

**Confirmed Minutes of the 151st Meeting of
the Advisory Council on the Environment
held on 14 April 2008 at 2:30 pm**

Present:

Prof LAM Kin-che, SBS, JP (Chairman)
Prof WONG Yuk-shan, BBS, JP (Deputy Chairman)
Dr Dorothy CHAN, BBS
Mr James GRAHAM
Ms Betty HO
Mr Edwin LAU
Dr MAN Chi-sum, JP
Dr NG Cho-nam, BBS
Prof POON Chi-sun
Mr Markus SHAW
Mr TSANG Kam-lam
Mr Simon WONG
Mr Carlson K S CHAN (Secretary)

Absent with Apologies:

Prof Howard HUANG
Prof Paul LAM
Ms Goretti LAU
Mr Eddie WONG
Prof WONG Tze-wai
Dr YAU Wing-kwong

In Attendance:

Mr Edward YAU, JP	Secretary for the Environment (agenda item 4)
Ms Anissa WONG, JP	Permanent Secretary for the Environment
Mr C C LAY	Assistant Director (Conservation), Agriculture, Fisheries and Conservation Department (AFCD)
Mr P Y TAM	Assistant Director/Technical Services, Planning Department
Mr Eric CHAN	Administrative Assistant to Secretary for the Environment (agenda item 4)
Miss Teresa CHIU	Press Secretary to Secretary for the Environment (agenda item 4)
Ms Monica KO	Principal Information Officer, Environmental Protection Department (EPD)
Ms Josephine CHEUNG	Chief Executive Officer (CBD), EPD

Mr KWAN Chung-kit Office Manager (CBD), EPD
Ms Loletta LAU Executive Officer (CBD), EPD

In Attendance for Agenda Item 3:

Mr Y C CHAN Principal Assistant Secretary (Works)3, Development Bureau
Mr Bobby NG Assistant Director (Development), Water Supplies Department (WSD)
Mr C L WONG Senior Engineer/Resources Planning, WSD
Mr Alan MAN Director, Black and Veatch Hong Kong Ltd.

In Attendance for Agenda Item 4:

Mr Vincent TANG Assistant Director (Nature Conservation and Infrastructure Planning), EPD
Mr C W TSE, JP Assistant Director (Environmental Assessment), EPD
Mr Phill BLACK Director, Pro-Plan Asia Ltd.
Mr S L NG Director, LLA Ltd.
Mr Alex WANG Senior Engineer, Ove Arup
Mr Peter AUSTIN Technical Director, Environmental Resources Management (ERM)
Mr Terence FONG Senior Consultant, ERM
Mr Kenneth TO Director, KTA Ltd.
Miss Meeling YAU Director, Eco-System
Dr Eric TSANG Chairman, Green Power
Dr MAN Chi-sum, JP Chief Executive Officer, Green Power
Mr Joe FONG Director, Sha Lo Tung Development Company

In Attendance for Agenda Item 5:

Mr C W TSE, JP Assistant Director (Environmental Assessment), EPD
Mr Joseph SHAM Acting Assistant Director (Country & Marine Parks), AFCD
Mr C H LEUNG Senior Country Parks Officer (South East), AFCD

Action

Agenda Item 1 : Confirmation of the draft minutes of the 150th meeting held on 10 March 2008

The draft minutes were confirmed without amendments.

Agenda Item 2 : Matters arising from the minutes of the 150th meeting held on 10 March 2008

2. There were no matters arising from the minutes of the last meeting.

Agenda Item 3 : Total Water Management Strategy in Hong Kong (ACE Paper 13/2008)

3. Mr Y C Chan informed Members that a paper on “Total Water Management (TWM) in Hong Kong” was submitted to the Council for consideration in 2003. The purpose of the current paper was to update Members on the latest development of the pilot schemes under the TWM programme set out in the above paper and outcome of a review study for formulating a TWM strategy that would serve Hong Kong’s need in the long term. Mr Bobby Ng briefed Members on the details of the update and review study.

4. A Member declared interest as his company was involved in the Demonstration Scheme on Reclaimed Water Uses in the North District. The meeting agreed that he could stay and continue to take part in the discussion.

5. In reply to the Chairman’s enquiry, Mr C L Wong said that the average water consumption rate in the domestic sector was about 210 litres per capita per day which had remained steady over the past few years. The water consumption rate had increased when compared with that about 20 years ago, probably due to the rising living standard. He agreed that more should be done to achieve water conservation.

6. A Member asked whether there was available information showing the comparison of water consumption rate between public and private housing. Mr C L Wong said that there was no available information in this aspect and they would consider computing the information for future reference.

7. A Member considered that information on the comparison of water consumption rate in Hong Kong with that of other developed cities would be useful in assessing the local water consumption pattern and effectiveness of water conservation efforts. Mr Bobby Ng undertook to provide the information after the meeting.

(Post-meeting note: The required information was circulated to Members after the meeting.)

8. A Member agreed with the presentation team on the point that the expansion of water gathering ground might have negative impacts on the environment, in particular the ecology of some sensitive downstream resources, and thus should not be given high priority. He considered that reservoirs were important water resources in Hong Kong and asked whether there was any plan to restore the reservoirs originally designed for irrigation or non-potable purposes into wetlands for ecological use. Mr C L Wong said that irrigation reservoirs were either under the management of the Water Supplies Department (WSD) or the Agriculture, Fisheries and Conservation Department (AFCD). Those reservoirs under the purview of the WSD were within the water gathering ground. If the water stored in these reservoirs was not used for irrigation, it could still be deployed for potable use through the water collection facilities in the water gathering ground.

