only cater for our changing environment, but will provide a framework to positively enhance that environment.

With these remarks, Sir, I move the motion.

Question on the motion proposed.

MR STEPHEN CHEONG (in Cantonese): Sir, for the purpose of improving the living and working environments of the public, I support the spirit of the comprehensive review of the Town Planning Ordinance. As a Member of the Legislative Council, I consider that, in scrutinizing a Bill, attention should be given not only to the spirit of the Bill itself, but also to its practicability and possible impacts on Hong Kong from the macroscopic point of view.

Since the publication of the Consultative Document on Comprehensive Review of the Town Planning Ordinance, a number of local professional organizations have

expressed their views on the issue. Their experience aggregated over years of work in connection with town planning is something to be reckoned with. It is the practice of professional bodies in Hong Kong to handle things prudently and sedately. I believe they would never jump to rash conclusions before looking into relevant policies and would by no means raise objection to anything indiscriminately in a bid to attract public attention and win public applause.

Some professional organizations consider that if the procedures for examining and approving town planning proposals as set out in the consultative document are accepted, the time required for approving a proposal will be longer than that under the existing arrangements. In addition to the two months during which a proposal submitted must be displayed for the public to raise objections, if any, the Executive Council will need another nine months to consider and decide on any proposal against which objections have been raised. During this period, the plans submitted by the applicant will not be examined and endorsed. As such process will take at least a further six months to accomplish, a proposal may take as long as 17 months to go through all necessary procedures. And 17 months is a very long time in terms of investing on any development projects. It would certainly be a factor which the investors or developers would take into account. The professional bodies consider that this is detrimental to the investment environment of Hong Kong.

It is proposed in the consultative document that in addition to occupation permits, future building developments also need to possess planning certificates issued by the Town Planning Board.

In the past, examination and approval procedures were carried out through central co-ordination so as to reduce alleged bureaucracy and enhance efficiency. Yet in terms of the time required for processing applications, are those proposed arrangements in the consultative document less efficient than the existing procedures? As such arrangements are likely to be regarded as running counter to the spirit of past practice, will they subject the Administration to accusations of further bureaucratization? If this issue gives rise to a controversy eventually, then the object of promoting public participation is but empty talks that cannot produce any practical effects.

Professional organizations believe that this will definitely slow down the pace of land development and will very likely affect the regular pattern of demand and supply of properties. As this artificially imposed manipulation may affect the

demand and supply situation in the market, we should consider carefully whether they are the most appropriate and necessary arrangements for the people of Hong Kong.

Lastly, I would like to say a few words about power. Proposals in the document have prompted us to think of excessive power. I agree with some professional organizations that if excessive powers of intervention are given to the Town Planning Board, its authority will override the existing rights covered by the title deeds. Under such circumstances, property owners and investors cannot be certain as to whether their rights will be safeguarded. Eventually this will bring about uncertainty and adverse effects to the future investment environment of Hong Kong.

Although the Administration should play an important role in town planning, it would be inappropriate and insensible that only the Administration or one government department should involve and take decisions on matters concerning town planning which have far reaching impacts on the territory. Professional bodies that have commented on the issue have requested earlier for extension of the consultation period to facilitate their scrutiny of the document. In debating the motion on this important and complicated document today, this Council should adopt the same down to earth attitude, fully consider their views and suitably amend the relevant arrangements so as to produce a piece of more satisfactory legislation.

With these remarks, Sir, I support the motion.

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

In the past few decades, there have been repeated requests in the community for a comprehensive review of the obsolete and rigid Town Planning Ordinance. But not until today did the Government carry out any review to seek improvement. This reminds me of cases in which countries attempt to change from the planned economy they have practised for a long time to market economy in the shortest span of time. The two are similar in that they will inevitably encounter more difficulties in removing long-standing problems and have to pay a considerable cost. On the issue of town planning, I hope the measures to be adopted by the Government will not be too drastic or stringent, so as to avoid any grave impact on the community.

The current comprehensive review of the Town Planning Ordinance undoubtedly

covers a wide range of issues. But just as the case in last year when amendment to the Ordinance was made, the question of whether affected landowners should be compensated remains a crucial problem to be solved. Before I express my views on this issue, I would like to comment on other areas covered by the consultative document.

Heung Yee Kuk has thoroughly and carefully studied the consultative document on Comprehensive Review of the Town Planning Ordinance and submitted its views to the Legislative Council ad hoc group. As regards development control and planning certificates, we are of the view that existing land leases and Building Ordinance both contain planning provisions, resulting in a two-tier control. Hence future legislation should streamline the existing system instead of making it more complicated. We suggest that the Government should co-ordinate the procedures of land administration, building regulations and planning criteria. A "centralized" system should be established. The legislation on planning, building and land administration should be amended concurrently to avoid confusion and complication which will hamper the development of Hong Kong as a whole.

We believe that while it is reasonable to assess the environmental impact of a development as proposed, the requirements for environmental protection should not be too harsh in rural areas and should be appropriately adjusted to take local views into consideration, so as to ensure that the residents of rural areas can have a reasonable opportunity to upgrade their quality of living.

Moreover, as some village houses are immediately adjacent to buildings which have monumental significance, the Special Design Area will affect the redevelopment of these houses. We feel that before designating an area as a Special Design Area, consideration should be given to reprovisioning the affected village houses or allocating a site for their redevelopment.

Sir, I am very concerned about the issue of non-conforming existing uses and amortization discussed in the consultative document.

The consultative document refers to the concept of "amortization" as adopted in some municipalities in the United States, which provides for the compulsory termination without compensation of a non-conformity at the end of a specified period of time. After deliberation, Heung Yee Kuk found that such measure has been constantly challenged in the United States. Some general principles in the

application of "amortization" have been developed from court cases over the past few decades. It is stipulated that "amortization" can be applied only if the criteria of legality, propriety, essentiality and necessity are met. In other words, consideration should be given to the following questions: whether the measure is unconstitutional; whether the period of time is adequate and whether the problem of relocation has been solved; whether the planned uses will affect public health, safety and moralities and whether it is a cause of nuisance to the public; whether other methods such as licensing and resumption of land can be used apart from "amortization".

"Amortization" should not be applied if any of the above criteria cannot be met.

On the basis of the above principle, we feel that if "amortization" is to be applied to an area used for open storage, that area should become a "residential" zone in the first instance. Moreover, the amortization period should be determined on a case by case basis and should not be decided unilaterally by the Government. Arrangements for removal and relocation should first be sorted out.

Amortization is undeniably a practice which forcibly deprives the owners of their rights without compensation. In the United States, amortization can only be applied in very limited circumstances with safeguards provided by the Constitution. If such measure is introduced into Hong Kong, it is believed that owners will be compelled to sue the Government for breach of lease conditions. We therefore consider that amortization should not be adopted if there are other measures to deal with non-conforming uses.

Sir, the Town Planning Ordinance, by its previous amendment to introduce Interim Development Permission Area and Development Permission Area as well as the system of planning application, has cast a serious and far-reaching impact on the property rights and leasehold interests of private landowners in Hong Kong including the New Territories. The designation of Development Permission Area by the Town Planning Board in effect puts a freeze on all uses of land which would otherwise be permitted by the terms of the Crown Lease. However, no compensation is to be paid to the landowners affected.

In the current comprehensive review of the Town Planning Ordinance, the Administration should make reasonable arrangement for the payment of compensation, otherwise the review as a whole will not be able to achieve its anticipated effect.

As Hong Kong is operating under a capitalistic system, private property rights should be respected and protected.

Other than those belonging to the Crown or resumed by the Government, all land in the New Territories are held under Block Crown Leases. The Block Crown Leases control the uses of land by providing that the lessee and successors shall not "use, exercise or follow upon the land any noisy, noisome or offensive trade or business whatever ..... and that the lessee shall not erect or construct any building or structure of any description .... without first having obtained the approval" of Government. Apart from the above, there are no other restrictions.

Presently landowners can use their land lawfully according to the Crown Lease. The imposition of control by the Government on the lawful use of land by means of planning restrictions is tantamount to a unilateral breach of the Block Crown Lease on the part of the Government. This will erode the property rights of the landowners and will seriously affect their livelihood. In such circumstances, it will be grossly unfair if the affected landowners are not compensated.

If the Government finally decides not to pay compensation on the grounds that the huge amount involved is beyond its financial capacity, the foundation of our capitalistic society may be undermined. If it is accepted that the private property or property rights of certain people can be sacrificed or deprived of for the sake of the overall interests of the community, today the Government can apply this principle to the Town Planning Ordinance to deny the rights of the landowners and tomorrow it can also deny the interests of industrialists, merchants, high-income earners and rich people in the name of providing better retirement benefits, medical services and education facilities for the community. If this happens, the spirit of capitalism will be eroded. It will be detrimental to the maintenance of the social and economic system of Hong Kong. From the constitutional point of view, non-provision of compensation is also against the spirit of the provision regarding the protection of private property rights in the Basic Law.

Sir, as regards the payment of compensation, Heung Yee Kuk is of the view that the "purchase notice" system of the United Kingdom should be adopted in Hong Kong. Landowners should have statutory rights to require the Government to resume their land when the use of such land is sterilized by planned uses or when the property rights or leasehold interests attaching to their land are confiscated or reduced to such an extent that their land has become incapable of reasonably beneficial use.

The Government must take into account the potential development value of the land to be resumed when it offers compensation under the system of "purchase notice".

As regards the issue of betterment, the existing practice is that the Government would charge premium from the landowner who applies for development to permit a higher value use or a higher development density. Obviously, the land premium system is equivalent to betterment. . I think the existing system is fair, simple and effective. Other forms of betterment will be complex and difficult to implement. The main reason is that before a charge can be made by the Government in respect of a particular property, it is necessary to prove that the property has increased in value owing to the operation of a particular provision in a planning scheme or to the execution of a particular project under the scheme. Besides, how to calculate the rate of increase in value will give rise to major disputes and confusion.

Sir, democratic countries attach great importance to the protection of private property rights and regard this as a basic principle. Hong Kong is now moving towards a more democratic direction. The Administration should fully take into account this point in drafting the new Town Planning Bill.

Sir, with these remarks, I support the motion.

MR RONALD ARCULLI: Sir, I would be very surprised if there was a significant body of opinion that held the view that a comprehensive review of the Town Planning Ordinance was not necessary, for it cannot be disputed that there is such a need. The publication of the consultative document is therefore not just timely but long overdue and despite its shortcomings it serves as a useful discussion paper. While I have no wish to dwell on the reasons for such need, I believe it will be useful to touch on this point. I will then deal with the truly important points which are:

(1) The need for an economic and financial impact study;

(2) The drastic change in the existing land development system as proposed in the consultative document;

(3) The implications of the proposals in the consultative document;

(4) Compensation and betterment;

(5) The proper and the best way forward.

Sir, I shall now deal with the need for review.

Currently, planning is covered by piecemeal legislation which, to say the least, is neither efficient nor does it provide the desired level of certainty from everyone's point of view.

Secondly, there are a number of areas that are not satisfactory under the existing system, for example, the principle of compensation and betterment, the right of appeal to an independent tribunal, elimination of conflicting land uses, control of temporary land uses, to name but a few.

Thirdly, planning on a territorial or sub-regional basis is presently an administrative process. This is undesirable because this is planning at the highest level and consultation is at best piecemeal, apart from the difficulty of ascertaining whether opinions expressed are accepted, whether wholly or in part. One consequence is that where properties are down-zoned their owners, particularly private individuals, are often ignorant of the fact of down-zoning and are therefore unable to raise objections in time.

I now turn to deal with the need for economic and financial impact studies. The consultative document recognizes that the planning process is concerned with land use. In view of the unusual circumstances that we have in Hong Kong, two of which are a sizeable population and a restrictive supply of land, any planning process will definitely have a significant effect on land values. Therefore if planning is to be carried out fairly, equitably and properly, it must be carried out with fiscal responsibility. This responsibility is hardly reflected in the existing planning system and seems to find no place at all in the consultative document. Compensation and betterment is referred to in the consultative document as an area of concern but has, in my view, been made the subject of a separate consultation for purely tactical reasons. It is not possible to separate into two the inextricably linked issues of planning on the one hand and compensation and betterment on the other. If we want to decide on a new planning system, particularly where the object of the exercise is to have a fairer and more effective statutory planning system, it seems to me that the consultative document is incomplete for it fails to take into account the fiscal effects of the planning processes it proposes.

The next point concerns the drastic change in the existing land development system if what is proposed in the consultative document is to be adopted. At present, development of land is controlled through some basic mechanisms: the land tenure system, the Building Planning Regulations, and the Town Planning Ordinance. This is an arrangement that has gone on for some time and is quite well understood by those associated with the development process. Nevertheless, in recent years planning seems to override contractual rights and obligations under Crown leases and our laws in that new limitations have imposed density rather than land use without any form of compensation to the owner. The consultative document proposes to extend these powers even further without considering a cost benefit analysis or compensation to private property owners. All this is to be carried out under the guise that it is for the public good but the real question is this, and I quote: "Is it for the public good, and can the public afford it?"

I shall now deal with some of the implications of the proposals outlined in the consultative document. Picking up from the question that I asked, and that is: "Is it for the public good, and can the public afford it?", it seems to me that it is necessary to assess the overall implications of any resulting legislation if proposals outlined in the consultative document were made law. One obvious result would be a significant increase in the time involved through extensive public consultation as well as processing time. This would increase additional resource requirements within the Administration, additional professional fees, but most importantly incredible time being devoted to this process. The immediate effect would be to slow down the production of new and much needed residential flats at a time when there is great public pressure on the Government to release additional land. One does not have to be a genius to conclude that the prices of homes will therefore increase due to a reducing supply of new flats. Surely, this is not what the public expects.

Another aspect outlined in the consultative document is the planning certificate system which is essentially modelled on the comprehensive planning system in the United Kingdom and is one which gives a huge discretion to the proposed Planning Board. Such a planning certificate system will result in a two-tier land value system, namely, sites with planning permission and those without. Is this what Hong Kong really wants? It seems extraordinary for Hong Kong to move in this direction at a time when Royal Assent was given to the Planning and Compensation Act 1991 in the United Kingdom which actually moves the planning system in the United Kingdom towards the system presently used in Hong Kong.

I imagine my honourable colleagues and indeed the Secretary for Planning, Environment and Lands would be extremely disappointed if I did not speak on the subject of compensation and betterment. However, I want to emphasize that I believe it is an important issue that affects every property owner in Hong Kong, and indeed it might even be said that the smaller the owner the more drastic the impact.

The second point I wish to make here is that it would be unrealistic to expect the public purse to pay full cash compensation in each and every instance when compensation should fairly, equitably and properly be paid. But this does not mean that there should be no compensation at all. The problem can be tackled by, for instance, proper phasing of planning controls designed to reduce development potential or to thin out densely developed urban areas. Another helpful approach would be to create a framework for the public and private sectors to work hand in hand on comprehensive developments to take into account social and planning aspirations. However, in cases where loss or diminution of property rights are unavoidable, there can be no question that compensation must be given but there is no absolute necessity that such compensation should be in the form of cash. It can take other forms, namely, additional land grants, in situ or non in situ exchanges, transferrable development rights, and so on. In short, this issue is too serious to be dismissed and demands a creative and collaborative approach to ensure that a reasonably fair and equitable solution is found.

Before I leave this point, Sir, I would not want it to be thought that I am ducking the issue of betterment. At present, a form of betterment is collected through different methods. The most obvious and direct source is the land premium system which applies to all developments requiring lease modification, land exchange, or in other instances. In a more general sense, indirect betterment is also collected through government land sales, rates, and perhaps more importantly the 3% rateable value which will apply to all leases extended from 1997 to the year 2047. I think there is no pretence that this issue needs detailed consideration but I believe it is not right to suggest that because of its complexities we should bury the issue of compensation into the complexities of betterment.

Sir, I shall conclude by dealing with my last point: What is the proper, and what is the best way forward? I believe that it cannot be argued that planning cannot and should not take place in a vacuum. The consultative document sets out a number of concerns and objectives sought to be achieved. However, I regret to say that in

my view the proposals put forward appear to be somewhat blinkered in that they appear to have been drawn up from a single point of view, namely, that of the Planning Department, and do not reflect the serious implications that would result, nor the numerous interests that would undoubtedly be affected if the proposals were implemented. These interests are not limited to the private sector but involve other government departments within the Administration. It would be refreshing if the views of other departments within the Administration were expressed in this debate.

