

**Confirmed Minutes of the 159th Meeting of
the Advisory Council on the Environment
held on 16 February 2009 at 2:30 pm**

Present:

Prof LAM Kin-che, SBS, JP (Chairman)

Prof Paul LAM, JP (Deputy Chairman)

Ms Teresa AU

Dr Dorothy CHAN, BBS

Mr Oscar CHOW

Ms Betty HO

Mr Michael JEBSEN, BBS

Mr Edwin LAU

Prof Joseph LEE

Mr Michael LEE

Dr MAN Chi-sum, JP

Dr Alfred TAM

Mr TSANG Kam-lam

Prof WONG Ming-hung

Mr Simon WONG, JP

Dr YAU Wing-kwong

Prof Ignatius YU

Mr Carlson K S CHAN (Secretary)

Absent with Apologies:

Prof CHAU Kwai-cheong

In Attendance:

Ms Anissa WONG, JP

Mr C C LAY

Mr P Y TAM

Ms Monica KO

Ms Josephine CHEUNG

Mr KWAN Chung-kit

Ms Loletta LAU

Permanent Secretary for the Environment

Assistant Director (Conservation), Agriculture, Fisheries
and Conservation Department (AFCD)

Assistant Director/Technical Services, Planning
Department

Principal Information Officer, Environmental Protection
Department (EPD)

Chief Executive Officer (CBD), EPD

Office Manager (CBD), EPD

Executive Officer (CBD), EPD

In Attendance for Agenda Item 3

Mr Vincent TANG	Assistant Director (Nature Conservation and Infrastructure Planning), EPD
Miss Vivien LI	Senior Administrative Officer (Nature Conservation), EPD
Dr P M SO	Senior Conservation Officer (Biodiversity), AFCD

In Attendance for Agenda Item 4

Mr C W TSE, JP	Assistant Director (Environmental Assessment), EPD
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Action

Agenda Item 1 : Confirmation of the draft minutes of the 158th meeting held on 9 January 2009

The draft minutes were confirmed without amendment.

Agenda Item 2 : Matters arising from the minutes of the 158th meeting held on 9 January 2009

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

Agenda Item 3 : Proposed legislation for the implementation of the Biosafety Protocol ***(ACE Paper 3/2009)***

3. The Chairman informed Members that the Nature Conservation Subcommittee discussed the proposed legislation for implementation of the Biosafety Protocol on 10 February. A summary of the major views expressed at the Subcommittee meeting was tabled for Members' reference.

4. Mr C C Lay briefed Members on the background and objectives of the proposed legislation for the implementation of the Cartagena Protocol on Biosafety (the Protocol), which was adopted under the Convention on Biological Diversity (the Convention), in Hong Kong to protect biological diversity from

possible impacts arising from living modified organisms (LMOs). It would enable Hong Kong to fulfill the specific requirements of the Protocol, and the extension of the Convention and the Protocol to Hong Kong.

5. As the Chairman of the Nature Conservation Subcommittee, could not attend the meeting, a Member reported the views of the Nature Conservation Subcommittee on behalf of the Chairman. He said that the Nature Conservation Subcommittee supported the proposed legislation with a view to implementing the Protocol and the Convention in Hong Kong. The Subcommittee noted that the scope of the Protocol did not cover food safety and food labeling issues. The Agriculture, Fisheries and Conservation Department (AFCD) would seek advice from experts on matters in connection with the administration of the proposed legislation, including the risk assessments of LMOs for release into the environment. The Subcommittee considered that the authority should take adequate measures to monitor the situation closely after an approved LMO was released into the environment and take safety measures in case new information showed that the approved LMO might pose a risk to biological diversity that was not acceptable or manageable.

6. A Member referred to paragraph 29 of the Nature Conservation Subcommittee paper annexed to the ACE paper and enquired about the basis of determining a suitable disposal means for the LMOs. Mr C C Lay explained that the disposal means would depend on the types of LMOs in question as there were LMO bacteria, virus, fish, animals and plants. For example, a suitable disposal means for the remains of LMO plants and animals, which would no longer be living organisms, would be at the landfills.

7. A Member considered that in view of the technical nature of the subject and related terms, it would be important to enhance public understanding and awareness of the issue. The public should be well informed about what LMOs were and to what extent Hong Kong would be threatened if LMOs were released into the environment without control.

8. The Chairman agreed that it was important to make the technical terms clear to the public in the context of the proposed legislation, for example, the terms “LMOs”, “release into the environment” and “risk assessment”. In reply to the Chairman’s enquiry, Mr C C Lay said that planting an LMO crop in

the field or leaving an LMO fish in Hong Kong waters were typical examples of releasing LMOs into the environment.

9. A Member asked whether genetically modified (GM) produces, such as using GM papaya or maize seedlings for agricultural purpose in Hong Kong, would be within the scope of the Protocol. Mr C C Lay explained that LMOs were living organisms genetically modified through the use of modern biotechnology that overcame natural reproductive barriers. If GM crops were brought in Hong Kong for agricultural purpose, it would be subject to regulation under the proposed legislation. However, the import of GM produces for direct consumption as food would not be regulated under the proposed legislation as they were not imported for releasing into the environment. The main objective of the proposal was to provide a regulatory framework to restrict and control the release of LMOs into the local environment.