9. A Member enquired about the plan for securing steady water supply after the expiry of the current contractual agreement with the Guangdong Authorities, taking account of the problem of water shortage in the Guangdong area in recent years. Mr Bobby Ng said that under the existing agreement with the Guangdong Authorities, it was agreed that the Mainland would supply Dongjiang water up to an ultimate quantity of 1,100 million cubic metres (mcm). So far, the quantity of water supplied to Hong Kong was about 700 mcm. The latest projection showed that the pledged amount could meet the demand up to 2030.

10. The Chairman enquired about the long-term plan for sustainable water supply in view of the keen competition for water resources in the region. Mr Y C Chan said that under the integrated strategy for the TWM programme, the Government would give priority to stepping up water conservation, such as in promoting the use of water saving devices. In this respect, the Government was taking a lead in installing water saving devices, such as taps that limit flow. Efforts would be made to encourage developers to install such environment-friendly devices in new buildings.

11. A Member expressed concern about the supply of Dongjiang water in the medium to long term in view of the increasing population and competing demand for water resources in the region. He considered that contingency

plans for ensuring reliability of water supply were required. Mr Bobby Ng explained that water supply for the Guangzhou area mainly relied on other rivers, namely the Beijiang and Xijiang. Besides Hong Kong, Dongjiang also supplied Huizhou, Dongguan and Shenzhen with a small quantity to Guangzhou. The water exported to Hong Kong was just a small portion of the total yield from Dongjiang. They did not see problems with supply from Dongjiang but not withstanding that, efforts were being made to explore new sources such as desalination. He added that the Water Resources Department of Guangdong Province had devised a distribution framework of Dongjiang water supply, which recognized the ultimate quantity of 1,100 mcm allotted to Hong Kong. He also remarked that with increasing population and demand for water, the Guangdong Province was also exploring the possibility of using more water supply from the Beijiang and Xijiang, and the neighbouring cities in the Mainland which were facing the problem of water shortage were already taking steps to mitigate the problem, such as by building more reservoirs.

12. A Member considered that there was difficulty for existing buildings to benefit from the water saving devices. He urged the Government to take more proactive steps in public education on water conservation, especially for the younger generation.

13. A Member considered that water tariff in Hong Kong was relatively low and there was not much incentive to reduce water consumption. Mr Y C Chan said that the Administration was very cautious in making use of water tariff as a tool to persuade people to conserve water in view of the implications on the cost of living of the public. In respect of the subsidy to water tariff, the current level of water tariff was already recovering about 95% of the costs for supplying water. To achieve water conservation, public education would be a more useful means. For example, WSD had in mind more focused themes of public education and inclusion in school syllabus the concepts and practice in water conservation.

14. In reply to a Member's enquiry, Mr Y C Chan confirmed that the cost recovery rate of 95% included the depreciation cost of hardwares and cost of Dongjiang water. A portion of the rates for premises also contributed towards the cost of water supply. The Member considered that if a large portion of the costs of supplying water was embedded in the rates and the majority of the general public were not aware of this, there would not be economic incentive for water conservation. At the request of the Member,

Mr Chan undertook to provide information regarding the contribution of the rates to the overall costs of supplying water to consumers after the meeting.

(Post-meeting note: The required information was circulated to Members after the meeting.)

15. A Member considered that the 23% of fresh water mains leakage in 2007 was a relatively high figure and he noted that the replacement and rehabilitation programme would only be completed by 2015. He asked whether the timeframe could be shortened. Mr Y C Chan said that the current programme would require replacement of about 300 km of water main pipes each year, with heavy implications on traffic conditions. To shorten the timeframe would be difficult although every effort would be made to speed up the programme.

16. A Member shared the concern about the high percentage of water mains leakage. She suggested identifying areas of priority where the water pipes were weaker in order to focus efforts in managing the problem timely. A Member said that the current water mains leakage, when reduced, would also have ecological impacts on some sensitive areas. As shown in overseas examples, pipe sealing and repairing works could have adverse ecological impacts, such as causing death of trees. The long-term leakage problem would also cause the dropping of water-table in soil substrata which could lead to potential structural problems of buildings and roads and thus would increase maintenance costs.

17. A Member urged the Government to take the lead in encouraging water reclamation in Government premises such as the reuse of grey water and rainwater harvesting. Mr Y C Chan explained that grey water and rainwater harvesting might not be cost-effective in view of the capital investment and maintenance costs needed for the small potential saving in fresh water. Nonetheless, the Government would conduct trials in order to gather information and build up experience for mapping the way forward. A Member suggested installing rainwater harvesting systems in large public housing estates where large quantity of water was consumed for watering plants.

18. A Member considered that the proposed Water Efficiency Labelling Scheme would be useful for public education, especially on the means of water conservation and choice of water saving devices. He asked whether

the lead time of two to three years in setting up the voluntary scheme could be shortened. Mr C L Wong said that every effort would be made to expedite the implementation of the scheme. Nonetheless, the estimated timeframe was realistic having regard to the experience in rolling out the Energy Efficiency Labelling Scheme. A considerable lead time was required to sort out the complications involved, such as testings and standard-setting for the products, securing the support of trade associations and procedural clearance with the World Trade Organization.