For the reasons that I have referred to, I therefore propose that a working party comprising of diverse interests be set up to review the consultative document and to put forward new proposals for an evolutionary change in the present planning system. The terms of this working party will include:

(a) The need to introduce fiscal responsibility into our new planning system;

(b) The need to balance private rights with public interests and this would obviously include a fair and equitable proposal regarding compensation for the loss or diminution of private rights;

(c) Publication of plans at territorial and regional levels so that everyone can understand and recognize the context in which zoning plans have been drawn up;

(d) The introduction of an independent appeals tribunal together with limited rights of appeal to the Governor in Council;

(e) Provision for public consultation at the outline zoning plan level as well as in respect of developments that have a district-wide impact, with strict time limits for such consultations;

(f) Provision for enforcement of plan zoning, particularly where land use causes danger to public health, but subject to private property rights;

(g) The need to address the issue of land leases;

(h) The need for planning and other legislation to assist in the assembly of sites if piecemeal development is to be avoided and if the Metroplan is to become a reality.

Sir, in conclusion, I have been asked by the Real Estate Developers' Association to put on record that it is more than willing to play its part in such a working party and that it is prepared to make its contribution to providing a workable and flexible framework for a new planning system in order to ensure continuous economic growth in Hong Kong.

Sir, many of the issues have been set out in the consultative document and with goodwill and hardwork I believe that such a working party will be able to produce an acceptable, fair and efficient new planning system for Hong Kong within a matter of months.

Sir, with the reservations and subject to the remarks I have made, I support the motion.

MR MARTIN BARROW: Sir, I would like to add my support to this comprehensive review and to comment on one aspect. As Members are aware, tourism is a major contributor to the Hong Kong economy and if we are to sustain the long-term development of that industry it is vital that we continue to build the attractiveness of Hong Kong's tourism product. A key element of the Hong Kong Tourist Association's strategy is to promote a longer stay in Hong Kong, and the preservation of our heritage is an important element of this strategy. This applies to both the traditional Chinese heritage as well as western heritage.

The redevelopment of the Western Market is a good recent example of what can be achieved. I hope that government planners will look at other opportunities to develop new attractions which will have appeal to both the people of Hong Kong and foreign visitors alike.

With these words, Sir, I support the motion.

MR JIMMY McGREGOR: Sir, as my colleague Mr Edward HO has indicated, this consultative document is the result of a long and very detailed process of examination which has taken into account the views of professionals and their organizations and the experience of the Government in land planning and utilization. The subject is one of immense importance to Hong Kong and of absorbing interest to all those involved in infrastructural development and financing. That must include most companies listed

on our Stock Exchange and a great many which are not.

This therefore is a fundamental review which will probably result in significant improvements in land planning and utilization. This will apply particularly throughout the New Territories. Many will say that it is not before time. Environmentalists no doubt will readily agree that large areas of previously beautiful countryside and farmland have been converted into environmental wasteland in the short period of eight years or so since the Government discovered that it had no authority to prevent virtually uncontrolled expansion of container and other storage on agricultural land.

I will not speak on the technical aspects of the review since other better qualified than I are doing so. In addition, many professional organizations such as the Hong Kong Institute of Surveyors and the Royal Institute of Chartered Surveyors have submitted detailed reports on the review proposal. My constitutency has also submitted views on matters of concern as has the Hong Kong Democratic Foundation, many of whose members are also professionally interested in the outcome of the review. Indeed, it would be difficult to find anybody who might not be affected in one way or another by this comprehensive review of land planning policy, principles and systems.

We are at long last recognizing in land planning and implementation that there is only one Hong Kong, not two. The New Territories, despite its distinct history and culture, forms part of the modern whole and, as such, must increasingly be subject to the same land planning policies, rules and regulations that are applied to the urban areas and the new towns. We can no longer afford to allow land utilization to proceed without central planning, with a lack of co-ordination, or indeed connection, with other developments and uses.

It was clear for some time that land use outside the urban areas would have to be brought into an overall planning system and pattern if Hong Kong is to continue to develop economically, socially and environmentally in harmony, utilizing our land resources intelligently and fairly. A substantial step in that direction was taken with the passing into law of the Town Planning (Amendment) Bill 1991.

In this process, however, we must recognize that landowners affected by proposed changes in land planning and utilization must not be unfairly and unreasonably treated when new planning procedures are applied to their land. They must be adequately compensated for any losses that may be caused and the review has paid attention to

this matter. At the same time however it is in the nature of land planning that some landowners will benefit more than others. In the final analysis the entire community will benefit from good planning which strikes a balance between the need to provide for efficient infrastructure and the need to ensure a high standard of conservation of the natural environment.

In this latter regard, I must appeal to the Government to seek a solution, which may not be possible within the Comprehensive Review proposals as I understand them, in regard to amortization to eliminate the dreadful effect on the New Territories environment of the rapid spread of container storage and other storage areas. One way or another this mess must be brought under control by some form of licensing or land planning control without requiring a massive compensation from public funds. I am told that the rental fees charged by the landowners concerned might presently amount to something like $50 million a month. This is in respect of nearly 50 million sq ft of agricultural land now being rented for storage purposes. It will not be an easy job, I should think, to return this land to a less lucrative function.

There will be many further opportunities for this Council to consider and debate land planning in Hong Kong so I will not waste more time of this Council. I am sure the review is timely and I have no doubt that it will result in better planning and therefore a better environment for Hong Kong people in future. Sir, I support the motion.

MR ALBERT CHAN (in Cantonese): Sir, the United Democrats welcome the present government move to review the existing planning legislation and planning procedure which have not been substantially modified since 1939, despite the significant changes which have taken place in Hong Kong, politically, socially and economically, in this interval of time.

We will respond to every aspect of the Comprehensive Review of the Town Planning Ordinance, with the exception of a few individual items on which we have reservations for either their contravention of the principle of equality before the law or other reasons.

As the land planning and infrastructural development policy spokesman for the United Democrats, I will speak on the more contentious issues of development control and non-conforming uses raised in the Comprehensive Review of the Town Planning

Ordinance Consultative Document. Mr NG Ming-yum, the Reverend FUNG Chi-wood and Mr MAN Sai-cheong will also speak for the United Democrats on the issues of compensation and betterment, planning application, areas of special control and plan-making process.

Development control

The proposed planning certificate and enforcement provisions, in addition to providing guidelines for, and controlling, public and private development, will also provide a solution to the problem of land development control which cannot be dealt with under the existing Buildings Ordinance and lease conditions. It is for this reason that I basically agree with the use of the planning certificate and enforcement provisions for development control. Modifications which still have to be made are listed as follows:

(i) Under the present proposal, failure to comply with the enforcement notice, stop notice or reinstatement notice is an offence punishable by a fine. In order to step up development control, I propose that a sufficiently deterrent fine should be imposed in order to achieve development control. Otherwise, control and punishment will only exist in name.

(ii) Under the present proposal, the Planning Authority will be empowered to issue planning certificates, which may result in subjective planning. A set of planning guidelines and public notification system should be devised to strengthen the provision of development guidelines. The Government may actually refer to the existing, quite well-developed planning guidelines and public notification system in Britain. Meanwhile, the Government may also consider whether the planning standards should follow the example of the existing Hong Kong Housing (Design) Ordinance, and be promulgated in the form of by-laws. Public consultation should be conducted before the establishment of such planning guidelines.

(iii) I am concerned about the possibility of corruption with the Planning Department being entrusted with the power to issue planning certificates. It is up to the Government to minimize the possibility of corruption and irregularity through improving the internal administration of the Planning Department and fully developing a public system of planning standards and guidelines as mentioned above.

The other themes of my speech involve the issues of non-conforming existing uses

and amortization plan.

The problem of mixed land use arises as a result of lands not being used according to the statutory plans but having nevertheless been used in such manner prior to the promulgation of these statutory plans. Such lands cannot be regarded as being used for unpermitted purposes and are consequently allowed to continue to be used for purposes which are not compatible with the planning objectives. In the present situation it is not until a given piece of land is used for purposes which involve structural change to the building, or is in the process of applying for new development, or is used for purposes which contravene environmental and health Ordinances that the problem of non-conforming use can be tackled at all. The proposed amortization plan provides a means of solving this problem, particularly insofar as the problem of mixed land use in old districts is concerned. It is for this reason that the United Democrats are in support of the spirit of the amortization plan. However, modifications have to be made as follows:

(i) The Government should publicize the detailed information regarding the implementation of the plan involved so that the public may have a clear picture. It should also, before implementation, conduct a wide consultation exercise.

(ii) I think that the amortization plan should synchronize with the removal arrangement in order to expedite the elimination of non-conforming land uses and minimize lawsuits which may arise due to the setting of the amortization period and the resulting closure of some existing lawful, but non-conforming, businesses. The Government should at the same time be very cautious in implementing the amortization plan in order to minimize its public impact and entertain views of residents of the affected area. The Government should consult the district board involved which may in its turn take the initiative to propose ways of terminating certain kinds of non-conforming land uses. This should be done to increase public participation on the one hand and promote the objective of overall planning on the other. It is up to the Planning Department to complete the follow-up work proposed by the district board.

(iii) It is very unfair and a contravention of the principle of equality before the law that the proposed amortization plan is only applicable to the non-conforming uses on open land and non-conforming uses within conforming buildings while not applicable at all to the substantial non-conforming buildings which involved heavy private investment. It is for this reason that I propose that no exemption should

be made and that all land uses should be subject to the control of the amortization plan.

(iv) The departments concerned should smooth out the details of overall implementation of the amortization plan in order to clarify the confusion which may be caused to the public. All land uses to which the amortization plan may apply should be clearly defined and relevant guidelines should be drawn up and publicized. Residents' complaints may actually be used as important reference in the drawing up of the guidelines in matters relating to implementation. The Government should also seek to limit the use of discretionary powers in order to minimize the possibility of corruption.

Conclusion

The Government should, in devising the relevant legislative procedures, give the highest priority to community interest, instead of considering only the views of big business groups and property developers and professional bodies with vested interests, in order that the objective of town planning may be achieved, that control is appropriately exercised over future planning and development, that public interest and community needs are served, and not least, that the modification to the Planning Ordinance procedures are in line with public interest.

Sir, with these remarks, I support the motion.

5.00 pm

CHIEF SECRETARY: There are still a number of Members to speak on this motion. Members might appreciate a short break at this point.

5.24 pm

CHIEF SECRETARY: Council will now resume the debate on Mr Edward HO's motion.

MR MOSES CHENG: Sir, I rise to speak today in favour of a more fair, open, efficient and effective process of town planning for Hong Kong. Unfortunately, I do not believe

that the proposals set out in the consultative document encompass all the correct means to properly progress down this path. Not only as a member of this Legislative Council, but also as a concerned father, I would very much want the next generation to inherit an environmentally sound, well-organized and beautiful city they deserve. Our quest, then, must be to use the opportunity of this consultative debate to devise a systematic approach to town planning that withstands the test of time and remains fair, open, efficient and effective for the immediate future and beyond.

While the proposed reforms attempt to reach these objectives, I am convinced that they have not gone far enough to strengthen our system, and in many cases have not gone in the right direction at all. First, and foremost, let us live up to our responsibility of ensuring fairness in the Government's dealings with our citizens. Under our present system, citizens, investors and entrepreneurs alike have to negotiate their land use from the Government. The grant of land and the premium payable are based upon determined and express development rights. How then can such rights be changed in the midst of the process of town planning without just compensation being payable to the parties aggrieved. In doing so, we are not only altering the value of land, and the worth of individual holdings, but most importantly we are altering the perception of government credibility. I believe we cannot afford to sacrifice the "good faith" image of our Government in our efforts to strengthen town planning, and I am worried that the extent of the proposed language does just that.

At least two problems, inextricably linked, are at the forefront of my desire to review the contents of these proposals. The first problem is the most serious, and much of the discomfort with this consultative document results from it. I am talking about the openness and accountability of the Town Planning Board and the process. While I am happy to see us in agreement that we should move towards a more open process, I am not satisfied that we have employed this principle strongly enough. We have opened for input at least one layer of this planning process, but what about the greater areas of regional and territorial planning for example? Why do we draw an arbitrary line on the democratic input of citizens and professionals in this process? Barring a substantive reason that proves limiting access and openness might be detrimental, I would like to see our increasingly democratic system consistently apply such principles in our thinking, in our legislation, and in our reformed institutions.

I propose we take these reforms further down the democratic path of accountability

and put in place structural and legislative oversight mechanisms in the town planning process to guarantee check and balance of power and authority on such critical decision-making. While we may agree at a given point in time with the direction and administration of the Town Planning Board, for the future's sake, we cannot take for granted the immense new power and authority as well as control that these proposals give to a selected few. Town planners should not become de facto legislators and should not be beyond the reproach of ordinary people. This means, in my opinion, that the Legislative Council must take the initiative to tie itself to the process. I do not propose hands-on meddling in the day to day work of those professionals, but a role which allows citizens and businesses to vent their views. This, of course, is only one means and an indirect one at that, but the more avenues of "people-to-power" dialogue we design can only enhance this process and consequently the future of our community. Let us take further these proposals that shift power around and build mechanisms to confirm qualified candidates to sit on this very powerful board. My point here is not intended as a negative reflection of the current Board, nor previous ones, as I hold a great deal of respect for the difficulty of their task, and how well they pursue it. My challenge is to step back from the trees, so that we may see the whole forest, and properly reform this Board for the long term in a manner that is fitting in a democratic society. It is simply unacceptable, whether speaking of tax collection, the police, town planning or any other agency of the Government, to allow too great a concentration of power, unchecked, and out of reach. I believe this to be the case with the present proposals, and I hope all of you will join me in seeking for the inclusion of even greater, more democratic openness and access to the future planning of Hong Kong.

The second problem -- of no lesser importance -- is the question of fairness. I have already spoken of the image the Hong Kong Government may be affiliated with if we deal out of both sides of our mouth. But the impact of losing credibility over consistency and fairness with landowners and investors is enormous. Hong Kong is not, in my opinion, an ugly place to live in, and many considers it a modern architectural wonder amongst the most attractive cities in the world. This is a reputation not devised over the years purely by our town planners. This easily recognizable fact is the result of wide-ranging and diverse contributions of creativity and our core character of free-spirited entrepreneuralism. I contend that those are the chief forces that have made this city one of international repute, and I am not prepared to stifle them in the name of uniformity. We need not judge our future development on the model of other cities in very different contexts to our own. This is not Singapore, San Franciso, Stockholm, or Sydney and whatever

shortcomings we have, we have even more to be proud of. I believe there is only one good model to judge ourselves against and this is the specific context of our own development and the needs and desires of our citizens for the future.

Let us not confuse this issue by reducing the complexity of our task to a simple contest between town planners and developers. There are obvious effects of reform that surface concerning these key players in our future. I am concerned about all the people caught in between. The mechanic who owns and lives in his garage. The son who inherits a building in Kowloon as his family's main asset. Who will speak for these people's interest? Who will hear their claims for redress or grievances? I insist that the individuals and small entrepreneurs that form the backbone of our society be considered with the importance they deserve, and not shuffled away in the polarizing, power shifting these proposals allow. It is our duty to ensure fairness, be referees of commerce and development, and although I am in favour of changes that will strengthen this role, I regret to say these proposals may undermine it and prove counter productive. Even the status quo avoids such danger. I am very supportive of the themes laid out by the comprehensive review. The Government, in my opinion, can and should have a more positive, pro-active role in town planning. But I am sure that we must also construct that role properly and with due consideration to all aspects of this process. More than ever, we need to have a greater contribution in addressing logistical and tangible problems in planning. Traffic congestion, waste systems, noise pollution, environmental soundness, and other tangible concerns should be planned for professionally with foresight and vision over the creation of a better living environment. I am excited about the so-called "Special Design Areas" having a prominent contribution to the historical and aesthetic character of our community. I am excited about the potential for a beneficial partnership with the private sector in renewing areas that reflect our unique heritage and culture. Such tangible measures of reform should fill the plate of Hong Kong town planners to keep them busy well into the next century. I think it then unwise to burden the Board -- willing or not -- with responsibilities that belong in the realm of creative forces and dynamic planning amongst the entrepreneurs of our society. They need statutory, logistical, pragmatic guidance applied fairly and comprehensively, open to grievances and redress. This is the role of the Government. As for the individuals, entrepreneurs, businesses and developers that employ engineers, architects, planners, and builders, they should construct responsibly and consistently with the guidance of long-term objectives they know in advance. They should also have enough freedom and flexibility within the guidance of the Government to use their professional and creative skills to the benefit of our community. This is their role. We must make

sure that fair and democratic legislation on town planning which emerges from this Chamber keeps these roles distinct, enhances each, and strengthens their bond in a positive way for a better Hong Kong. I will support changes in this consultative document that pursue this course, but the course currently charted is not on target.

In summary, let me say that many parts of our current process work well, and have had remarkable results in making Hong Kong an attractive urban city of international repute. In the case of these already effective policies, I think we should leave "well-enough" alone. If it is not broke, do not try to fix it. What we can and must do is bring our policy in line with the current situation, with eyes towards the future, and ears open to our citizens. We can add to and enhance our town planning process, first by democratizing more than the proposed reform offers, through the make up of the Town Planning Board, accountability and checks and balance on the system, oversight and confirmation by the Legislative Council, and devising mechanisms of redress to compensate for grievances. And secondly, we must give the attention deserved to the issue of fairness by the Government in administering this process. If our proposals are consistent and concise in their approach to tangible duties and responsibilities and we limit government subjectivity, we can achieve this. I hope you, my colleagues, find this approach reasonable and join together with me to strengthen these proposals before they become law. Someday our children will appreciate our careful scrutiny of the planning process for the city they inherit.

With these remarks, I support the motion.

MR MARVIN CHEUNG: Sir, let me first of all say that I welcome this comprehensive review of the Town Planning Ordinance. A thorough overhaul of the Ordinance is long overdue; events and practices have overtaken legislation and I support the main thrust of the changes proposed to bring the Ordinance up to date. I do however, have one or two reservations.

The necessity of fair and effective planning is beyond doubt. Planners in Hong Kong have, perhaps, an especially difficult task -- we are unique, for example, in that all our land is leasehold rather than freehold and the landlord is the Government. Also, it is an appointed body, in the shape of the Town Planning Board rather than any elected local authority, which makes decisions about planning.

The pressures for development are enormous because Hong Kong's need for buildings

and developments of all types is seemingly insatiable and at the same time we have a serious shortage of the most vital ingredient -- land. Planners have to take account of the needs of the developers, the local community, industry, tourism, communications and the environment, to name but a few, while bearing in mind the overriding factor which is the economy. Planning is a matter of reconciling all these possibly conflicting needs and interests. As such planning is largely a matter of getting the right balance. With this in mind I should like to make the following points.

My first concern is with the Appeal Board. I have no doubt that it is a much more efficient way to deal with objections than the previous system where all objections had to be heard by the Governor in Council. I was pleased with the setting up of the Appeal Board -- indeed I am a member of the Board -- but would like to bring to the attention of this Council what I see as a likely problem. The consultative document states that the Appeal Board is not a judicial body as such but its function is to carry out independent reviews of the Planning Board's decision on the merits of the case brought to it, rather than to consider whether the Planning Board has acted within the law. Is there not a danger that the Appeal Board, thus described, would become a Super Planning Board? It seems to me that there may be some confusion of the roles of the two Boards. For instance, if the Appeal Board overrules a decision of the Planning Board, where does that leave the Planning Board? How will it affect its future decisions if the Planning Board and those who refer to it know that it is not the Planning Board but the Appeal Board which will make the final decision on planning matters? Applicants could take an objection to the Appeal Board in order to override the decision of the Planning Board. Unless their roles are clarified there is a danger that the two Boards may be working according to different rules and criteria.

The Appeal Board has an important part to play in the consideration of genuine objections but it is vital that the role of the Planning Board as planner should not be compromised. I find the role of the Appeal Board in this respect somewhat unclear and would welcome clarification by the Administration in due course.

Turning now to the recommendations for a new planning process, I welcome the overcoming of the anomaly where, under the old system, a development which is the subject of an objection could go ahead before the results of an appeal were known. I, like many others, was concerned about the effects of "freezing" a development during the objection period and am pleased to note the Government's assurance that

freezing applies to the individual site rather than the whole area covered by the plan.

On the question of the time in which the Planning Board should submit a draft plan and recommendations to the Governor in Council, I suggest that the nine-month period should be reduced to six months. This would of course lessen delay but nine months should not in any case be necessary. The reason for this is that a planning study will already have been carried out by the Board as part of the planning process and before publication of the draft plan. It is not as though the Planning Board would be starting from scratch; it should already know what the views of the public are and be aware of any objections, representations, and so on, which are likely to be raised. Therefore six months should be plenty of time to consider objections and make recommendations on them to the Governor in Council.

I agree there is a need for more openness and public involvement in planning matters and note the measures put forward in the review to achieve this. Again, we have to strike a balance between various interests and I sympathize with those professional bodies who have complained of the delay in approving planning applications that is likely to result from some of the recommendations in this review. For this reason I support the second option in the consultative document which is that the Planning Board should have discretion in deciding which applications should be publicized, subject to the proviso that only applications of the bad neighbour type should be referred to the public. I agree with my colleagues in the Legislative Council who urge that this type of development should be clearly defined in the Ordinance.

Finally, I turn to the vexed question of compensation and betterment. The comprehensive review, in my opinion, ducked this problem by referring it to a special committee. Members of this Council have to decide on the principle of compensation and betterment. Except where a private site has been so zoned as to deprive the owner of any right of development, or where down-zoning has been applied to a piece of land which has been sold by the Government with a specified plot ratio and the first development has not taken place on that piece of land, I personally do not believe in it. Leaving aside all questions of rights and ethics, I simply do not think that it is a workable proposition. This is mainly because in the case of compensation -- and there can be no betterment without compensation -- there would be major problems over valuation. Trying to value a development for compensation in Hong Kong's highly volatile property market would be like trying to hit a moving target. Any decisions

as to valuation would be immediately out of date, precedents would be meaningless but could still be used to challenge a ruling. Even if such a difficult decision could be made, it would be so subjective, time consuming, expensive and controversial as to make the whole exercise untenable.

Added to this, there is the question of where the money paid in compensation would come from; amounts would be large. Again, apart from ethical considerations, if the money comes from the public purse, the effects on public services could be serious.

It is not surprising then that no other country has been able to devise a workable and fair system of compensation and betterment. I suggest that it would be foolish of us in Hong Kong to try and pioneer such a system where others have failed. In short, compensation and betterment is a red herring. Members of the Council have far more important matters to consider if we are to get a much needed revised Town Planning Ordinance on to the statute books without further unnecessary delay. I would like to suggest to my colleagues that we waste no more time on compensation and betterment; we should instead concentrate our efforts on the real issues regarding planning.

With these remarks, Sir, I support the motion.

REV FUNG CHI-WOOD (in Cantonese): Sir, the fundamental objective of town planning is to promote the right development in the right place and at the right time, so as to bring about a better organized, more efficient and more pleasant environment in which to live and to work. The Government, as a policy maker and implementor, must be able to take care of the overall interest of the public as well as that of the private and strike a balance between both sides, in order to reduce unnecessary conflicts. The most effective way is to gauge views from various sectors of the community and to identify an optimum approach for town planning. However, it seems that the Government has failed to understand the wishes of the general public, thus causing continuous social disputes. Today, regarding the Consultative Document on Comprehensive Review of the Town Planning Ordinance, I would like to comment on the public involvement in planning application, assessment of environmental impact and conservation of historical structure.

The analysis on public participation made in this document is where the existing planning problem lies. In fact, the public are greatly dissatisfied that they are not given opportunity to take part in the planning process. At present, general

application for planning is not publicized and the public do not have a chance to comment on such a matter. As for the existing Town Planning Board (TPB) of which the members are appointed, they may not be able to fully appreciate the needs of the general public and may easily neglect the public interests.

This consultative document is intended to enhance the chance for public views and to encourage public involvement. This no doubt brings about a breakthrough to government policy on town planning. I basically agree to such a policy change, but there is room for improvement. Firstly, all applications which will affect the community at large should be published for public opinions so as to ensure that their views will not be neglected. Apart from the use of public notice and newspapers, notices should also be put up in the vicinity of the affected areas for public information. In order not to affect the works progress, the Government should draw up consultative procedures for "simple application" and set out guidelines for making such applications so as to streamline the consultation process for certain development. It should also specify the types of development that may resort to such application procedure. It is also suggested in the paper that the Planning Department should have discretion to slightly modify approved developments. I basically agree to this, but the Government should formulate guidelines for exercising such discretion.

At present, applications for urban redevelopment mainly rely on developers or the Land Development Corporation (LDC). The progress of renewal works led by the LDC has been slow. Each redevelopment application has to be bogged down for a few years. I therefore suggest that the Government should consider using "planning agreement" as one of the means for approving redevelopment.

"Planning agreement" means that the Government enters into agreement with developers and draws up conditions for concerned development projects. This approach has been taken in the United Kingdom and the United States for years. The Government should study the possibility of using such a "planning agreement" approach for redeveloping old areas and reports should be submitted to the Legislative Council for scrutiny. At present, the Government only sets out additional conditions in cases of land sales and makes lease in contractual terms. For redevelopment in old areas, it mainly depends on the private sector or the LDC to take initiative to buy land for renewal projects. If the place concerned lies within the redevelopment area, the Government will assist the Corporation by making the resumption of land mandatory. Since the Government takes a passive attitude towards redevelopment projects, the

progress of urban renewal is slow and a lot of objections have been raised by affected occupants and flat owners. Under the "planning agreement", the Planning Board (PB) may identify areas for redevelopment and set out conditions including those for relocating the affected residents, allowing small owners to get shares from the redevelopment company and inviting interested private firms to bid for redevelopment projects. As these are open procedures, private negotiation which may lead to secret deals can be avoided. The district boards concerned should also be fully consulted on the redevelopment agreement before its implementation.

Meanwhile, the statutory "social impact assessment" should also play an important role in the consideration of redevelopment applications. As it is pointed out in the legislation, its purpose is to "promote public health, safety, convenience and general well-being". Therefore, planning documents should include all relevant reports, assessment reports and statements. In my view, the relevant social impact assessment should be made statutory. At the same time, there should be inclusion of assessment on social implication in the planning for each redevelopment item and comprehensive redevelopment area. Besides, I would like to suggest that if it is so requested by the district boards, the social impact assessment should be regarded as part of the "Outline Zoning Plan" and should undergo examination in the plan-making process. The social impact assessment should cover factors including the demography, housing needs and relocation, the situation of job opportunities, the needs and provision of social welfare, the neglected minority, the affected places of cultural or historical values and the timetable for implementing various projects.

The Director of Planning, Mr PUN Kwok-shing, has recently told the press that the practice of "public hearings" in foreign countries would be introduced as a means to consult the people affected by town planning development. I highly approve of it and I am sure that this kind of communication may ease some of the conflicts between Government and people. However, there are still some inadequacies. The general public are basically different from developers in that they lack resources and have no right to influence the formation of planning projects. I think the Government should, upon receiving the planning applications, speedily notify the public of such applications so that the public may follow the whole plan-making process. As for the affected community areas and bodies, the Government should render assistance such as providing legal counsel, information and professional advice. In this manner, the affected parties may take part in the planning process in spite of their lack of resources. Then the interests of the lower class and the disadvantaged parties can also be taken care of.

I am very dissatisfied that it has not been mentioned in the consultative document that public involvement and their opinions are allowed in the planning application system for the territory-wide development and district level strategic development. Since such projects relate to the future overall development of Hong Kong and have a direct bearing on public interests, public consultation is necessary and people should have the right to know about the progress of such projects.

District boards should continue to serve as a bridge for communication between the Government and the people and be conferred certain powers. The Government should make laws to provide that if the district boards require for a study on a planning, the Planning Department should assist them in providing adequate resources and information. In exercising control amortization, the district boards should be given statutory right to make recommendations and be consulted. The public should have the right to know about the reasons for the PB to make such a decision. Therefore, all hearing proceedings should be made open so that the public and the media may have a better understanding of the planning process. Such an arrangement will be helpful to them in giving more opinions.

The chapter concerning the planning and guidelines for local development has failed to cover the relevant criteria for environmental impact and principles for development. "Energy conservation", for example, has been totally neglected. According to statistics, around 40% of electricity in Hong Kong is consumed by the air-conditioning system of buildings. Energy conservation should therefore be included as one of the requirements for development planning and its applications. Furthermore, the disposal of wastes such as solid wastes, toxic chemical or clinical wastes should also be brought under well thought out planning controls.

Regarding the environmental impact assessment the Government has the responsibility to control individual development activities within each type of land use so as to avoid causing adverse effects to the surrounding environment as far as possible. The Government should make environmental impact assessment statutory and replace the proposed administrative considerations with statutory measures. It should make specific regulations for environmental impact assessment to be expressed in a distinct classifying system on various developments and should publish and promulgate the criteria for such classification. In the past, the Government did not promulgate such criteria giving the reason that there were technical problems. However, experience from foreign countries like Britain has shown that environmental

impact assessment may be presented to the public in a readable report form in about 10 pages. Taking the golf course project on Sha Lo Tung and the reclamation works in the harbour west as examples, we may see that the town planning has not been consistent with the objectives of environmental protection. I therefore propose that environmental impact assessment should be considered in the planning process and the results made public as soon as possible so that the affected people may express their views on the projects concerned.

I welcome the efforts made by the Government in preserving areas of historical interest. However, in my view, when members of the Antiquities Advisory Board identify that a certain development will damage valuable antiquities, the PB should have the power to suspend such development for a reasonable designated period. In the interests of various parties, there should be reasonable compensation payable to those affected.

In my opinion, town planning should seek to serve public interest and to take into account public and social needs and protect the interests of the lower class as well as the disadvantaged sections of the community. Therefore, the public should have the rights to know and to express their views. This is to assure that public wishes are to be fully appreciated and I believe whether such wishes will be fully considered depends on comprehensive but not partial involvement of the public in the planning process.

With these remarks, I support the motion.

MR FREDERICK FUNG (in Cantonese): Sir, I welcome the review by the Government of the Town Planning Ordinance. New legislation should be introduced to meet new times, as the consultative document quite rightly points out. It is a sign of progress that the authorities concerned have acknowledged that loopholes exist in the existing planning application system. The enhancement of the transparency of the Town Planning Board, the strengthening of public participation, the setting up of an Appeal Board, and the tightening up on control of temporary land uses are positive measures which will enable public opinion to be represented on the Board and make sure that town development will take public interest into account. But I personally think that there are still areas in which the Ordinance may still be further improved, particularly in terms of Board membership and degree of public participation. Paragraph 3.18 of the Consultative Document on the Comprehensive Review of the Town

Planning Ordinance specifies the membership of the Appeal Board. But in order to ensure the independence of the Board and its authority of final arbitration, it is suggested that the chairman should not only be appointed by the Governor but his or her appointment should actually be endorsed by the Legislative Council. This will ensure that chairmanship will be assumed by a neutral party who is accountable to the Legislative Council.

Meanwhile, paragraph 3.33 of the consultative document proposes to permit the public to make applications for amendments to a draft or approved plan for consideration by the Planning Board. However, there would be no right of appeal if the application for amendment to the plan was not accepted. I can see two problems with regard to the proposal. First, the proposal does not specify that the public has a right to an explanation in the event of an application being rejected. Second, the unsuccessful applicant does not have the right to appeal. This limits the exercise of the public right to appeal which is not only instrumental in raising the level of public participation but is also a necessary mechanism to ensure that public opinion is respected.

Paragraph 4.11 of the consultative document provides two options of canvassing public views. Option One requires the Planning Board to notify the public of all planning applications and Option Two allows the Planning Board to have the discretion to decide which application should be publicized such that simple applications would not be publicized. I believe that Option One is better than Option Two in that the latter does not preclude the possibility of the public being deprived of the right to information, for, after all, the definition of simple application is rather arbitrary. What the Board may consider to be a simple application may not be regarded as such by the public. The above comment has been made with particular reference to the proposal made in the consultative document.

I have other comments which I hope the Government will also consider in the preparation of the new Town Planning Ordinance.

First of all, the Outline Zoning Plans given by the Planning, Environment and Lands Branch only give a rough picture. The public will, even at the end of the scrutiny, only get to know which areas are to be used for residential development, and which areas are allocated for use by the Government, or for other proposes. There is nothing further on the plan which would give the details of the Government/Institution/Community uses. They could very well mean either the

building of a refuse collection point, community centre, or school, or other facilities. We understand that each of these uses will have quite different impact on the residents. I believe that the Government must have already had a certain layout plan in mind when earmarking a given piece of land for a certain kind of use. I believe that the Government should, in revealing the Outline Zoning Plans to the public, specify the purpose to which a particular piece of land will be put and provide more information in that regard. This practice will enable the public to give more specific comments to the authorities concerned after examining the plan.