19. The Chairman considered the TWM strategy a good direction towards the proactive management of water demand and supply resources. He summarized Members' views as follows –

- (a) given the regional competition for water resources, there was a need to plan ahead in ensuring sustainable water supply for Hong Kong in the medium to long term;
- (b) efforts had to be stepped up on water conservation, including public education, extensive use and promotion of water saving devices in areas such as public housing estates, early implementation of the Water Efficiency Labelling Scheme, taking the lead by the Government, and possible use of water tariff as an economic incentive;
- (c) continued efforts should be made on exploring water resources, such as water reclamation, reuse of grey water and rainwater harvesting, to ensure water could be used in a beneficial way; and
- (d) given the relatively high percentage of water mains leakage, efforts should be made to fix the problem as speedily as possible and minimize the potential impacts on ecology.

Agenda Item 4 : Report of the Nature Conservation Subcommittee
(ACE Paper 14/2008)

20. A Member declared interest as the Green Power, in which he served as the Chief Executive Officer, was the conservation partner of the Sha Lo Tung (SLT) proposal. A Member declared interest as her company was engaged as a planning consultant for the Mui Tsz Lam & Mau Ping proposal and

the Conservancy Association, in which she served as the Chairman, was the conservation management partner of the proposal. The Chairman declared interest as he had served as an advisor to the Conservancy Association before 2005. A Member declared interest as he was serving as the Director of the Conservancy Association but he was not directly involved in the Mui Tsz Lam & Mau Ping proposal. The meeting agreed that two Members had to abstain from the meeting in view of their personal and direct involvement in the proposals being considered. Members noted that a Member would join the presentation team in presenting the SLT proposal. The Chairman could stay and continue to chair the meeting. A Member could stay and continue to take part in the discussion but refrain from discussion relating to the Mui Tsz Lam & Mau Ping proposal.

21. The Chairman of the Nature Conservation Subcommittee reported on the recommendation of the Nature Conservation Subcommittee regarding the five proposals submitted under the Pilot Scheme for Public-private Partnership (PPP), which involved land located at Mui Tsz Lam & Mau Ping, SLT, Tai Ho, Wu Kau Tang and Yung Shue O. He said that the project proponents (the proponents) made presentations at the Subcommittee meeting (except for the proponent of Yung Shue O who had declined the invitation). The Subcommittee recommended that the SLT project be supported from a nature conservation angle and the proponent be invited to attend the Council meeting. While the Tai Ho project was worthy of support from conservation perspective, the project was considered not ready to be taken forward in its present form. The proponent should be encouraged to refine the proposal and address the problems identified. The other three projects were not recommended. The meeting agreed that the proponent of the SLT proposal could make a presentation to facilitate the Council's consideration.

22. The Chairman informed Members that the proponent of the Tai Ho project provided some supplementary information regarding the project after the meeting. Separately, a letter from the Conservancy Association was received expressing views on the need for statutory EIA for PPP scheme. The two documents were tabled for Members' information.

(The project proponent team of the SLT project joined the meeting at this juncture.)

23. Mr Phill Black briefed Members on the details of the SLT proposal

which comprised three key features, namely the development of an Ecological Reserve, a low-rise Multi-cultural Education Retreat cum Columbarium Complex and upgrading of the SLT Road.

24. The Chairman enquired about the funding arrangement of the project. Mr Phill Black said that the financial plan included a set-up fund of \$50 million for the Ecological Reserve and related infrastructure as well as \$140 million for long-term management and operational costs. The funding of \$140 million was an estimated amount generated from development within the greenbelt zone. It included \$20 million to meet the annual maintenance cost for SLT Road and \$120 million to finance the long-term operation of the Ecological Reserve and related facilities.

25. In reply to the enquiry of a Member, Mr Phill Black confirmed that the Sha Lo Tung Development Company (SLTDC) would inject \$120 million upfront to the Trust Fund upon the confirmation of land grant agreement and prior to the commencement of construction works. The \$120 million was considered adequate to cover annual expenditure on conservation given an estimated 3% to 4% annual return.

26. In reply to a Member's enquiry, Mr Joe Fong said that the SLTDC had experience in land or property development since 1950s. The company had focused on the management of existing properties since 1980s.

27. A Member asked whether there was any plan to preserve the old villages such as Cheung Uk for heritage purpose. Mr Phill Black said that the current proposal mainly focused on the ecological aspect. It was understood that some abandoned village structures in Cheung Uk were classified as Grade II structures and opportunities could be explored for incorporating heritage preservation into the agreements through planning or land applications with separate funding arrangement.

28. In reply to a Member's enquiry, Mr Phill Black confirmed that the SLTDC would surrender all the land it owned in SLT valley (representing 96% of the private land in the valley) to the Government for setting up the Ecological Reserve. Strictly speaking, eligible indigenous villagers of the unpurchased lots could submit applications to the Government for small house development under the Small House Policy (SHP).

29. A Member enquired about the possibility of eligible indigenous villagers submitting applications for village house development in the SLT valley. Mr Joe Fong said that they had already secured the support of village representatives and Tai Po Rural Committee for implementation of the project. The plan was to have contractual agreements with eligible indigenous villagers within the site by granting compensation in cash to them for giving up their rights to submit applications under the SHP on land within the SLT valley. Mr Phill Black added that the Government imposed very stringent requirements on applications under the SHP. The Government would consider the applications within SLT valley having regard to the ecological value of the area.