Lastly, the Government should consider the setting up of a body similar to the Legal Aid Department. It may be tentatively called the Planning Aid Office and it should be tasked with providing assistance to grassroots residents who need to take certain proceedings because they are affected by government planning. Given the enormous amount of professional knowledge involved in town planning, the affected parties may have to secure professional help at their own expense to help them sort things out. Grassroots residents who have no such knowledge and who cannot afford professional help will not be able to make full use of the more open town planning system and statutory provisions to adequately protect their interests. It is for this reason that I suggest that a Planning Aid Office should be set up to provide professional and resource assistance to members of the public.

I support the motion on the basis of the foregoing comments. Thank you, Sir.

MR GILBERT LEUNG (in Cantonese): Sir,

A tardy spring

The Town Planning Ordinance was enacted in 1939 and has been in effect for 53 years. It is an incontestable fact that the existing legislation is no longer able to cater for the current social development. There have been a number of professional bodies and members of the community demanding the Government to conduct an overall review of the situation, but their demand has not been taken seriously. This has resulted in some unsatisfactory developments. To a certain extent, the "problem" land uses mentioned in the consultative document are consequent upon the fact that the Government has all along neglected comprehensive planning and failed to review the established policy on a regular basis. Now, the Government has finally accepted public opinion to carry out an overall review on existing planning

legislation. It is really a tardy spring, but it is "better late than never" and I have great expectation for such a delayed review.

Major issues of concern for the Regional Council

The consultative document published by the Government was discussed in the Regional Council (RC) last September. While the RC welcomed and strongly supported the review, it was concerned that the public consultation on the development plans and the planning applications may delay some of the projects for the RC. For example, it is very likely that the provision of public toilets and refuse collection points will be delayed if such proposals meet with objections from neighbouring residents. There is a requirement for inclusion of a statement of environmental impact assessment in the planning applications. This may increase the cost for RC projects. As for the concept of amortization, it may affect the refuse collection points or public toilets built a long time ago in "residential areas". Since most of these tatty facilities are located at old areas, there is difficulty in looking for space in such areas to build a RC complex to accommodate these facilities.

However, the RC supports that it needs to consult the public on the above contentious municipal services to enable the residents to participate in identifying sites for these facilities, but the consultation must not affect the provision of such facilities. However, it may lengthen the preparation process.

Public notification of planning and sterilization of development

Public notification of planning and increased public involvement are the major objectives of this review. I highly approve of this. In order to ensure that the decision to encourage public involvement is not just a gesture, the planning process will have to be lengthened and certain developments will have to be temporarily sterilized. However, we have to bear in mind that flexibility and efficiency are the ingredients of our success. Therefore, should any developments have to be sterilized, it must ensure that the freezing period will not be unduly long, the affected scope is kept to the minimum and the duration is as short as possible. Only by doing so can public interests be maintained.

On this crucial point, proposals contained in the consultative document are less than satisfactory. Modifications are necessary particularly on two points, which is the definition of "objections" against draft plans and the time limit for the

Executive Council and the Appeal Board (AB) to hear objections.

The assessment of hearing

Paragraph 3.25 of the document mentioned that at the close of the statutory exhibition period, the Planning Board (PB) would classify the representations received and identify which representations were objections in nature. Since this will directly affect the number of sites to be frozen for development and will produce serious impact, I suggest that there should be guidelines in the new legislation to define "objections" and to specify the eligibility of people who are entitled to "related" interest so as to avoid malicious objections tantamount to blackmail. In order to increase transparency of the plan-making process, it should be set out in the legislation that the hearing of objections is to be undertaken by a sub-committee under the PB and the hearing should be kept open.

An exact time limit for sterilization of development rights

The Government has proposed that there is need for the PB to submit all representations and its recommendations to the Executive Council for approval within the nine months of the expiry of the plan exhibition period. However, there is no time limit set for the Executive Council to make such an approval. It is not specified in paragraph 3.29 that whether the expiry period of the nine months is statutory or just an interval administrative guideline. It is stated in the same paragraph that the Executive Council is allowed to extend the nine-month-period. It is proposed in Paragraph 3.30 that, if necessary, the Executive Council may refer the representations to the AB for further study or another hearing. However, it does not provide a time limit either. In other words, if there is no upper time limit for the sterilization period, investors will not be able to assess when the study as well as the freezing period will end. I of course support the idea to enhance public involvement, but I cannot agree that such a recommendation is already the best to balance between public involvement and efficiency. To achieve a better balance the following amendments may be considered:

(1) The Executive Council and AB must deal with the representations under statutory time limit. I suggest that the Executive Council upon receiving the recommendations from the PB should complete the approval process within two months or refer the representations to the AB for further study. The AB has to finish the study within two months and then submit the result to the Executive Council which

is required to make a decision in a month's time.

(2) The nine months proposed in the document as the time limit for the PB to submit the recommendations to Executive Council is too long. In addition to the time limit proposed by me for the Executive Council and the AB to deal with objections, the freezing period for a development may amount to 11 to 14 months which means a lot of time. I therefore recommend to have the nine-month period changed to six months and specified in the new planning legislation as an express statutory provision so as to enable investors to assess the sterilization time for any development more accurately. The suggestion in the document to allow the Executive Council to extend the time limit for approval has already provided a guarantee. Therefore, the six-month period, if necessary, may be extended, but there should be provision for the duration of each extension, such as three months, and the number of extensions.

Planning application

Regarding the planning applications, I highly approve of the option II in paragraph 4.12, that is, the PB is allowed to have discretion in deciding which applications should be publicized. Simple and uncontentious applications would not be published to avoid causing unnecessary delay to development. The PB should provide a set of criteria for the planning application system and then publicize them. A sub-committee should also be set up for deciding which applications to be publicized. As it is suggested in paragraph 4.12 that all applications would be exhibited in public for one month, the public may be notified of all planning applications through such a channel. Option II can assure that necessary publicity is to be made on contentious applications. This may ensure public involvement and at the same time avoid unnecessary delay to development and wastage of resources.

Purchase notice

Whether there should be payment of compensation for removal or curtailment of development rights as a result of planning legislation is another focus in this review. In cases of total removal of development rights, the landowners concerned should be compensated . This is a fundamental principle of respecting individual property rights in a society ruled by law particularly those adopting a capitalistic economy system. Such a principle is generally followed in existing legislation, but the situation is less than satisfactory. I therefore highly favour the introduction of a purchase notice system proposed in the consultative document. This is to provide

landowners with a right to serve a purchase notice on the Government to require it to resume their land when the use of such land was sterilized by statutory zoning and the land meets the criterion that it is "incapable of any other reasonably beneficial use". Although it is pointed out in the document that there has been an existing administrative practice similar to the proposed arrangement, such a policy is not widely known and the Government may terminate any policy as it likes so there is no protection for landowners. Making the existing practice statutory through legislative procedure is to provide for transparency and to formalize such an arrangement. As a result, a "privilege" only known to a few people will become a right exercisable by all landowners.

Compensation arising from curtailment of development rights

The issue of compensating loss arising from planning restrictions under which development rights are curtailed is most contentious. Advocates of compensation emphasized the "paramount" status of the leasehold system and that the integrity of individual property rights should be upheld. The argument against payment of compensation emphasized the Government's role as a public custodian and pointed out that it was difficult to achieve "integrity" of individual property rights. Apparently, there are divergent views over the issue. It is in fact an argument of "public interests". How to define public interests of Hong Kong? On the issues of planning and compensation, under what arrangement that we can achieve the greatest public interests? We treasure very much our entitlement to private ownership of property. This is the foundation of our community and is the basic element of Hong Kong's prosperity. Unless we are willing to give up our goal to achieve prosperity, otherwise we must safeguard individual property rights where the public interest basically lies. We have recognized the significance of town planning in a modern society. Just like all other pieces of legislation, planning legislation must be kept in line with social development and be modified according to political and social changes. Otherwise, inopportune planning legislation will only impede further social development and produce adverse effects on the prosperity of our community. Therefore, the crux of the matter is how to strike a balance between maintaining the fundamental social principle of individual property rights and promoting social development and to reach a compromise so as to achieve the greatest public interest.

To accomplish such a balance, I think we should consider the compensation issue with reference to the following principle, that is, to explicitly spell out in the lease the development rights for land use.

If development rights are spelt out in the lease, the interest of landowners will be safeguarded. If the Government later on curtails the development rights of a landowner through the Town Planning Ordinance, it should compensate the affected landowner the loss incurred as a result of the disparity between the development rights allowed in the lease and those permitted under the new legislation. In reality, such a compensation principle has been recognized in the existing government policy. Last year, the Government agreed to grant more land in Kwai Chung for industrial purpose where the plot ratio has been lowered. This has indicated that the effect of the lease conditions is respected. The above principle of compensation should therefore be specified in the new legislation so as to formalize and to provide transparency for the whole planning system.

As for the leases without specifying development rights, that is, unrestricted leases, we may not exclude any entitlement to compensation. But a baseline must be drawn on the right to compensation. I would like to propose that we may adopt the development rights allowed under current legislation as the laws for calculation of compensation. Should there be any further curtailment of development rights, the Government should compensate for such curtailment. This is to protect individual property rights and to limit the compensation to an acceptable level as well.

As regards the issue of betterment, since it is difficult to assess the cause to the increase in the value of land and to establish how much of the increased value is attributable to the planning decision, I do not think the principle of betterment should be applied here. Experience from foreign countries has proved that betterment is not a successful measure.

Conclusion

Finally, I should like to sum up with a few brief comments. I regard this as a tardy spring for the comprehensive review is conducted since the Planning Ordinance has been enacted for more than 50 years. However, we must avoid making radical changes . Since the amortization method has been proved unsuccessful, it should not be introduced to Hong Kong. There is even reservation whether the planning certification system is necessary. I highly approve of the recommendations to

increase transparency and to promote public involvement in the planning system, but we should also take into account the effectiveness of development and its investment. Public interest should not simply be regarded predominant over individual property rights. Otherwise the status of Hong Kong may inadvertently be undermined. We should consider how to set out criteria which will be acceptable to the overwhelming majority as well as practicable in this community. Today, I have recommended the criteria which I think fit. Town planning is never an easy task as it involves competition between the political and economic considerations and there is a need to have such a task to be carried out by an organization that can strike a balance between the two considerations and be able to be accountable to the public. I therefore expect this Council can have greater involvement in this task in the future.

With these remarks, Sir, I support the motion.

MR MAN SAI-CHEONG (in Cantonese): Sir, since 1939, planning legislation in Hong Kong has not seen any fundamental amendment. Now, at last, comes the Town Planning Bill which carries great significance to the protection of public interests and creation of a living environment for Hong Kong people. However, there are still inadequacies and constraints in the context of this Consultative Document on the Comprehensive Review of the Town Planning Ordinance.

Firstly, the level of public participation is still low. The stance of the United Democrats of Hong Kong (UDHK) on the town planning process is to "protect public interests and meet the needs of the public and society". To achieve this aim, public participation should be enhanced so that the public can get hold of planning information and be involved in the planning process. In some Western countries, public participation in the planning process has a history of over 40 years. In this regard, Hong Kong seems to be relatively "slow in reacting". Until recently, development plans were and are still passively exhibited for two months and most residents in the affected areas, due to "ignorance", were deprived of chances to voice their opinions. Since the establishment of district boards in 1981, comparatively formal channels have existed for public consultation and we witnessed some sort of breakthrough in the development of public consultation. The comprehensive review now proposes a series of amendments to the Town Planning Ordinance. Although this is conceivably a "delayed response", it is "better late than never" after all. The significance of public participation lies in giving more information to the public and providing a forum for their expression of opinions and participation in the

formulation process. On top of these, public participation creates a better planning process by narrowing the communication gap between professional town planners and the public, and facilitating their exchange of ideas and understanding on the situation so as to attain planning decisions in the public interest. Therefore, the decision process on planning projects should be made public as far as possible. The consultative document proposes two options in this regard. Firstly, the Planning Board will have discretion in deciding which planning applications should be made known for public information and consultation; secondly, the Planning Board will be required to make known all planning applications. I support the second option, that is, to make known all planning applications, because I believe in the judgement of the public. I do not support their idea of allowing the Planning Board to decide which applications can be or cannot be made public. If we would like to enhance the public's sense of participation in town planning and better their understanding in planning matters, and if we believe the public has the wisdom to judge whether a planning programme is beneficial to society as a whole, then the Planning Board should, without hesitation, make public all planning applications. Moreover, we should not use "efficiency" as the excuse to selectively cover up certain planning applications, particularly those items "which are unwelcome in neighbouring areas" because once the residents discover the nature of such items, the development will still be impeded. As such, I propose the Planning Board not to fail to make known planning applications on the grounds of administrative "efficiency", which is simply unfair to the residents.

Another focus of concern is the role played by district boards in public participation on planning matters. In the past 10 years, district boards have played a role in consultation exercises concerning planning programmes. Though according to section 16 of the existing Town Planning Ordinance, institutional channels for consultation are not necessary in considering planning applications, district officers of the districts concerned will normally seek the advice of district boards on some large-scale planning projects. At present, there are elected members in every district board throughout the territory to voice the opinions of the public. This serves as an effective system of communication. So if district boards will be given statutory powers to initiate researches on important planning projects which will greatly affect the residents, not only can such a consultation channel strengthen the exchange of information between the public and the authorities concerned, the elected district board members can also act as "an intermediary" to pass information to individual members of the public and reflect and collate the opinions expressed by them. I believe such means will enhance public participation in town planning

effectively.

The general public, especially those in the lower social strata have always been placed in a comparatively difficult position. When developers make applications or lodge appeals on planning projects, they can engage many professionals to fight for their applications. However, when ordinary citizens object to or express opinions on certain planning projects, because they are in want of professional knowledge and resources required for engaging consultants, very often they have very slim chances to redress the grievances even if the redevelopment or development projects adversely affect their living environment. In the United Kingdom, the Town and Country Planning Association established in 1973 in London the first planning support service in the world, that is, the "Planning Aid Council" referred to by some colleagues of this Council. The service mainly liaises with the community, helps residents to solve problems encountered in the process of town planning and provides professional advice. I wonder if the Hong Kong Government will provide necessary resources to encourage the establishment of such a service in Hong Kong? Or will it consider employing and training more community development workers to help the public with problems arising from town planning?

In the process of public participation in town planning, public hearings serve as the most effective means for mutual communication. Public hearings promote public awareness towards town planning, facilitate mutual understanding between both concerned parties and help to tackle difficulties through rational, fair and peaceful discussions. They also enable members of the public and the media to attend appeal proceedings. While meetings of the Legislative Council are open to the public, the Housing Authority also allows the public into its magnificent conference chamber. Urging the public to listen and speak up, public hearings serve as an indispensable step for enhancing public participation. Sometimes, public hearings may even boost public confidence in the Authority's ultimate decision on planning development. Actually, consideration can be given to conducting public hearings may be conducted at district board meetings or organized by the district boards.

If we believe that public participation is beneficial to community planning and makes the planning process fairer and more reasonable, then the structure and the composition of the Planning Board should be reconsidered so that it can be more accountable to the public. The UDHK proposes that the Planning Board should comprise three types of members, one-third of which to be nominated by the Legislative Council and then appointed by the Governor, one-third to be professionals or government

officials appointed by the Governor, and the remaining one-third to be appointed by the Governor to represent environmental political bodies, interest groups, professional bodies, and so on.

As a member of the Appeal Board, I would like to comment on the time allowed for reviewing objections. Developers and investors are concerned about the delay caused by the 11-month freezing period (that is, two months for consultation and nine months for consideration) to land development and the delay on the part of processing by the Executive Council and the Appeal Board. Therefore, the legislation should stipulate clearly the time limit for responsible departments to deal with the objections in order to reduce uncertainties and unclear prospects on the part of the developers. At the same time, the legislation should also stipulate the time limit for the Building and Lands Department to process individual cases.

Moreover, I would like to talk about environmental impact assessment. The UDHK welcomes the proposal in the Consultative Document on Comprehensive Review of the Town Planning Ordinance that for certain planning applications, an environmental impact assessment report should be submitted under the guidance of the Planning Board. This proposal makes planning stride forward towards a new era. In Australia, the planning process is protected by law to ensure that an environmental impact assessment report must be submitted together with the planning application before the implementation of a major development project. In the report, the actual implication of a planning project on surrounding environment, public health and quality of life can be estimated and foreseen. The report will mainly cover the descriptions of the development project, and the impact on various environmental aspects including water quality, air quality and noise and data will be provided to estimate the severity of the impact. The report will also assess the acceptability of individual environmental implications. Generally speaking, the environmental impact assessment report should be submitted before an application is approved because if the report is submitted only after the application has been accepted or the planned development is underway and later on the project is found to have significant impact on the environment, then the developers would suffer great loss and the people would also be seriously affected. Hence, we should not save costs and think it does not matter much even without the environmental impact assessment. In fact, when we find out that the project does have serious adverse effect on the environment and even on the ecology, public health and the quality of life, it would be too late and the social cost would be too great. A good example is the Island Eastern Corridor, which has caused noise pollution to adjacent residential development. Another example is

a residential development which had been built on a landfill site in Australia before a detailed environmental impact assessment was made. Later, owing to the pollution of the underground water in the residential development, some residents suffered from cancer after drinking the water and having paid such a high price, eventually the people in the whole locality have to move out. This shows that environmental impact assessment is very important. However, it is not a window dressing for planning application nor used to prove that a development project is beneficial to the environment after a decision has been made. A recent example is the proposal of building a golf course in Sha Lo Tung, which raises the question of the integrity of the nearby country park. Therefore, environmental impact assessment must have a statutory status -- a point which was mentioned by several Members. The Government should set up a clear classification system of environmental impact assessment required for different kinds of development, otherwise, the assessment would become simply a window dressing for planning applications and be used to increase the possibility of getting approval, thus the objectivity and the effectiveness of environmental impact assessment become doubtful. In addition, environmental impact assessment is closely related to public participation because if the Government publishes environmental impact assessment reports to let the public know the effect of the projects on the environment, the public will have better understanding and more faith and find the projects more acceptable. Of course, environmental impact assessment also involves some confidential information such as commercial secret papers. However, except those information which has to be kept confidential, it is also believed that making public the assessment reports as well as the guidance of the Government or the Planing Board on environmental impact assessment is an important process to enhance public participation.

To sum up, if the principle of "democratic participation in drawing up land use plans" can be implemented, and if the consideration of environmental factors can have a statutory status during the planning stage, the town planning of Hong Kong will make a great move and all these achievements in the whole consultation process are significant.

With these remarks, Sir, I support the motion.

MR NG MING-YUM (in Cantonese): Sir, regarding the wide scope covered by the Consultative Document on the Comprehensive Review of the Town Planning Ordinance, I will focus my speech on the issues of compensation and betterment. I believe that

these issues should be dealt with both in accordance with the principle of equality and fairplay balancing private property right with public interest, and in accordance with the provisions in the Sino-British Joint Declaration and the Basic Law. Section VI of the Sino-British Joint Declaration states, and I quote, "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." Article 105 of the Basic law also states, and I quote again, "The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay."

I wish to stress the provisions of the Sino-British Joint Declaration and the Basic Law particularly, because lawful deprivation is mentioned instead of planning in both and also, because they deal with the real circumstances which prevailed at the time instead of possible circumstances. I started with the issue of principle and I will deal with the issue of compensation on that basis. I am for the argument that public interest should take precedence over private interest and that on that basis each individual should have some obligations towards society. Meanwhile, for the sake of public interest, each individual may incur some loss but such loss is necessary because it is up to the Government to curtail individual rights in order to uphold public interest. It is for this reason that the Government does not have the obligation of providing compensation. The other point I wish to make concerns property right. Indeed, the property owner does not have the right to the unlimited use of his land. In addition to complying with the lease conditions, he or she should also respect all relevant legislation, such as that relating to environment, buildings and fire safety, town planning being only one of the applicable pieces of legislation. Given that the Government is not required to provide compensation under other legislation, there is no reason why the Government should provide compensation for town planning, particularly bearing in mind that the legislation is for the protection of the overall public interest and as such should naturally take precedence over the lease reached by any two parties.

One view I have heard is that previously, urban leases for the most part did not contain restrictions regarding land use and building density. Given that is the case, it does not follow that development should not be subject to any control. Insofar

as building height is concerned, the Buildings Ordinance of 1932 provided that residential buildings should not exceed the height of five storeys. This restriction was relaxed in 1955 and tightened up again 1962. In neither case was compensation nor indeed betterment settled in money terms. Similarly, neither appreciation nor devaluation resulting from town planning should lead to any form of levy or compensation. I believe that in the case of old scheduled lots, for example the building lots of the New Territories, there is no specific restriction in the lease and there is no need for the Government to provide compensation. It is because although no specific restrictions were given in black and white at the time the land was leased it did not mean that no restrictions applied. The absence of specific restrictions should be understood as providing for land use to conform to the conditions for development which then prevailed. Any redevelopment of land should be in line with the prevailing legislative provisions. In the event of the existing legislation being more rigorous than the old one, it should be complied with instead of forming a basis for claiming compensation. If the land is used for other than the purposes consistent with town planning, and that such use is clearly banned by the lease conditions, then parties concerned have already contravened the lease conditions. The Government may effectively ban such use at any time and demand that the parties concerned pay compensation for breach of lease conditions. In these circumstances, any possible loss which may be caused by town planning should not deserve compensation.

But on the other hand, if the land is not suitable for the use specifically provided for in the lease to the detriment of users as a result of uses being limited by the statutory plans, then it is an exceptional case which calls for reasonable compensation to be paid.

Put simply, in accordance with the principle of equality and fairplay and the provisions of the Sino-British Joint Declaration and the Basic Law, I believe that any possible loss which may be caused by town planning, with the exception of the circumstances which are specifically provided for in the lease, should not be compensated for.

Meanwhile, the issue of betterment levy should be resolved similarly, that is, in accordance with the principle of equality and fairplay, and the provisions of the Sino-British Joint Declaration and the Basic Law. Betterment and compensation are very closely related and as such should be considered together.

I believe that if my proposal is adopted in dealing with claims for loss, which

is to say that no compensation will be awarded unless provided for in the lease, then by the same rationale, any appreciation resulting from town planning should not lead to betterment for the investor should enjoy as well as suffer the consequences of his investment. But if the Government decides to provide some kind of compensation for loss incurred as a result of town planning then it is only fair that the Government imposes also some kind of betterment.

Of these two fairly acceptable options I would consider to be the more practicable the one which in principle provides for neither compensation nor betterment levy. The issue here is really that, if compensation should be adopted then I would strongly call for the adoption of a betterment levy as well. Otherwise, if the Government should be persuaded to adopt the policy of compensation while waiving betterment it would be most unfair to the taxpayers, the Government and the people as a whole.

Sir, I understand that betterment, while based on a very simple principle, may be extremely difficult to implement. For one thing, it is no easy matter to establish which properties have increased in value due to planning decisions. Secondly, it is very difficult to measure, afterwards, the extent to which the planning decision contributes to the increase, and the extent to which the increase is actually caused by other factors. Even if the extent can indeed be measured, it is nevertheless nothing more than an anticipated increase which may materialize within a certain time frame but which may equally well be affected by substantial or insubstantial circumstances at the time development gets underway.

It can be anticipated that all of the above factors may render betterment very difficult to implement, if indeed there is a need for it to be imposed in the first place. And it is due to difficulties such as these that a number of western countries which have implemented some form of betterment levy have to give it up eventually. But I wish to stress here that, in keeping with the principle of equality and fairplay, if the loss incurring party should be awarded compensation, then the profit making party should be liable to a betterment levy. In view of the difficulties of implementation, I would suggest that the Government may actually think in terms of some kind of capital gains tax instead of land betterment tax. This is an easier way of resolving the issue of the cause of betterment, whether it be the planning decision or other factors.

Sir, before closing my speech, I would like to sum up my views on this whole issue of whether or not to impose levy on betterment and award compensation for loss in

the following terms. The Government stands to gain from levy without compensation; the property owner stands to gain from compensation without levy; the public stands to gain with levy and compensation going in tandem; fair play exists only without any party profiting nor incurring loss. I hope the Government will cautiously tackle this issue by upholding the principle of equality and fair play and abiding by the provisions of the Sino-British Joint Declaration and the Basic Law.

Sir, with these remarks, I support the motion.

MR TIK CHI-YUEN (in Cantonese): Sir, Meeting Point has the following views on the Comprehensive Review of the Town Planning Ordinance. We believe that town planning should be based on principles as listed below.

1 Land should be used effectively while resources of space should be exploited likewise and their continuity guaranteed.

2 In exploiting the resources guarantee must be made regarding a fair distribution of both cost and benefits.

3 There must be democratic participation in the town planning process such that the various opinions will find suitable channels of expression to influence policy and people involved in the discussions must have access to adequate information.

We welcome the government move to comprehensively review the outdated Town Planning Ordinance. I applaud also the government initiative of publishing a consultative document to solicit public views before making amendments to the Ordinance. But we must also point out that this comprehensive review has been too late in coming. The rapid urban development which has taken place over the past 30 to 40 years in Hong Kong has produced a lot of environmental problems, some of which have already been mentioned by the consultative document itself. The outdated Town Planning Ordinance may not be the direct cause of these problems, but it is, to be sure, partly to blame for them. We hope that the Government will henceforth be more forthcoming in terms of taking a long-term and integrated approach to the problem of town planning, instead of resorting to remedial actions to solve problems which have emerged, and then only in response to public pressure. Indeed, remedial measures often turn out to be more expensive than preventative measures and frequently, errors may even become unrectifiable at all.

We generally agree with the proposed plan making process mentioned in Chapter Three of the consultative document, particularly the fact that it acknowledges the principle of public participation. But there are three points which we would like to make here.

1 The Government should put together a specific consultative plan to solicit public opinion. Initiative should be taken to introduce the plan and explain it to the general public in layman language, through pictures and the media, at both draft planning and planning study stages.

2 The arrangement for the Governor in Council to decide whether or not to forward appeals to the Appeal Board will add to the workload of the Executive Council and involve the latter in the nitty gritty of many planning problems. We suggest that the normal appeal procedure should be adopted such that the appellant may appeal directly to the Appeal Board, as provided for in the appeal procedure proposed in Chapter Four on planning applications.

3 We believe that, in addition to the statutory plans which should require public consultation, strategic planning is even in greater need of public participation because it has a decisive bearing on the quality of life and the use of community resources. We believe that the new legislation should specify the consultation procedure which the Government has to comply with in conducting strategic planning. We are in favour of making public all planning applications, that is, Option One contained in paragraph 4.11, in view of the fact that a lot of the planning applications are tantamount to amending the statutory plans. We also are in strong favour of the proposed principle regarding development control, mentioned in Chapter Five, that all matters relating to planning should be dealt with collectively by the department responsible for planning. The Buildings Ordinance should only control the design and safety of buildings. While the specific procedure should of course take efficiency into account but it must not sacrifice the planning principle.

We applaud the government acceptance of the fact that "assessment of the environmental impact of a development constitutes an integrated component of planning," to quote paragraph 7.2 of the consultative document. I support the proposed practice of requiring all planning applications to be filed with an assessment of environmental impact. Regarding designated development mentioned in paragraph 7.4, we believe that the plan should also specify the designated development

for public information and comment. We believe prior to designated development being confirmed an assessment of environmental impact should be conducted.

We also wish to comment on the composition of the Town Planning Board. Town planning is not only a technical issue for it is at the same time a political issue. It involves the interests of individuals and organizations and these interests may inevitably clash. Town planning is therefore a process whereby the different interests are co-ordinated and reconciled. The institution charged with planning, such as the Town Planning Board, is a vital part of the game. It should adequately reflect and represent the interests of all parties. Indeed, the town planning body in many countries is an elected body such as the local municipal council or government. The composition of the Town Planning Board is even more important in the political context of Hong Kong. We believe that the criteria of appointment should be devised in such a way that the interests and opinions of all parties will be adequately represented. The proposals regarding amortization mentioned in Chapter Eight, though instrumental to the amelioration of environmental problems, should be clearly spelt out in the legislation in terms of the principle of its implementation, and more specifically, the parties who suffer economically as a result will be taken care of. Regarding the point made in the consultative document that the plan would not apply to substantial non-conforming buildings which involved heavy private investment, we take the view that this is not being exactly fair.

Lastly, Meeting Point is opposed to the proposed compensation and betterment arrangements which will involve insurmountable technical problems.

Sir, with these remarks, I support the motion.

DR SAMUEL WONG: Sir, to comment on the Consultative Document on the Comprehensive Review of Town Planning Ordinance, an ad hoc committee was formed a few months ago within my constituency, the Hong Kong Institution of Engineers. After holding a series of meetings, a 20-page report was being prepared and has been submitted to the relevant government departments for attention. This report has my full support.

In the last 50 years Hong Kong's urban environment has changed dramatically; yet the Town Planning Ordinance has remained substantially the same over that period. So I do not require much convincing that it needs a comprehensive review. I therefore support the review in principle.

It is a substantial document; so I will restrict my comments to one section, Compensation and Betterment. I am sure my colleagues will deal more than adequately with the rest.

Up till now compensation has only been awarded, as a matter of right, for land which is actually or virtually confiscated. Lesser limitations on the use of land arising from government decisions have not been accompanied by any right to compensation. Betterment, which I would simplistically describe as the opposite of compensation -- a levy on land made more valuable as a result of government decisions -- has not existed as such, only indirectly in the form of rates and Crown rent increases, property tax increases, stamp duty and land premiums.

There has recently been one significant amendment -- principally to restrict, for environmental reasons, storage on agricultural land. The complaint that the effect was to restrict possible enhancement of the value of agricultural land without any right to compensation was countered by the common law argument that the land was leased for agricultural use and that was unaffected. So it is argued that the legislation is in line with common law and the contract.

The consultative document offers two main options: either to leave things substantially as they are, with compensation only for effective confiscation of land, and no direct government revenue from the betterment; or to devise a scale of compensation, and by inference betterment to go with it, so that all hardship and gain is duly adjusted.

There is another issue, which I regard as quite separate. Should compensation remain under the existing administrative procedure, whereby the onus is on the landowner to request the Government to resume their land, or should it be in the Ordinance as the statutory right of landowners to require the Government to resume their land that has been sterilized by statutory zoning? This matter could in my view be resolved independently of the main philosophical issue. It revolves around the choice between simplicity and certainty of payment. If it is simple it costs the taxpayers less. If it is written into the law the individual can feel more secure against bureaucratic irregularities such as victimization. I tend to favour simplicity myself, provided it can be shown that the existing system has operated reasonably smoothly in the past. I do, however, support the point that once land is sterilized by a finalized plan the owner should be able to have it resumed at any

time before implementation of the plan, without having to await the discretion of the Government.

But return to the main issue, namely choosing between minimum but relatively objective compensation and a comprehensive scale of adjustment for a wide range of hardship and gain from statutory zoning.

It is very easy to say, and I say it myself, that the Government has no right to impose any hardship at all on anybody in a democratic society without due compensation. It is easy to say. It is not so easy to implement. It is a complex matter.

The document makes it clear that we are dealing with a matter of common law. It was William BRENNAN who said, in 1957, and I quote, "'custom' was always the common law's most cherished source. So much so, in fact, that not until well into the Seventeenth Century did English lawyers make any distinction between law declaration and law making. And what was declared 'custom' but the accumulated wisdom of social problems of society itself? The function of law was to formalize and preserve this wisdom."

It follows that, in considering compensation and betterment, "custom" should not be discarded lightly if we are to give due respect to common law.

Now custom varies from country to country. It may be a statement of the obvious but custom in Hong Kong is deeply rooted in Chinese culture and it would be a mistake to slavishly follow what is done in the United States or even Britain, even though this is where our law came from. We must make up our own minds.

So what sort of a people live in Hong Kong? What is their natural reaction to the concepts of compensation and betterment? What is their custom?

People in Hong Kong are more group-minded and tolerant than in many western countries. If the community as a whole benefits from something, individuals are generally ready enough to accept that some have better luck than others. So if I suffer a certain hardship because my land comes under some restriction, which is actually for the common good, while my best friend's land triples in value, I will attend his celebration party with rather more equanimity than in some other countries.

In the United States, for example, the custom seems to be to sue for almost

anything without regard for the long-term effect on society.

So tolerance plays an important part in custom in Hong Kong and we should only depart from that custom for compelling reasons.