30. A Member asked how the pledged measures in minimizing environmental impacts of the development would be complied with since the statutory Environmental Impact Assessment Ordinance (EIAO) procedures were not applicable to the project. Mr Terence Fong said that while it was not a designated project (DP), an environmental assessment was conducted in accordance with the EIA standards and a number of mitigating measures were recommended. The developer would implement the mitigating measures and the monitoring results would be reported to relevant authorities. During the construction phase, daily monitoring would be conducted. The Green Power would station a staff on-site for environmental monitoring who would be empowered to stop the works if deemed necessary. Mr Phill Black added that the PPP scheme, unlike a DP, would entail a strong partnership and cooperation relationship between the Government and the proponent.

31. A Member referred to Figure 3.6 of the environmental assessment report (the Report) and asked about possible run-off to the river. Mr Terence Fong explained that the earth works would only be conducted in dry seasons from November to March and the construction activities were minor works which could be completed within a short time frame. There was no stream in the work area but only a gully area through which the run-off would pass. To divert the hinterland run-off through the site to the downstream area, an enclosed pipe would be provided. To avoid hinterland run-off to other areas, a peripheral drainage system would be provided together with facilities such as sedimentation tanks to collect all run-off which would be pumped away from the site. Since the SLT Road upgrading works would be completed before the development project, a proper drainage system would be put in place to pump the run-off away from the development site through SLT Road.

32. A Member was concerned about monitoring of the environmental impacts arising from upgrading of SLT Road as the EIAO procedures were not applicable to the project. Mr Phill Black explained that the road upgrading works were part of the SLT project. Monitoring and control measures for the project would apply to the road upgrading works. Mr Terence Fong added that the monitoring results of the Environmental Manual and Audit programme would be reported to the Environmental Protection Department (EPD) and AFCD. Mr Joe Fong said that in the context of previous development plans for SLT Road, AFCD had imposed very stringent requirements based on those under the EIAO. Environmental assessments from Ting Kok Road with 500 m wide on both sides were required. The environmental assessment conducted for the current project was based on these requirements. Mr Vincent Tang informed Members that while the proponent would be responsible for the road upgrading works and entrusted with the responsibility for future management, the road would still be a public road. It would be subject to the roadwork standards imposed by the Transport Department (TD) and Highways Department.

33. A Member said that, to her understanding, road upgrading projects would have to fulfill standard requirements, such as road alignment and gradient. For monitoring purpose, the contractor had to produce detailed plans, including engineering reports, construction methods and timetable, to the TD and Highways Department. The contractor had to observe permit conditions. During construction, the contractor's performance would be monitored and complaints would be dealt with.

34. Mr C C Lay said that the proposed development works would avoid encroaching into the Site of Special Scientific Interest (SSSI) and Conservation Area to minimize its environmental impacts. While the EIAO procedures were not applicable to the project, an environmental impact assessment study based on the EIAO standards was conducted. The Task Force together with Green Power would closely monitor the construction process to ensure mitigating measures would be properly implemented.

35. A Member enquired about measures in controlling the use of the widened SLT Road. Mr Phill Black said that the road would be widened from less than 3 m to a minimum of 4.5 m. To provide sufficient passing-bays along the road, over 60% of the road would be 6 m wide. As agreed by the Police and TD, no special traffic measures would normally be required except during Ching Ming and Chung Yeung Festival days. A traffic management plan

would be put in place for the two festivals and would be reviewed in consultation with the Police and TD. Mr Joe Fong said that a study on traffic impacts was conducted on all columbaria in Hong Kong. The findings showed that the traffic in the columbaria, including Ching Chung Koon which maintained 95,000 niches, would be less than 100 vehicles per day on average. The traffic in the Ching Chung Koon increased to about 180 vehicles on the “Festival of Kwun Yam”. Mr Alex Wang added that the SLT Road would be restricted to shuttle bus and emergency vehicles during the festival days.

36. In reply to a Member’s enquiry, Mr Phill Black said that the public car park comprised 40 spaces. Together with SLT Road, it would be entrusted to the SLTDC for management. He confirmed that the proposed parking area was sufficient to cater for visitors to the Ecological Reserve, development site requirements and Country Park users and had been determined in consultation with TD. There would not be any changes to the number of car park spaces except that improvement works might be carried out.

37. A Member asked whether the Council would be updated of any subsequent changes in the proposal such as increase in the number of car park spaces. Mr Phill Black said that material changes during the application process, such as construction design with environmental impacts, could be reported to the Council. Ms Anissa Wong said that the submission to ACE was the first step of the process in seeking statutory and policy approvals. The Task Force which comprised representatives from relevant departments would work closely with the proponent through out the application process. Departments concerned would be consulted on any changes and would assess relevant implications. The proponent would be requested to submit reports to the Council when necessary.

38. A Member enquired about the detailed design of the Multi-cultural Education Retreat. Mr Phill Black said that the detailed design plan of the Retreat was under preparation and would be submitted at the planning application stage. The Retreat would be low-rise buildings, including a two-storey dormitory for up to 30 people inclusive of staff and a one-storey learning centre for class size of 10 to 20 people for short durations. The buildings would be kept close to the existing contours to avoid excessive cuts on the slope.