Next we have to consider the question of complication. The present custom is simple. Regulatory planning does not invoke compensation, confiscatory planning does. Adjustment for a wide range of hardship and gain could be immensely complicated. Just consider Port and Airport Development Strategy. The transport improvements to Lantau will have a definite effect on property values. How will these be assessed? What will be the extent? Will betterment apply to every home owner (a staggering thought) or just to developer? Would existing home owners escape and future owners pay a premium? Then there is the Kowloon peninsula. What will happen to property values when Kai Tak is closed and all height restrictions are removed? Unless plot ratios can be adjusted so that land values remain the same, there could be so many adjustments that they could take us well into the next century to implement. Another effect of the closure of Kai Tak could be property depression in Clearwater Bay. An indirect effect and difficult to quantify, but should it be taken into account?

Which brings me to the matter of cost. The administrative load of adjustments such I have just mentioned would be enormous. Even if betterment and compensation simply cancelled out, the cost to the community would still be huge in just administration. If compensation were greater the cost could be astronomic.

But perhaps most serious of all would be the subjectivity. Just reading the consultative document raised, among others, the following questions:

- How long is a long period? This was in the context of land being sterilized for a long period before confiscation.

- How sterilized does it have to be to invoke compensation?

- At what stage do restrictions amount to "total removal of property rights"?

- How do you define "any reasonable beneficial use"?

Terms such as these, if not most carefully used, are going to invite long legal wrangles from which the public is unlikely to gain very much, indeed society could

lose a lot. The impression I gained from the document was that graded compensation was in great danger of being subjective while betterment was even worse.

In many cases of betterment it would be necessary to decide what properties had increased in value due to planning decision and by how much. In any case it would only be an expectation value and one not sought by the owner. How fair would it be to demand immediate payment, or even to have a levy hanging over the land for decades like capital gains tax? To complete the circle it seems contrary to custom.

So there are undoubtedly strong arguments against changing the custom. Yet the contrary questions remain. What about individual rights? A lease is a contract and if it is broken should not compensation follow? In short no individual should suffer hardship without compensation. It is a matter of human rights.

I have lived in Hong Kong long enough to know that in the end we are going to compromise. Indeed, you can see this is implied in the terms of reference of the Special Committee on Compensation and Betterment, which included having due regard for: common law (I would say this implied custom); the effect of public investment on land values; the effect of planning on land values; the need for planning to be affordable; and the net total cost of compensation and betterment.

In other words, they were told to consider a degree more compensation and betterment, but not to go too far.

I personally support such a pragmatic approach. Indeed my view is this.

An essential ingredient of both compensation and betterment is that the need for them has arisen because of decision or action by the Government beyond the control of the landowner. In general he has not asked for the change and may not have been specifically consulted. The establishment of this principle supports compensation but detracts from betterment. It is right to compensate for hardship which is no fault of his own but much less justifiable to make him pay for a gain he did not ask for and may not be able to afford. In the latter case I deem it right that the Government should meet the cost of their decision. Furthermore, I believe it to be a principle of administration in Hong Kong that individuals should be treated the same without too much regard for their circumstances, just as it costs the same for a telephone in Central and in a hut on Tai Mo Shan. Under this concept I do not think the Government should single out individuals who happen to benefit because of the

good fortune of location. In my view changes in rateable value, property tax and land premiums are adequate adjustments.

In short I do not support betterment.

As for compensation, all my instincts cry out to compensate for hardship where the latter is significant and the former practicable. Again it is right that the Government should pay for their decisions. But compensation should be strongly circumscribed. It should be kept simple, objective and affordable in the spirit of neighbourliness and the Hong Kong people's acceptance of a reasonable degree of good and bad luck. As a guideline I would suggest that compensation should be payable under the Town Planning Ordinance for a degradation in land value, fulfilling the criteria listed in the consultative document, that can be computed objectively by a formula established by a professional body such as the Hong Kong Institute of Surveyors, but not otherwise. At least that would reduce the number of legal wrangles to a minimum.

In conclusion I support some extension of compensation provided it can be objectively assessed according to a laid down formula, but I do not support betterment.

Sir, with these remarks I support the motion.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I was beginning to think that I had heard the best of everything about town planning legislation, but today's debate has provided a refreshing range of views, however polarized the interests and views represented may have been, which I believe will make a real contribution to the review. Since we published a consultative document on the review on 8 July last year, we have received during the consultative period a total 65 written representations, we have held about 50 briefings and we have received views from a great number of other sources and channels, including through this Council. We have been very impressed by the width and the depth of the comments made.

In thanking Members for their contribution to the debate, I will make a few points about some of the main issues and concerns raised in the consultation. People, principally other than developers, seem to want wider public consultation in the preparation of statutory plans and in the planning process. But some, including many

here, feel that the preparation of territorial and sub-regional development strategies should also be included within the ambit of the Planning Ordinance and public consultation on these development strategies should also be made statutory. We saw this differently; we felt these strategies were really policy statements rather than physical plans and should be dealt with like other policy statements. There should certainly be public consultation where appropriate but the type of consultation should not be rigidly fixed by the law.

Developers and professionals worry that the proposed interim development controls might cause delays to development schemes, especially during the period for considering objections. In particular, there might be abuses through vexatious objections to published statutory plans. While we do not want that practice, which is prevalent in some other places, developing here, we have proposed in the consultative document to streamline the procedures for hearing objections and to impose statutory time limits on the various stages of the plan-making process. We are considering this issue further.

But perhaps the most criticized and perhaps, I think, the most misunderstood part of the document is the proposed planning certificate system. It has been seen as creating a new world of uncertainty and additional work to developers, and causing delay to the development process. We feel that all these fears are misguided. We have explained to concerned groups on many occasions, and also to the ad hoc group of this Council, that it is not by any stretch of imagination that we are proposing the United Kingdom type planning certificate system. It is to enable the Planning Authority to deal directly with the planning aspects of building works rather than indirectly through the Building Ordinance as at present. The system will not -- and I repeat not -- be used to introduce additional controls or impose extra requirements over and above those contained in existing statutory plans or in permissions granted by the Town Planning Board under them or, where there is no statutory plan, under the existing administrative system. In short, it certifies that the necessary planning decisions have been made. It is not a way of making them. It will be dealt with, wherever possible, currently with the approval of building plans. After much discussion and dialogue, some professional groups are beginning to see the purpose and merits -- I say merits -- of the proposal.

While most people accept that special design areas for key civic areas and in the immediate neighbourhoods of historical monuments are right in principle, some, Mr Edward HO for one, have questioned the expertise of the Planning Board to consider

the design aspects of development proposals. Design and aesthetics are always controversial, as the Prince of Wales knows well, and even the silver medal choices of the Hong Kong Institute of Architects, made with the help of however august lay persons, have their critics. But in any case, first we do always ensure that there is a wide spectrum of opinion in the Board, and we have consistently appointed some, who are supposed to know something about design, to its membership. Perhaps more important, wherever the Board intends to designate an area as a special design area, it will publish its intentions both in the initial planning study and in the draft statutory outline zoning plan for public comment and objections. There is moreover nothing to prevent the Board from appointing a sub-committee or even consultants to help it make up its collective mind on design aspects of development proposals. But the good principle of a decision by the Planning Board will remain.

There are different views on the concept of amortization. Some support the proposal and see it as an effective means to eliminate undesirable non-conforming existing uses. Others are concerned about the hardship which might be caused and are of the view that compensation should be payable to those affected. Most of the concerns relate to the method of determining the amortization and the need for a comprehensive relocation strategy for the displaced non-conforming uses. The Administration appreciates these concerns and is looking at the matter further. In view of its compensation implications, this general concept of amortizing undesirable non-conforming uses is also being closely examined by the Special Committee on Compensation and Betterment.

And what about the economic impact study of the proposals contained in the consultative document which has been suggested? When we drew up the proposals in the document, we considered the financial and economic implications in general terms, such as the staff resources needed to implement them and the potential delay that could be caused to the development process as a result of a more open and fairer planning system. However, this was not in the form of a quantitative economic impact analysis which could answer such questions as changes in property and land values. Indeed on reflection we doubt if it is possible to carry out a meaningful economic impact analysis of proposed changes in statutory planning procedures, which, by themselves, would not confer or restrict specific individual development rights. It could only be when statutory plans were drawn up for particular districts that the economic impact of any planning or development control proposals could be assessed readily and realistically.

I would like to clarify the position of the Appeal Board. At present its powers are limited to deciding, in the place of the Governor in Council, on appeals from decisions by the Town Planning Board on section 16 applications. The review document proposes extension of the Board's powers to advising on outstanding objections to draft outline plans at the request of the Governor in Council. Its function could be seen as a second opinion on the objection and on the part of the plan objected to. The Governor in Council remains the final arbiter.

Finally, compensation and betterment remain a controversial subject, as we have heard today. We, in the Government, have quite deliberately avoided taking a public line on this issue, which, as some speeches in this debate have shown very clearly, is a very delicate matter indeed involving the balance between private and community interests. We have avoided this because we have deliberately appointed the Special Committee to advise us on the subject. When the Special Committee has reported -- I have no doubt it will come about -- the Government will have to form its mind before drafting legislation.

The Administration is now studying the 65 submissions received. Views of Members expressed this evening will certainly also be taken into very careful consideration. The original proposals in the consultative document will be revised or modified, where appropriate, to take account of the suggestions and comments. We are also looking forward to receiving the report by the Special Committee. The next step will be to finalize proposals and to prepare a new planning Bill which, I hope, will be introduced into this Council in about a year's time.

Sir, with these remarks, I support the motion.

MR EDWARD HO: Sir, I am most grateful to the many Members who spoke during this debate and I am sure that they have provided some very useful opinions to the Administration. I hope that the consultative document is really consultative in the true sense that it was not cast in concrete and that the Secretary for Planning, Environment and Lands, as he just told us so, will indeed be prepared to modify the original proposals after considering all the representations more carefully later on.

Remarkably, although the consultative document has been of such a complicated and controversial nature, there has been a lot of consensus. First of all, there has been a lot of consensus on the fact that we do need a review at this stage, a

comprehensive review that is overdue, and also consensus on the objectives stated in the consultative document -- and they are in the beginning section -- which are: openness, fairness, certainty, efficiency, effectiveness, affordability and comprehensiveness. The differences in opinions relate to whether those objectives can be attained by the proposals in the consultative document -- and of course many of these objectives are or could be conflicting in nature. For instance, when we open up the public consultation process, would that affect efficiency? Would that delay the development programme? And delay would mean that it would affect not only developers and professionals but also, of course, the public at large because I think we all know that planning is for the common good.

I have in my speech concentrated mostly on the practical aspects of the document because I am a practising professional. I have not strayed into the philosophical argument because I think we have already a consensus on the objectives, and I have not suspected any dishonourable motives or otherwise on the part of the Administration or the planners -- I think some have accused them of this -- in drafting these proposals. I think the intentions are honourable but I think it is up to us now to see whether the proposals could be implemented in their practical aspects so that we can devise an efficient and effective system.

And in this respect I support the view of Mr Ronald ARCULLI and the Real Estate Developers' Association and some of the professional institutions that a special working party should be set up to look into the practical aspects of the proposals to assess the representations that have been made. And I think that with this sort of input -- and of course the composition of that working party would not be just from the real estate developers or from the professionals but from other members of the community -- the assessment exercise would allay the fear of many as to the fairness of the proposals. And I think that is really the objective and really the purpose of the debate this afternoon.

Question on the motion put and agreed to.

Adjournment

ATTORNEY GENERAL: Sir, I move that this Council do now adjourn.

CHIEF SECRETARY: Dr HUANG Chen-ya has given notice to raise a matter for reply by the Government. Could I remind Members that in an adjournment debate there are 45 minutes for Members to speak. At that point or after all the Members wishing to speak have spoken, whichever is the earlier, I will call upon the Secretary for Planning, Environment and Lands to reply.

Public housing subsidy policy

7.20 pm

DR HUANG CHEN-YA (in Cantonese): Sir, the issue of public housing subsidy policy which we are discussing tonight would appear to be a matter decided by the Housing Authority rather than part of the government policy as a whole. But we understand that half of our population live in public housing and indeed, about 30% of private housing tenants are actually eligible for public housing. It is up to the Government, given the housing problem faced by 65% of our population, to take responsibility instead of leaving everything to the discretion of the Housing Authority. In considering the public housing subsidy policy, the Government should look at it from the perspective of overall government policy instead of treating it as purely part of the housing policy.

The double rent policy implemented by the Housing Authority since 1987 is allegedly geared towards the objective of lowering the level of subsidy to the economically better off tenants and encouraging the really affluent tenants to move out in order that the more needy applicants can move into public housing. The United Democrats believe that this objective is incorrect and the principle behind it unreasonable, and that the policy as a whole will have negative effects. I would like to offer my comments on the objective.

Let me start by asking why these tenants are charged double rent? Public housing tenants are the low income earners of Hong Kong. Our housing policy should let them enjoy low rent so as to enable them to accumulate enough wealth so that their children may have a better chance of social promotion. We should worry why, after ten years of subsidized housing, three quarters of the public housing families have not been able to improve economically. Meanwhile, we should be pleased to see that the economic circumstances of one quarter of the public housing families have improved. Why should we penalize them, the 25% economically better off tenants, for their

hard-earned gains, and actually add to their economic burden? Why should they be reduced to poverty again when they have just struggled out of their plight?

Of the tenants paying double rent, over 40% were couples without income. They are old and frail, and their children cannot afford to turn over all of their income to them. Meanwhile, their meagre savings are eroded daily by inflation. Why should they be forced to move out and live in private housing whose high rent they cannot afford? Why should their children be made to part with them by being forced to move out? Indeed, only 2% of the affected, better off public tenants who have to pay double rent, have so far moved out. Indeed, the percentage of tenants moving out of public housing has gone up from 2% between 1986 and 1987 to a modest 3.14% between 1990 and 1991. Why are tenants reluctant to give up public housing? The main reason is that they are not well off at all, with a personal income of around $3, 000. While private housing is beyond their reach either as buyers or renters, they cannot afford to buy a Home Ownership Scheme flat either, which is why they have remained in public housing, as lamb to the slaughter, as the saying goes. As a matter of fact, the housing estates in which these people lived at the start were quite remotely located. It is after the area has begun to flourish, when transport and commercial networks have been established, that the Government is now in a position to sell off the land at high prices to the private developers. From a macro-economic point of view, the government investment in public housing is minimal compared to the value of the land which it eventually resumes. Public housing tenants have not only benefited from the low rent, they have indeed done their fair share of pioneering. While they have been subsidized, they have at the same time contributed to the prosperity and wealth of Hong Kong. Why should they not be allowed to enjoy their fair share of prosperity?

Sir, we must realize that, in order to reduce public reliance on the Government and social welfare spending, the best way is to enable the public to become more affluent. The double rent policy should be more appropriately called the impoverishment policy which makes it difficult for public tenants to escape the clutches of poverty, which effectively condemns them to poverty forever. With these remarks, I call for the abolition of this policy.

THE CHIEF SECRETARY: I have acceded to Mr LAU Chin-shek's request to speak out of turn.

MR LAU CHIN-SHEK (in Cantonese): Sir, the double rent policy which has been

implemented for four years now has never been popular with public housing tenants for reasons which I do not think need to be fully explained here.

Dr Conrad LAM and myself are Elected Members returned from Central Kowloon, which is a constituency with a high concentration of public housing. I absolutely agree with Dr LAM's analysis of the data on the public housing subsidy policy which he will provide later on. I will only speak here on the government commitment to public housing as a social service from the perspective of the changed policy on public housing rent.

Public housing has always provided accommodation for low income earners who want to settle down, ever since the Shek Kip Mei squatter fire in 1953. It was about the only social service provided by the Government in the 1950s and 1960s. The rent level was set initially according to construction cost and recurrent expenses, for example, in terms of maintenance, rates, administrative and management costs. In October 1972, Governor Murray MacLEHOSE also explicitly stated in his Ten-Year Public Housing Programme that it was government responsibility to seek a solution to the housing problem of all people of Hong Kong. But in 1977, a rent policy committee was set up and the suggestion was made that the public rent should be set at a level commensurate with the affordability of the tenants and the comparative value of the housing estate, in a clear departure from the practice of setting rent at cost and maintenance level. Since then, rent has consistently risen by a percentage above inflation while the rent charged by newly completed public housing flats actually approaches 15% of the median household income. In September, 1986, the Domestic Rent Policy Review Committee of the Housing Authority published a report which officially set the rent of newly completed public housing flats at 15% of the median household income. Indeed, the report also suggested that the Housing Authority may adopt a flexible rent policy, instead of obligatorily adhering to the practice of aligning rent with cost. In December, 1990, in a report put together by the Housing Authority Ad Hoc Committee to Review Domestic Rent Policy and Allocation Standards, it was actually suggested that the rent applicable to a spacious flat may actually be set at 18.5% of the median household income.

Sir, when one looks at the development of the public housing rent policy, one can actually see that the Housing Authority is gradually transforming a social service for satisfying the housing needs of the lower income groups into a policy of setting public housing rent according to the affordability of the tenants and the respective value of the estates. This attempt to gradually reduce the government commitment

to public housing eventually led to the introduction of the public housing subsidy policy, which came to be called "double rent policy", in 1986. The lower income groups who have achieved a higher household income have become known as the well-off tenants as part of the attempt to make the public housing tenants bear the cost of what should be government spending on public housing. The double rent policy does not only take advantage of the public housing tenants but has also strengthened the theoretical ground for the Government to cut back on its public housing spending. It is for this reason that we should oppose the double rent policy and query the Housing Authority on its theoretical basis. More importantly, we must oppose the tendency for the Government to reduce its social service commitment.

Sir, housing is "home" to us; it is a citizen's right to have a reasonable place of accommodation. I firmly support the public housing tenants to fight for their reasonable right and we will continue to fight until this right is granted.

Sir, with these remarks, I support the request by public housing tenants to abolish the public housing subsidy policy. Thank you.

MRS SELINA CHOW (in Cantonese): Sir, I remember when the Hong Kong Housing Authority decided to implement the so-called "well off" tenant policy five years ago, I was then one of the members in making the decision. Therefore I still have a rough picture of the whole issue in my mind.

I believe few people would disagree to the principle behind this policy. At the beginning when the tenants moved to the public housing estates, their financial capability fell far behind the market rent level. That was why they were allocated flats and provided with subsidy in the form of low rent. These tenants have been enjoying the benefit of low rent for a long time, and on the other hand their financial situation has also been improved. Moreover, they should have some savings after paying low rent for some years. Therefore as a matter of principle or obligation, they should be required to pay higher rent. When the Housing Authority was still considering the "well off" tenant policy at an early stage in 1987, many people would find that allocation of a flat in.the public housing sector was a very difficult matter. Many families applying for public housing had already waited for five or even seven years and they were still waiting for allocation endlessly. However, everybody would discover that apart from the low rent, public housing tenants are enjoying a much better living environment than those low-income families on the waiting list.

Furthermore, after the introduction of the Home Ownership Scheme (HOS), tenants of public housing had a better chance than other qualified applicants in getting a cheap and nice HOS flat. All these arrangements would make one feel unfair. Therefore everybody felt there was a need to review the policy on public housing subsidy. I still remember that the Housing Authority did discuss whether units occupied by some "well off" tenants who were able to pay rent in the private sector should be recovered by the Authority so that these units could be reallocated to households on the waiting list or in the temporary housing areas. This proposal was intended to be used as a means to alleviate the more urgent housing need of these people. After adequate public consultation, the Housing Authority considered that compulsory recovery of these flats would be too inhumane and subsequently it decided to adopt the so called "well off" tenant policy. It is hoped that the unfair situation between the sitting tenants and the applicants on the waiting list will be reduced. On the other hand, it is also hoped that by the implementation of this policy public housing tenants will be encouraged to purchase HOS flats or vacate their units if they can afford to do so. It was because of the reasons mentioned above that I wholeheartedly supported the "well off" tenant policy of the Authority.

It has been five years since then, and now we have 56 000 households paying double rent as a result of this policy. By April this year when this policy is to be fully implemented, the number of affected households will be increased to 70 000. According to the statistics prepared by the Authority, no difficulties were encountered in collecting rent and not a single appeal case was received in the past five years. It appears the degree of discontent is not as great as that specified in some comments.

As a matter of fact, nobody would welcome any increase in rent, but it does not mean they cannot afford it. The median monthly income for households affected by this policy is $17,200. These households represent a quarter of the high-income four-member families in the territory. Taking their medium monthly income into calculation, the rent they have to pay only represent 4.7% of their income, a lower percentage when compared with the 7.6% of all public housing tenants and the 16.8% in the private sector.

Some people have mentioned that some children were not willing to supplement the rent paid by their parents, and this would increase the burden of their parents who thus could not lead an easy life at the end of their years. Furthermore, some people have pointed out that some young people had even deserted their elderly owing to the

double rent measure. According to my observation, as Hong Kong is a Chinese community and the absolute majority of children in the families would show piety and respect to their parents. Therefore the above-mentioned situation is not quite popular. As to the remark made by the Honourable Dr HUANG Chen-ya to the effect that some children would desert their parents in order to avoid paying the higher rent, I think it is logically flawed after all. It is because the savings they will probably make from so doing will unlikely make up for the heavier burden from rentals for private housing. While it is fitting that the Authority should review its policy towards well off tenants at this stage, I do absolutely dismiss any proposals to do away with this policy. The Honourable Edward HO, Miriam LAU and LAU Wah-sum agree to all the comments I have made above.

MR HUI YIN-FAT (in Cantonese): Sir, because of the time constraint and also anticipating that quite a number of Honourable Members will give their views on the so-called "double-rent policy" for well-off tenants, I shall just point out two factors that work to the disadvantage of the housing subsidy policy.

First, the question of whether the Housing Authority should bear sole responsibility for all basic facilities and ancillary infrastructural projects such as schools, community centres and clinics, and so on, as well as for the funds required when developing a new rental estate. The Government has all along been responsible for these projects and the expenses needed. However, the Government had in 1990 requested the Authority to undertake on its own the provision of basic facilities and ancillary infrastructure required for the development of Rennie's Mill. When the Housing Authority decided to develop Tung Chung on Lantau Island last year, the Government again made a similar request. These two development projects, which should not have been the Authority's responsibility, are estimated to cost as much as $920 million and $750 million respectively.

Recently, the Authority had approached the Government to negotiate over the question of reimbursing advance payments, but to no avail. The Government is apparently trying to shirk its responsibility by reason of financial stringency. This will no doubt result in much higher building costs. If the Authority is to be financially self-sufficient and to achieve the Long Term Housing Strategy's target on time, it is inevitable that the level of subsidy for public housing tenants will have to be reduced.

Second, the question of quality versus quantity in housing development. In order to attract more residents to move into new towns, public housing estates completed in the past few years are not only well fitted with modern facilities, but also look no less magnificent than small-sized developments in the private sector. One point that must be stressed is that the authority should put the quality of housing in the first place. This is a view to which I am always inclined. Yet I have some reservations about the huge expenses spent on the whitewashing of buildings and the maintenance work required, because this will not only result in higher rents due to increased costs, but also slow down the pace of public housing development, thus forcing prospective tenants on the Authority's waiting list to wait even longer for allocation.

In brief, providing housing for the grassroots is not only a fundamental responsibility that should not be shirked by the Government, but also a major pillar for the maintenance of Hong Kong's prosperity and stability. The Government should not relegate this form of community welfare to a secondary position. On the other hand, the Authority should make better use of the limited resources available and quicken the pace of public housing construction so that its ambitious housing programme can be accomplished as early as possible.

Sir, with these remarks, I would like to urge the authority to take into full account the views of this Council when this policy comes up for review in the future.

MR TAM YIU-CHUNG (in Cantonese): Sir, in order to lower the subsidies given to "better-off" tenants, the "double rent" policy was implemented by the Government in 1987. Up till now, the policy has been ineffective in achieving the original objective. Well-off families who have to pay double rent think that the policy is actually a covert measure to increase rent which adds to their burden. Since the "double rent" policy has failed to achieve the intended objective after years of implementation and has given rise to great discontent from public housing tenants, the Government should review this policy.

According to a questionaire survey conducted by the Hong Kong Federation of Trade Unions in June last year covering 15 public housing estates over the territory, many double rent payers said that the rent and selling price of private premises were beyond their affordability. More than 70% of "well-off households" interviewed even considered that the price of Home Ownership Scheme flats was still too high for them.

Their only choice was to stay in public housing estates. In fact, up till August last year, only 2% of the "well-off households" have moved away from their rental units. The failure of the "double rent" policy to achieve the original objective was thus revealed. The survey also concluded that over 40% of those interviewed thought that a review of the policy was required. As a matter of fact, I think that the Government should review this controversial issue in the context of the situation over the past few years, such as high inflation rate, lowering of living standard of middle and lower income groups, soaring price of property and difficulties of home ownership, and so on.

I also hope that the Government would not review the policy behind closed doors. Wide consultation should be made so that a sound and practicable measure can be derived to solve the problem.

Sir, these are my remarks.

MRS PEGGY LAM (in Cantonese): Sir, the housing subsidy policy is intended to help members of the public who cannot afford private housing rentals to solve their housing problem. In an ideal situation, the more generous the Government is, the more members of the public will stand to benefit. Nevertheless, since public resources are finite and the Government is tackling too many financial problems, the formulation and implementation of the housing subsidy policy must be specific, selective and in line with the major principle of equity. In a tiny place like Hong Kong where the housing problem is most acute, we have to render help to those who are most in need.

The fact that the housing subsidy policy fails to benefit the widest spectrum of people or at times even fails to cater for the most needy is because of the Government's mere emphasis on the eligibility of public housing applicants but neglects the improvements in living standards and financial capabilities of its sitting tenants throughout the years. The by-product of such a policy is the creation of numerous "well-off tenants". Their family incomes have far exceeded the eligibility limit and some of them even own private properties. While imposing of double rent by the Housing Department is targeted upon these tenants, the new rent still fails to attain the principle of equity. It is because of the great disparity between public housing rentals and market rentals, and the disproportionate increase of incomes secured by such well-off tenants. The crux of the problem is these tenants, occupying the public housing units, have deprived the chances of those waiting list

applicants who are in genuine need of public housing.

As such, I propose that public housing tenants be required to lodge fresh applications every 10 years, subject to a set of equally vigorous means-tests in respect of their incomes and family composition. Unqualified tenants should thus move out, making way for those in genuine need of public housing. Through such a scheme, the waiting time required for public housing applicants to be allocated units will be much reduced.

I propose a 10-year period because time is absolutely necessary for a family to improve its financial condition, no matter by way of saving and investment or the growing up of the children who start to earn their own living. A 10-year period is a comparatively realistic time frame. However, the most important thing is the 10 years will give ample time to the well-off tenants to make provisions for their future, especially in respect of matters like mortgage arrangements for home loans, so that they have enough time to get well-prepared to avoid finding themselves in a desperate position when asked to move out of public housing units.

Conceivably, the proposed policy of a 20-year cycle will impose massive administrative work on the Housing Department, while the sitting tenants with their vested interests affected will lodge strong opposition. However, we must not forget that the aim of the housing subsidy policy is to help those in desperate need of housing rather than facilitating people to accumulate wealth or creating a privileged class of people. To let "well-off tenants" continue to occupy low-rent public housing units is in fact a tremendous waste of public resources. On the other hand, public housing tenants in general can rest assured, because the proposed policy is meant for the "well-off tenants" who can definitely afford private housing as determined by stringent qualifying criteria. A certain level of improvement in the living standard within the 10 years will not automatically disqualify sitting tenants from occupying public housing.

Sir, these are my remarks.

MR FREDERICK FUNG (in Cantonese): Sir, I think it is appropriate today for this Council to debate the Public Housing Subsidy Policy, given that an ad hoc committee was set up by the Housing Authority in October last year to look at this matter. I will speak on this issue from four perspectives but before that I would like to express my view

that the existing policy has been a big mistake. In principle, the housing policy is designed to assist and subsidize needy residents to solve their housing problem. But I feel that the existing public housing subsidy policy and the direction in which the policy review is taking is towards reducing the level of subsidy to public housing tenants, without consideration given to how many more categories of people are now in need of public housing. In other words, we have not given assistance to the needy to solve their housing problem.

Firstly, I would like to talk about how the level of public housing subsidy has been arrived at. In November last year, the Housing Authority published a paper on the subsidy level which claims that the subsidy per tenant is approximately $600,000. Indeed, this estimate has been arrived at by working out the rent differential between the public and private sectors, instead of working on the basis of any real fixed ratio. This practice raises the suspicion that the Government is intent on exaggeration in order to make it easier to implement, and persuade others to support, the public housing subsidy policy. I think there is a need for this practice to be revised and reviewed by the Housing Department. Although the Housing Department has, with the consent of members of the Housing Authority, withdrawn the paper for reconsideration, I believe that the methodology of assessing subsidy level should be made public.

Secondly, we should think about whether public housing is a form of subsidy or a social investment. I believe that it is a social investment for the following reasons.

First, the net assets held by the Housing Authority up to this point in time are worth $101,939.5 million. These assets represent the government investment in public housing over the years.

Second, the investment is in fact in the people of Hong Kong. The low public housing rent has enabled the people of Hong Kong to solve their housing problem without having to bear the brunt of the unreasonable property market price. The low income groups have been able to settle down and gradually improve their quality of life. This has created public goodwill towards the Government. Meanwhile, we can also see that public housing has brought a lot of wealth to the Hong Kong Government. In numerous instances, the public housing tenants have served as pioneers by moving into the new towns. In about ten years' time, land will have become more expensive with the improvement of transport link and increase in population. The Government can then increase its revenue through land auction and it is in this way that the building

of public housing may be said to be an investment, a trade-off between the Government and the people. But we have never heard the Government ever thanking the public for what they have done.

Third, this is a matter of arbitrary application. The public housing subsidy policy is applied across the board in the sense that the tenant whose income is twice the waiting list income ceiling will be considered to be a well-off tenant and consequently made to pay double rent. But after paying the double rent, the tenant will find his disposable income far less than his counterpart who is not liable to pay the double rent. The way the policy is applied arbitrarily is unreasonable and unfair.

Indeed, the housing policy has its inconsistencies. The Government allows people who are earning above the income ceiling to move into public housing without passing the means test if they are affected by a clearance operation, or indeed if they agreed to move into Tin Shui Wai. Some of them were actually earning twice the income ceiling at the time they became public housing tenants. Since no clarification was made to them before they moved in, one would ask if it is entirely fair to ask them to pay double rent after they have moved in, and bear the consequences of the policy which have not been clearly explained to them.

Fourth, I wish to say that it is up to us to identify the people of Hong Kong who are in need of public housing. The first group consists of people who meet the waiting list income limit but are nevertheless not able to move into public housing and consequently have to pay the exorbitant private sector rent. Is it possible for the Government to give them rent assistance before they actually move into public housing? The second group are those whose earnings have exceeded the waiting list income limit, but who nevertheless want to buy an HOS flat. They have not been able to do so because they failed to be selected in the draw and there are not enough HOS flats to go around. They end up staying in private premises and paying the high rent that goes with it. Can we help them buy their own flats by providing them with assistance in the form of tax remission to offset mortgage interest, or rent subsidy? The last group are the "sandwich class" of Hong Kong, earning between $14,000 and $20,000, who are neither able to buy private nor HOS flats. Can the Government help them solve their problem by offering them tax remission for mortgage interest or exemption from stamp duty?

I believe it is now time to consider reviewing the public housing subsidy policy.

I hope that the Government will take a final decision only after listening to the opinions of all parties concerned. I also hope that the Housing Authority will make its final revision only after conducting a public consultation exercise. Thank you, Sir.

DR LAM KUI-CHUN (in Cantonese): Sir, I understand that the technical difficulties in defining real better-off tenants need to be considered. But I think the principle is very clear. In terms of median income, private housing rentals account for 16.8% of the tenants' income. But public housing rentals account for 7.6% on average. The income of better-off tenants will have increased three-and-a-half-fold and eleven-and-a-half-fold, that is 1 150%, 10 years and 15 years respectively after they have moved into public housing estates. To some better-off tenants, this increase in income will have reduced the rental vis-a-vis income to 2.5%. A fair calculation is that the rate of increase of public housing rentals must at least be the same as the prevailing ratio of rentals to income, that is 7.6%. However, the better-off tenants are only required to pay 4.7% of their income as rentals.

I understand that the additional revenues from rental increases have all been used for funding public housing projects, including construction of new public housing estates and this has sped up the production rate of new estates by 12%. These better-off tenants should pay 7.6% of their income as rentals. But now, they are not even willing to pay 7.5% and have attempted to enlist the support of the Legislative Councillors to oppose the policy. I believe to the 250 000-plus much less well-off people on the waiting list for public housing, the better-off tenants in refusing to pay their fair share of rent, are like those who, once home and dry, are past caring for others who have not yet made it to "shore". In their eyes, the better-off tenants are very selfish.

DR CONRAD LAM (in Cantonese): Sir, it would be short-sighted of us, seeing the tree for the wood as it were, to view the public housing subsidy policy as affecting only the public housing sector. The policy is practically part of the overall policy of distribution of territorial resources. The bone of contention is really whether it should be the rich and the big capitalists, or the public housing tenants, who should be made to pay more.