39. A Member enquired about the future management and

maintenance of the development area after the sale of niches. Mr Joe Fong said that the SLTDC would provide the required infrastructure and facilities and entrust the management and maintenance responsibilities of the Multi-cultural Education Retreat cum Columbarium Complex to a reputable non-profit making religious body. An initial operational fund of \$10 million plus a proportion of the revenue from the sale of niches for future maintenance would be provided to the management body. An annual fee would be charged on the niches sold to provide regular income to cover the management and maintenance of the niches.

40. A Member made reference to the recent community concern about the Public Space Policy regarding putting public open spaces under private management and hoped that the management body of the development site would be cautious about the management of public places, including the public road, car park and other common areas and facilities.

41. A Member enquired about conservation plans to enhance ecological value of the site. Miss Meeling Yau said that the Green Power had helped drafting of the conservation management plan since 2005 with targets and action plans. The fundamental target was to preserve the area through effective land control and removal of potential threats. Action plans included research and monitoring to define ecological requirements of species of conservation concerns for better understanding of the site condition and conservation management which would be beneficial to the habitats. Measures included the removal of exotic species and restoration of shrublands and grasslands by replanting.

42. Referring to the fourth column entitled “relative encroachment to SSSI and natural stream” in Table 2.1 of Volume I of the Report, the Chairman enquired about the meaning of “low” encroachment. Mr Terence Fong confirmed that the development would be located away from the SSSI and natural stream and thus the word “low” in fact meant “no” encroachment.

(The project proponent team left the meeting at this juncture.)

43. The Chairman asked Members whether they agreed with the recommendations of the Subcommittee elaborated in paragraph 40 of the paper. A Member said that he agreed with the Subcommittee’s recommendation in general. For the Tai Ho’s project, he considered that as the land exchange issue was the key outstanding issue and it should be highlighted that it was not only

the proponent's role, but also the Government's role in trying to resolve the land exchange issue in order to facilitate the implementation of projects of similar nature.

44. The Chairman enquired about the possibility of considering the Tai Ho proposal under the Management Agreements scheme of the New Nature Conservation Policy. A Member suggested that the proponent be informed of the concerns of the Council and encouraged to refine the proposal and address the problems identified. With implementation of the first PPP project, experience would be gained for implementation of more projects. Ms Anissa Wong said that if the SLT project was supported and taken forward, the statutory process would be transparent. The proponent of Tai Ho project could make reference to the SLT project in refining the proposal. The meeting agreed with the Subcommittee's recommendation in supporting the SLT project and that the project should be examined in greater details.

45. Mr P Y Tam said that the project was intended to be a PPP project, with Government as a partner. While there could be various forms of partnership, under the current proposed arrangement the Government would have little control over its partner (i.e. the developer) regarding the subsequent processes once the land exchange (which was a major stake in this case) had been completed, since most of the other processes did not invoke statutory controls. The present mechanisms might not be entirely sufficient to ensure that the project could be implemented properly. To supplement the deficiency, the Government might have to consider setting up institutional mechanisms such as high level committees to steer and monitor the process and lay down effective administrative measures to guide and control the development.

46. A Member suggested that the "massive accommodation-type facility" in paragraph 40(a)(iii) of the paper be changed to "resort-type facility" to avoid turning the Education Retreat to a resort for leisure purposes.

47. A Member referred to paragraph 40(a)(v) of the paper and considered that the crux of securing the support of the local indigenous villagers was to get their support for not building small village houses in SLT valley in order to conserve the area. While the current proposal was a favourable option in preserving SLT under the PPP, he did not want to see eligible indigenous villagers coming back and applying for small house development which would affect implementation of the project.

48. Mr C C Lay highlighted that the SLTDC owned 96% of the project site. Out of the 4% of unpurchased lots, only very small strips of scattered areas were located within the “V” zone. The rest of unpurchased lots were located within the SSSI, Conservation Areas and Green Belt on which small house development would not be allowed. Moreover, most owners of these lots were not identifiable. The chance for building small village houses within the SLT valley was very slim. Ms Anissa Wong said that the consideration of applications under the SHP was a land policy issue and indigenous villagers’ rights should be respected.

49. Mr Edward Yau said that we would need to explore options with different pros and cons in mapping the way forward for the PPP scheme. With hurdles to overcome, the solutions would need to be creative and require compromises. Nonetheless, it would not be feasible to use this PPP case as a vehicle to set new SHP. The project had the merit of having the least land complications as the majority of the land was in the hands of the proponent and the proportion of unpurchased lots was exceptionally small with most landowners unidentifiable. If the area was able to be preserved with the involvement of the Government and a reputable green group through project management, it would stand a better chance of achieving the goal of nature conservation. Successful implementation of the pilot project would set a precedent for future cases.

50. A Member considered that being a partner of the project, the Government should make commitments to ensure the smooth implementation of the project and conservation of the area. He worried that the conservation efforts would attract eligible indigenous villagers to claim their rights for small house development for profit-making. Ms Anissa Wong said that one of the conditions for approving applications of small house development was the availability of infrastructural facilities. Within SLT, the majority of the area would be ecologically preserved. In case eligible indigenous villagers applied for small house development, the Lands Department would consider the applications taking account of the overall characteristics of the area.

51. Mr Edward Yau said that PPP was a new policy tool to achieve the objective of preserving ecologically important sites which were in the hands of private ownership such as SLT. Subject to securing the necessary application approvals and support of the Executive Council, the proposed scheme would be instrumental in preserving the area. With the surrendering of private land, the

land would be in the Government's hands with minor exceptions. The Government and the green group would play an important role in the future management of the site. As PPP was only a pilot scheme, we had to continue to develop suitable arrangements for fitting the proposal into the existing legislation or land-use planning mechanism to ensure successful implementation. As regards the concern of small house development, Government would regulate such development through existing land administration policy, which would take into account the ecological characteristics of the SLT area.