Wages have increased since 1982 by 122% nominally, but only 13% in real terms.

While wage increases of public tenants have been barely enough to offset inflation, the waiting list income limit has been raised by a modest 57 % between 1986 and now. It was estimated by the Housing Authority in 1986 that, as a result of the public housing subsidy policy, only 5% of public housing tenants would be made to pay double rent, but the real percentage has proven to be 25.5%, which is a far cry from the estimation. In the light of this, the subsidy policy has effectively meant rent increase for the tenants. It is problematic to use the household income as a criterion for defining a well-off tenant. The average household size of Hong Kong is 3.7 and according to statistics as at March 1989, the median income of Wong Tai Sin residents is $7,294, and that of the average Hong Kong citizen is $7,979. We have grounds to believe therefore that, if this trend continues, the majority of public housing tenants will have to pay double rent, with the exception of some who are either old or frail. Looking at the issue from another perspective, can one ask then whether, if one has to pay more because one happens to earn more, the public tenant who earns less is allowed to pay less rent? The double rent policy is geared towards the end of encouraging the so-called well-off tenants to move out. But the Housing Authority does not have adequate policy co-ordination in the way of expediting the building of HOS flats. It is very commonplace to hear of a public housing tenant failing, even after repeated attempts, to obtain an HOS flat. The reality is that tenant income is not as high as expected. One major reason for the failure of the Sale of Public Housing Flats to Sitting Tenants Scheme is, by Sir David AKERS-JONES's own admission, the wrong estimation of tenant income. One has the impression that the tenants are being squeezed rather indiscriminately because even though they do not have the means to become flat owners they are nevertheless forced by the existing policy to pay double rent.

Meanwhile, the clearee-turned-public-tenant does not have to meet any income ceiling requirement at all. Is it fair then that, after living in public housing for ten years, he is forced to pay double rent? The tenancy agreement signed between the tenant and the Housing Department provides for a biennial rent adjustment, but it does not make any mention of the possibility of double rent for the tenant whose income increases subsequently. One has the impression that the Government has not initially given the tenant the full information.

Sir, I have a better appreciation of the misery which the double rent policy has brought to the tenants because over 80% of Wong Tai Sin's population live in public housing. It is for this reason that I call for the abolition of the double rent policy.

MR LEE WING-TAT (in Cantonese): Sir, in the absence of a comprehensive social security system, the double rent policy will add to the burden of the tenants and reduce the ability of the lower income group to meet urgent needs and retire with their savings. The Government's reiteration that the well-off tenants can afford the double rent has not taken into consideration the widening gap between rent and wage increases. The average biennial rent adjustment of 25% has effectively meant that the tenant ends up paying a rent which is 305% of the rent which he was paying ten years ago, while a tenant caught by the double rent policy has actually to pay 610% of the original rent. Compared to this, the present wage increase has been about 7% annually, and will only be a modest 197% over ten years. The widening gap between income and rent has resulted in lowering of the living standard of the grassroots people.

The double rent policy should be abolished in the midst of today's anti-inflation cry. As a result of the arbitrary application of the double rent policy, members of the barely well-off household have resorted to settling for less income in order to avoid paying the punitive rent. This is not only inconductive to the improvement of the quality of life of the tenants, but it will actually hinder the creation of wealth for society as a whole. It will result in the economically active young family members moving out of the estates in order to keep the household income under the subsidy income limit. Between 1990 and 1991, some 38 800 names of young family members were struck off the Tenancy Card. 38% of these departing family members belonged to households paying double rent. The average age of the double rent paying tenants was 60, which is much higher than the territory norm of 48. The double rent policy will encourage more high income young people to move out of their present accommodation leaving behind their elderly parents, resulting in the aggravation of the aging problem in housing estates.

Dr LAM Kui-chun's point that the revenue from the double rent will go entirely towards the building of public housing is open to question. According to the financial arrangement between the Government and the Housing Authority after 1988, the Housing Authority is obliged to turn over to the Government an annual interest of 5% on the government investment of $27 billion in housing over the years. The interest amounting to over $1 billion, coupled with the 50% of the revenue from commercial and factory units, means that the Housing Authority is returning to the Government close to $2 billion annually.

Sir, as the housing policy spokesman of the Hong Kong United Democrats, I hereby

on behalf of the UDHK appeal to the Housing Authority to abolish its double rent policy.

MR FRED LI (in Cantonese): Mrs Selina CHOW was saying just now that, five years ago, while she was involved in the making of this policy, she was hoping that it would improve the public housing problem of Hong Kong. But unfortunately, five years on, the situation has not been improved; the waiting list is still full of applicants; and a further restriction has been introduced to the effect that the applicant may only wait for housing allocation in the New Territories, instead of urban housing. The implementation of this policy for the past five years has certainly increased revenue, but the policy objective has not been achieved. The policy objective is that more flats will be vacated for reallocation to the more needy, which is a worthy cause in itself. But it can be seen from the various figures that, whereas revenue from rent has significantly increased, the number of vacated flats has been minimal. Whereas it was originally estimated that only 5% of the public housing tenants will be made to pay double rent, the real percentage has come to 25%. This is a reflection that the tenants have real difficulties in terms of moving out, which means that they will either have to buy an HOS flat or a private flat. Indeed, it is very difficult to define what a well-off household is, or for that matter, what the term "relatively less in need of assistance" might mean.

On the other hand, a colleague has said that it is up to the Government to look after the people who are most in need of help, but does this entail that we have to always look after the most destitute people only? After a lapse of ten years, when the public housing tenants have improved their living standard, we are now turning to them, to get them to pay more rent. Is the Hong Kong Government so poor that it can only afford to look after the most destitute? That is one of the questions which I cannot find an answer to. The Housing Department has always presented an image of the public housing tenant as one who has been heavily subsidized; and in order to be fair to all, the argument then goes that the people with economic means should be made to pay more so that the level of assistance may be lowered. This is part truth and part fiction. On the other hand, the Housing Department has not mentioned that, in the three years between 1988 and 1991, the Government has already recovered $4 billion from the Housing Authority, and that 70% of government assistance to the Housing Authority has been in the form of land provision, not cash handout. Since the Housing Authority became financially autonomous in 1988, government assistance has gradually become relatively less than before and indeed the responsibility of

land production has been shifted from the Government to the Housing Authority. I cannot see the Government providing more and more assistance to the Housing Authority or the public housing tenants; on the contrary, government assistance has become less and less.

The overseas experience is that public housing assistance will not diminish after a lapse of time; it will not be slashed or rolled back. Assistance, once it has been provided, will become a commitment. It is a completely different practice from our existing policy. If the objective is really to obtain vacant flats for reallocation to the needy, then why is it that the Housing Authority has always been evading and refraining from taking a decision on the issue of whether or not to evict the private property owning public housing tenants? That is the best solution to the problem of obtaining vacant flats.

Lastly, it has become an increasingly prevalent thinking behind government policy that whoever can afford should be made to pay more. This is the thinking behind the policies on housing, medical and health, even social welfare. I have yet to learn from the Government who among us are the destitute, the more in need of assistance. Where is the fairness? There has never been a set of criteria proposed for discussion in respect of the various social services. The Government has so far resorted to arbitrarily and sweepingly setting an income threshold beyond which people will be considered to be quite capable of looking after themselves. We feel that, if Members can justifiably say that people with higher incomes should be made to pay more, then they should support raising the profit tax and income tax on the high income earners, because they deserve to pay more tax. Thank you, Sir.

CHIEF SECRETARY: There are two minutes left of the 45 minutes and three Members have yet to speak.

MR JAMES TO (in Cantonese): The Honourable Mrs Selina CHOW mentioned a while ago that the policy on well-off tenants served to reduce the disparities in terms of housing subsidy between the well-off tenants and the applicants on the waiting list. I do hope that she will refrain from advocating such an idea which may heighten the contradiction between the well-off tenants and the waiting list applicants regarding the disparities in housing subsidy. Given the resources available in the territory, who in fact are the culprits of this exploitation of the needy if judged from a macro

perspective? The Honourable Mrs Peggy LAM maintained that the well-off tenants were enjoying the benefit at the expense of the real needy. I would suggest that members of the public, after today's debate, might well think over who in fact are exploiting the most needy in our community.

I can hardly agree to the point that one will be able to afford the rent if one pays out the money without much difficulty. The fact is that residential rentals in the private sector will be a greater burden to and beyond the affordability of these public housing tenants. So they are taking it on the chin and paying double. The problem of the elderly has also emerged as a result of this policy on well-off tenants. People's views or reactions towards a policy may vary depending on how well they understand the matter. If I might ask Mrs Selina CHOW to come with me and Mr Frederick FUNG for a visit to the public housing estates in Sham Shui Po, I am sure she will realize the extent of the elderly problem brought about by the policy on well-off tenants. Thank you, Sir.

MR HOWARD YOUNG (in Cantonese): Sir, in principle I do not support the scrapping of the policy on well-off tenants. A few days ago members of the Co-operative Resources Centre and several other colleagues met with some friends from the People's Council on Public Housing Policy and discussed the matter. There are two points I would agree to: first, the public housing policy contributes to the development of our society; second, rectification should be made if things went awry upon implementation. But basically I am of the view that taxpayers' money should be spent less on subsidizing those who can afford to pay more. Thank you.

MR WONG WAI-YIN (in Cantonese): After listening to the speeches of Dr HUANG Chen-ya and Mrs Selina CHOW, I would like to make my point by giving some facts. In the New Territories west, there are public housing estates built over 20 years ago and newly developed Home Ownership courts in which many elderly people are living. Despite being the householders, these elderly people have been receiving from their children less than sufficient monetary contributions; the need to pay double rent therefore can be said to be a great burden to them. There are also instances where unmarried children are forced to leave their parents to live with their married brothers or sisters in order to avoid paying double rent, precipitating yet another social problem of many elderly parents being left unattended and without care, which would seem to be a contradiction tinged with irony, given the Housing Department's principle of

encouraging children to live with their elderly parents.

Finally, I would like to mention that the requirement for means testing does not apply to some people who are affected by government clearance operations. Moreover, the Housing Department has recently relaxed the criteria of public housing eligibility for Tin Shui Wai housing estates. To these people, they are in fact given the irrevocable sentence of having to pay double rent in the future once they move into a public housing estate. So is this policy on well-off tenants fair to them?

Thank you, Sir.

8.07 pm

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the present housing subsidy policy, often referred to as the "double-rent" policy, was developed after long deliberations dating back to the mid-1970s and some heated public debates in the mid-1980s. A Green Paper was published in August 1985 to focus public attention on the many issues involved. The result of the extensive consultation which followed indicated that the majority of the public supported the principle proposed in the Green Paper, namely that housing subsidy should be reduced for those public housing tenants who were no longer in need of it. The recommendations in the Green Paper were subsequently revised in the light of public consultation and endorsed by the Housing Authority in November 1986.

Under the housing subsidy policy, tenants who have lived in public housing for 10 years or more and whose household income exceeds twice the waiting list income limits are required to pay double net rent plus rates. The objective of this simple criterion is to avoid extensive income vetting on "better-off" tenants, and to enable those who are not that well-off to continue to enjoy the normal subsidized rents.

Implementation

Implementation of the policy has been phased over a period of five years according to the length of residence in public housing. The first batch of double-rent payers, who had lived in public housing for 23 years or more as in April 1987, started to pay double rent in April 1988.

Some 220 000 households are currently affected by this policy, of which some 56 000 or 25% are paying double rent. It is estimated that some 71 000 households or 27% will be paying double rent when the policy is fully implemented later this year.

It may be useful if I make two points regarding the implementation of the policy so far. First, the current Subsidy Income Limits for a four- person and five-person household are $15,800 and $17,600 respectively. This level is already close to the top 30% of households with the highest income in Hong Kong. Second, there have been no difficulties in the collection of double rent; and not a single case of appeal has been received in the past four years of operation. It may, therefore, be inferred that the current method of setting the Subsidy Income Limits has not created affordability problems and that the present implementation arrangements are workable.

Public sentiments

Over the recent years, there have been a number of representations and signature campaigns against the policy alleging that it has a divisive effect on family cohesion, encourages artificial splitting of families, or even causes friction among family members. There may be genuine cases of family discord, but we doubt if they are due to the payment of double rent alone.

To test this concern, the Housing Department therefore conducted a survey between August and October 1990 on whether double-rent payers could afford to purchase home ownership flats and their views on the housing subsidy policy. The results showed that about 35% of the current and potential double-rent payers considered the policy acceptable while 49% of the non-double-rent payers supported the policy. Over a similar period, a private research firm was commissioned to obtain feedback on the policy in the context of a general attitude survey on housing. The results revealed that 42% of the respondents from public housing and 65% from private housing supported the policy.

As I said earlier, public sentiments on this subject will not, and cannot, be expected to be unanimous. What is relevant here is that the underlying principle of giving less subsidy to those in less need does seem to have a widely-based support of the community.

Aspects of concern

During this debate, some have spoken of the need for continued protection of "low" income households against high inflation through low public housing rents. There have also been suggestions that the provision of public housing and, by implication, its continued subsidy, should remain a government commitment; that the current rent structure should be maintained; and that consideration should be given to those households which have been caught by the policy for marginally exceeding the set income ceiling, and so on.

It has been suggested that double rent alone will not have much effect on inducing "better-off" tenants to move out from public housing. Hence there is not much point in continuing with the policy.

This may well be true, as borne out by the fact that many double-rent payers still remain in public rental housing. However, the primary objective of this policy is not to compel them to move out of public housing. Although the surrender of accommodation by those who have bought their own homes is of course always welcome.

Whether or not a household moves out of public housing depends on a host of factors such as low public housing rent, the availability of new accommodation and the family's expected financial circumstances. The average age of the tenant who pays double rent is about 60. A considerable proportion of them also rely on the income of grown-up children who may, at some point, leave the family. So it is entirely understandable that double-rent payers, as a whole, have not been particularly keen, as one would have wished, to move out of public housing. This is however not a valid yardstick for the success of the policy.

Another much debated point is the calculation of household income. It has been argued at length, for example, that children do not contribute all their income towards household expenses. Some families may feel resentment against the policy if income-earning children, whose income may render the family liable to pay double rent, fail to contribute to the well-being and up-keep of their family. So this is not a problem confined to double-rent payers; it is applicable also to, for example, some applicants for assisted housing.

About the "nuisance" that this policy may have apparently caused to tenants, there have been suggestions that the investigation has failed to identify some of the "well-off" tenants.

Under present arrangements, tenants who wish to continue with normal rent are required to submit their income declaration forms to the Authority on a biennial basis. No documentary evidence is required unless there are suspicious cases, which make up about 5% of the total submissions. Those who are willing to pay double rent are not required to submit any papers to the Authority. More than 80% of existing double-rent payers are in this category. This suggests that most better-off tenants are actually prepared to pay double rent rather than attempting a false income declaration. There is thus little evidence to suggest that the present procedure is either cumbersome or ineffective.

Financial benefit

It has been suggested that the real objective of the policy is for the Authority to "grab" money from some easy victims. It is true that this policy is expected to bring an additional rental revenue of about $422 million to the Authority when it is fully implemented in 1992-93. This is a useful source of revenue, especially at a time when the Authority is expected to move towards greater financial autonomy. However, this amount represents only some 7% of the domestic rental income of the Authority, or 3% of its total income. While the contribution from this policy to the Authority's finances is certainly helpful, it is not an objective of the policy.

Policy review

When the Housing Authority decided to introduce the Housing Subsidy Policy in 1986, it was conscious of the need to reduce subsidy for those in less need so that other households in the waiting queue would benefit. In today's circumstances, when housing resources remain tight, this policy seems to continue to be justified, not so much from the financial point of view but rather from the point of view of general social equity within the community.

In view of the wide public interest in this policy, the Housing Authority, at its meeting on 11 July 1991, however, has decided to reaffirm the principle behind this policy while at the same time to set up an ad hoc committee to review its implementation. The committee has met three times. Its recommendations are expected to be available for public consultation later this year. No doubt, all the issues raised in this debate will be carefully considered by the committee in its review.

Concluding remarks

In conclusion, may I say that the many views raised this afternoon will be of great value to the Housing Authority. Equity, I believe, is a common goal shared by the Authority and its members.

Question on the adjournment proposed, put and agreed to.

Next sitting

CHIEF SECRETARY: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 22 January.

Adjourned accordingly at Eighteen minutes past Eight 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.