52. A Member considered that the proposal would provide a good opportunity to preserve the ecologically important site. In supporting the proposal, it would be useful for the Council to flag up its observations, such as a proper mechanism to regulate the PPP project, the role of the Government as a partner from the construction phase to completion of the project, means to sustain the conservation of the area given the existence of some unpurchased lots and efforts to sort out the possibility of small house development under the SHP.

53. A Member was concerned about the enforcement of the measures pledged by the proponent without a statutory EIA process. As the first PPP project under the New Nature Conservation Policy, Government should work out a clear system of guidelines and penalty for compliance. It was important for the first PPP to achieve high environmental standards with proper enforcement mechanism.

54. The Chairman said that there might be public concern about the reasons why the statutory EIAO procedures were not applicable to the SLT project given the ecological importance of the site and an earlier EIA on a development plan in the site was rejected a decade ago.

55. Mr C W Tse explained that the two major considerations in determining whether a project would be a DP under the EIAO were the nature of the project and proximity of the project to eco-sensitive areas. Examples of DPs included certain development works conducted partly or wholly within the eco-sensitive areas, reclamation works carried out within 500 m of the eco-sensitive areas and discharge point of drainage within 300 m of the eco-sensitive areas. The SLT project had been carefully assessed in the context of the EIAO. The scale of the upgrading of SLT Road was relatively small and

the work areas of the road were completely outside the eco-sensitive areas. The Multi-cultural Education Retreat cum Columbarium Complex as well as improvement works within the Ecological Reserve were all outside the eco-sensitive areas. The key enhancement activities inside the Ecological Reserve (listed in paragraph 3.2.3 of Volume I of the Report), such as weed removal, enrichment planting, installation of drop bar at road entrances to SLT valley and trail enhancement, did not fall into the scope of DPs. The proposed development had adopted the principle of avoidance in the design for protection of the eco-sensitive areas. Notwithstanding that the EIAO procedures were not applicable to the project, the proponent was advised to conduct a full-scale environmental assessment with the same requirements, criteria and standards of a statutory EIA.

56. In reply to a Member's enquiry, Mr C W Tse said that the basis of defining whether a project would be a DP was the footprint of the work area being gazetted. The Member said that a part of SLT Road near the development site was in close proximity to the country park. Widening of the whole access road would probably encroach into the country park and the project would be a DP. However, the proponent avoided encroachment into the country park by narrowing the width of that particular part of the road, as shown on Figure 3.8 of Volume I of the Report. Mr C W Tse explained that when the access road entered into the development area, the whole development area would be classified as part of the work area. Under the current proposal, both the work area of the access road and the development area were outside the eco-sensitive areas. Mr C C Lay added that while the left side of the access road along the boundary of the development site was in close proximity to the country park, the area on the right side of the access road was the development area and thus could provide sufficient space if widening of the road was necessary.

57. In reply to a Member's enquiry, Mr C W Tse said that there were precedent cases for project proponents to conduct EIA report on a voluntary basis even if the project was not a DP, including both public works and private developments. A Member suggested that the Council would support the proposal subject to the proponent's confirmation of conducting an EIA under the EIAO to ensure statutory enforcement, notwithstanding the fact that the proponent had already conducted an EIA on a voluntary basis.

58. A Member considered that the proponent's initiative to conduct an

EIA on a voluntary basis was different from imposing the requirement under a statutory framework. A Member agreed that if the project was not subject to the statutory framework, it was not appropriate to impose the statutory requirement.

59. Ms Anissa Wong said that there would be difficulties and read-across implications for imposing the statutory EIA requirement on the project proponent which was not applicable to the project. To ensure compliance of pledged measures and enforcement of penalty system, other alternatives such as a legally binding contractual agreement could be put in place. Mr C W Tse said that the penalty under the EIAO could not be applied to the proponent of a non-DP even if the proponent was required to conduct an EIA.

60. Quoting the previous example of the Disney Theme Park, the Chairman asked whether the Secretary for the Environment could invoke relevant clauses in the EIAO to designate a project as a DP if it was in the public interest to do so. Mr Edward Yau said that he shared Members' concerns that while the SLT proposal was a promising project from the nature conservation point of view, there were some outstanding issues to be addressed. If Members were concerned about the lack of commitment on the part of the proponent to deliver his promises while imposition of statutory requirements was not viable, alternative means such as administrative or contractual avenues could be explored to secure the assurance of the proponent. He was cautious about the legality of imposing EIA requirements on a non-DP under the Ordinance. The requirements should be reasonable, implementable and considerations had to be given to the implications on future applications. The Council could flag up the observations for the Administration and the Task Force to further examine the feasibility of imposing certain conditions on the proponent, failing which the PPP project might not be taken forward. Mr Vincent Tang said that the Administration had tried to explore the possibility of establishing legally binding instruments and the initial response from the proponent was very positive.

61. A Member considered that the EIA process was a systematic means of assessing the environmental impacts of a project. As the development project was conducted in an ecologically important site, it would not be tenable should no EIA be conducted. While the statutory framework was not applicable to the project, administrative arrangements could be made for the project to conduct an EIA by following the systematic process.

62. A Member said that under the statutory EIA mechanism, the entire process was transparent and the relevant information was made easily available in the public domain. For the SLT project, the environmental assessment had already been conducted. The most important issue was to put in place a mechanism to ensure that the pledged measures would be complied with and that both the Council and the public had confidence in the mechanism.

63. A Member said that he had no objection to proceeding with the environmental assessment through administrative means. Given that the project was a PPP on nature conservation, it was necessary for the Government to commit sufficient resources to enforce the contractual obligations of the proponent. He was concerned that standard policing measures would not be effective given the remoteness of the project site.

64. In reply to a Member's enquiry, Ms Anissa Wong said that under the proposed administrative arrangements, the proponent would be required to submit the environmental assessment report to the EIA Subcommittee by modeling on the EIA process but no Environmental Permit would be issued. Instead, environmental monitoring and enforcement would need to be carried out by means of tailor-made robust and legally binding measures to be worked out between the Government and the project proponent. The Member suggested that the details of the legally binding measures be submitted to the EIA Subcommittee. It should also be highlighted that the issue of enforcement should be a major issue to be addressed.

65. The meeting agreed that the proposed administrative means of formulating legally binding measures be adopted to ensure the compliance of pledged measures on environmental and nature conservation by the proponent. The proponent would be required to make public the EIA study and to submit the report to the EIA Subcommittee for advice.

66. The Chairman concluded that the pilot PPP scheme was an important policy tool of the New Nature Conservation Policy to enhance conservation of ecologically important sites in private ownership and the first project under the pilot scheme was an important milestone of the scheme. After examining the five applications submitted under the scheme, the Council recommended that –

- (a) the SLT project should be supported from the nature conservation

angle. However, the following implementation issues would need to be addressed as the proposal was to be taken forward –

- (i) the traffic management issue at SLT Road arising from the proposed development;
 - (ii) measures to ensure that the impact on the sensitive conservation area would be kept to the minimum. In the absence of statutory EIAO procedures, the proponent should be advised to make public its environmental impact assessment study and to submit it to the EIA Subcommittee for advice. Robust and legally binding measures should be formulated to ensure the continuing compliance of any pledged measures on environmental and nature conservation by the proponent;
 - (iii) measures to ensure that the Multi-cultural Education Retreat would not be turned to a resort-type facility;
 - (iv) sustainability of the operation of the Multi-cultural Education Retreat cum Columbarium Complex in a manner that was compatible with the overall nature conservation principles; and
 - (v) securing the support of the local indigenous villagers in implementing the conservation of the ecological sensitive areas.
- (b) the Tai Ho project was worthy of support from conservation perspective. However, the relatively low percentage of landholdings by the project proponent, the lack of an experienced partner to plan and manage the Ecology Park and the potentially complicated land related issues, including the non in-situ land exchange issue, were problems that need to be addressed before the project could be seriously considered. In its present form, the project was not ready to be taken forward. The project proponent should be informed of the concerns of the Council and encouraged to refine the proposal and address the problems identified with the relevant government authorities; and

- (c) the Mui Tsz Lam & Mau Ping, Wu Kau Tang and Yung Shue O projects should not be recommended.

67. Mr Edward Yau said that to sustain the conservation efforts at all the selected sites, the proponents of projects not being supported would be encouraged to explore the possibility of introducing Management Agreements to better preserve the ecological significance of the areas. He assured Members that efforts would continue to be made in pursuing projects worthy of consideration for achieving the nature conservation objectives.

Agenda Item 5 : Report on the 102nd Environmental Impact Assessment Subcommittee meeting
(ACE Paper 15/2008)

68. The Chairman informed Members that the public inspection period of the Environmental Impact Assessment (EIA) report on “South East New Territories (SENT) Landfill Extension” was from 26 February to 26 March 2008. Comments received by the EPD before the EIA Subcommittee meeting had been circulated to Subcommittee members for reference. For those comments which were received after the Subcommittee meeting, they had been circulated to all Council Members for reference before the meeting.

69. The Chairman of EIA Subcommittee reported on the recommendation of the Subcommittee on the EIA report. He said that the Subcommittee recommended the endorsement of the EIA report with some proposed conditions. The Subcommittee would also like to draw the attention of the Council on the general issue of encroachment into the country parks, which could be considered from a broader environmental protection perspective beyond the context of the EIA framework.

70. A Member said the issue of encroachment of the Landfill Extension site into the country parks had caused great concerns of some environmental organizations. He did not question the need for the landfill extension and recognized the technical difficulty of building a massive earth bund along the side of the country park. The problem was the legality and process involved in approving the temporary encroachment. The uses of country parks were set out in Section 4 of the Country Parks Ordinance, Cap. 208 (CPO) and landfilling for disposal of rubbish was not within the provisions. The Country Parks Authority (CPA) relied on Section 10 of the

CPO to approve non-conforming uses of country parks. However, Section 10 was repealed as a result of a judicial review in 1992. Although the Administration agreed to conduct a review of the CPO in 1993, this had yet to be done. Since then, the CPA continued to approve non-conforming uses in country parks without legal basis. In the past, projects which required land from country parks would require the gazettal of the redrawn boundaries for public comments.

71. A Member said that for the SENT Landfill Extension project, the Administration claimed that it was only a temporary encroachment. Nonetheless, the CPO made no distinction between permanent and temporary uses and hence the argument had no legal foundation. As a reference, the judgment in relation to the Protection of the Harbour Ordinance ruled that the temporary nature of the reclamation works near the Causeway Bay Typhoon Shelter did not constitute grounds for non-compliance of the relevant Ordinance. EPD obtained “in principle” endorsement from the Country and Marine Parks Board (CMPB) in early June 2007 to the SENT extension. However, the EPD and AFCD (in its position of CPA) failed to inform the CMPB that when a similar application was made by EPD to use 18 hectares of the same country park for SENT landfill in 1993, the procedure was challenged by Friends of the Earth (FOE). FOE submitted a complaint to the then Office of the Commissioner for Administrative Complaints (COMAC) (renamed as Office of The Ombudsman), who substantiated a number of the points raised by FOE and made several statements that were of direct concern to the present case. The fact that this information was not supplied to the CMPB for this present case gave rise to the concern that their decision was without legal basis and contrary to the correct procedure as determined by the COMAC. The COMAC noted [in that earlier case] that initially AFCD had objected to the landfill as a non-compatible use under the CPO. Bearing this in mind, the current decision of the CMPB should be revisited with full access to this information. EPD had informally consulted the environmental non-government organizations (ENGOS) about the SENT extension. EPD was informed by the ENGOS that this might be acceptable if appropriate compensation was offered in the form of designating suitable areas of high ecological value elsewhere in Hong Kong as Country Park. EPD had informed the ENGOS that it was not a policy to compensate for the land taken, although it had not stated under what policy, ordinance or administrative measure this was so. In the letters issued by EPD and AFCD, it was stated that the Government’s long-established position was that the CPO did not bind the Government. However, the Government had

acted in the past as if it considered itself to be bound by the Ordinance, such as in the cases of the Tate's Cairn in Ma On Shan Country Park, Shek O Road realignment in Shek O Country Park, and replacement of Tai Lam Country Park. The CPA had acted as if it was bound by the CPO in its initial consultations for the SENT Landfill when stating that encroachment for a landfill was unacceptable in 1981, 1989 and 1990. It was also worthy of note that the contention that the CPO did not bind the Government was considered and rejected by the COMAC.

72. The Member considered that the SENT Landfill Extension was a breach of the CPO and the temporary nature of the encroachment was no defense. The Government was clearly bound by the CPO and the proper procedures were not being followed, namely the mechanism under Sections 8 to 15 of the CPO for approving non-conforming uses and securing compensation without compromising the integrity of country parks. The need for landfill extension was not questioned but the Government should follow the appropriate legal procedures by redrawing and gazetting the new country park boundary, putting in place proper public consultation and granting compensation in other areas. The CPO should be reviewed to lay down proper procedures for approving non-conforming uses as promised in 1993.

73. Mr Joseph Sham informed Members that while the decision of the CPA was quashed under the judicial review in 1992, Section 10 of the CPO had not been repealed. In view of the legal implications of the issues brought up by the Member, it was necessary to seek legal advice on them.

74. The Chairman considered that given the legal and technical nature of the issues brought up by the Member, it would be beyond the remit of Council to discuss the legality and procedures involved in the issues which should more appropriately be taken up by the CPA and CMPB. The Member said that the concerns raised had been conveyed to the Administration but had not received serious attention. He considered that the encroachment into the country parks should be an issue of concern to the Council.

75. A Member agreed that in principle the encroachment into the country parks was not a desirable course of action. Nonetheless, consideration had to be given to pragmatic issues such as the insufficient lead time to tie in with the development of other waste treatment facilities.

76. Ms Anissa Wong noted the Member's concern about the legal and procedural issues and that the country park was not an ideal location for accommodating landfill extension while recognizing the need for the Landfill Extension project. She said that the concerns had been reflected to the EPD and CPA. The Administration would consider the issues raised in the light of the legal advice and other latest information available.

77. A Member enquired about the implications of having an EIA report endorsed by the ACE within the EIA framework but subsequently challenged on other legal grounds. The Chairman said that a DP had to go through different statutory processes and EIA process was only one of them. For example, the ACE endorsed the EIA report on "Wan Chai Development Phase II and Central-Wan Chai Bypass" based on the EIA process without going into the possible legal issues under the Protection of the Harbour Ordinance. In examining the EIA reports, the Council was required to examine the environmental impacts.

78. A Member said that the recommendation of the Subcommittee on the EIA report under consideration was based on the EIA framework. Mitigation or compensation measures would depend on the ecological importance of the site. The Council could also express concern on general environmental issues outside the context of the EIA framework. There were previous development projects which had encroached into the country parks. He suggested that the general issue of encroachment into the country parks be discussed at a future meeting. Another Member supported the Member's suggestion.

(Post-meeting note: The relevant departments would brief Members on the subject in due course.)

79. The Chairman concluded that the Council endorsed the EIA report with the conditions and suggestion proposed in paragraph 40 of the paper. The recommendation was made with respect to the Council's statutory role under the EIA Ordinance. From a broader environmental protection perspective beyond the context of the EIA framework, the Council expressed concerns about the encroachment of the Landfill Extension site into the country parks. A Member expressed his dissenting view regarding the EIA report in view of the potential illegality of the project.

Agenda Item 6 : Any other business

Tentative items for discussion at the next meeting

80. The agenda was being compiled. Members would be informed in due course.

Agenda Item 7 : Date of next meeting

81. The next meeting was scheduled for 16 May 2008.

**ACE Secretariat
April 2008**