10. In response to the Chairman's enquiry about control and labeling of GM food in Hong Kong, Mr C C Lay said that the responsible bureau and department were the Food and Health Bureau and the Food and Environmental Hygiene Department respectively. To his knowledge, there was currently no specific regulation in force for regulating import and sale of GM food in Hong Kong. There was a voluntary scheme on GM food labeling. Importers of LMOs for food purpose would need to comply with relevant shipment documentation requirements under the current proposed legislation.

11. A Member enquired about the effectiveness of the proposed legislation having regard that there was no complementary legislation to control the import or labeling of GM food. Mr C C Lay explained that the proposed legislation would help protect biological diversity by regulating the release of LMOs into the environment. It was important that the authority would be empowered to eradicate unapproved LMOs to minimize their potential adverse impacts on biological diversity.

12. The Chairman opined that the relevant authority on food safety and food labeling should consider the introduction of legislation on the labeling of GM food, which would help the implementation of the proposed legislation on Biosafety Protocol.

13. A Member enquired about the scenario of planting seeds of GM fruit after consumption. Mr C C Lay said that the key consideration was whether it was an intentional release of LMOs into the environment. If it was an intentional act, it would be an offence under the proposed legislation. Under the proposed legislation, AFCD would still be empowered to take remedial actions, such as eradicating the GM plants, even if the planting was unintentional or accidental.

14. A Member asked whether there would be any difference in the regulation between planting for commercial use and planting in a private garden. Mr C C Lay said that the intentional release of LMOs into the environment was a key consideration under the proposed legislation irrespective of whether the planting was for commercial or private purposes.

15. A Member enquired about the scenario of having the seeds from left-over of GM fruit being spread accidentally in the field. Mr C C Lay said that as the act was not intentional and thus it would not be an offence under the proposed legislation. Nonetheless, remedial actions could be taken to eradicate the GM plants.

16. A Member noted that the proposed legislation mainly concerned the regulation of import and export activities rather than consumption of GM produces. He enquired about the obligations of importers or exporters in ascertaining whether the produces they ordered were LMOs as they might not be able to get hold of the source information of produces, especially when the produces did not come from the 140 Parties to the Protocol. Mr C C Lay explained that a 5% adventitious threshold of GM mixing would be allowed as it was recognized that accidental mixing of traditional crops by LMO varieties of the same crops from different sources was inevitable in the production process, especially for large-scale production. If the produces contained 5% or more LMOs, the importers had to comply with relevant documentation requirements by providing information, such as whether the shipment contained LMOs and the intended use of the LMOs. In case of suspected offences, enforcement actions would be taken by the authority to establish evidences. This would be similar to the enforcement actions against importation of endangered species in which cases some importers might claim ignorance of the legislation. The enforcement teams would take necessary actions for investigation and

prosecution.

17. A Member considered that it was important that the control could be implemented practically and the general public would be aware of the restrictions against releasing LMOs into the environment. Mr C C Lay said that educational publicity programmes would be rolled out before enactment of the proposed legislation to let the public understand the subject and raise their awareness of the regulatory framework. At present, LMOs available in the market were limited and GM papaya was the most well known LMO.

18. Two Members enquired about the time frame for Hong Kong to implement the Protocol. Mr Vincent Tang said that the draft bill was scheduled for submission to the Legislative Council in mid-2009 and it was expected that the legislation might be enacted in late 2009. Mr C C Lay added that agreement from the Central People's Government would be required for extending the Protocol and the Convention to Hong Kong. After completion of the necessary procedures, the Central People's Government would notify the relevant secretariat on the extension of the Convention and the Protocol to Hong Kong.

19. The Chairman summarized Members' views as follows –

- (a) the Council fully supported the proposed legislation with the objective of protecting local biological diversity from possible impacts arising from trans-boundary movement of LMOs. It was an obligation of Hong Kong, being a world city, to comply with the Protocol;
- (b) the Council considered that it was important to raise public awareness and enhance education about the subject in view of its technical nature and implications of releasing LMOs into the environment; and
- (c) the Council considered that the authority should take adequate measures to monitor the situation closely after an approved LMO was released into the environment and take safety measures in case new information showed that the approved LMO might pose

a risk to biological diversity that was not acceptable or manageable.

Agenda Item 4 : Report on the 107th Environmental Impact Assessment Subcommittee Meeting
(ACE Paper 4/2009)

20. The Chairman informed the meeting that the paper reported on the recommendations of the Environmental Impact Assessment (EIA) Subcommittee on the following three EIA reports –

- (a) Kai Tak Development;
- (b) Sludge Treatment Facilities; and
- (c) Development of a Biodiesel Plant at Tseung Kwan O Industrial Estate.

21. A Member declared interest that her company was the planning consultant for the redevelopment of the Kowloon Godown located at Kai Hing Road, which fell within the Kai Tak Recommended Outline Development Plan (RODP) and was also the public engagement consultant for the Central Kowloon Route running through Ma Tau Kok to trunk road T2 in Kai Tak, which fell within the planning boundary of the Kai Tak RODP. She had abstained from the EIA Subcommittee meeting. The Chairman suggested and Members agreed that the Member should abstain from the meeting for the discussion of the EIA report on “Kai Tak Development”.

22. A Member declared interest as his company might bid for work contracts under the Kai Tak Development upon its implementation. Members took note of the Member’s declaration and considered that work contracts under the Kai Tak Development would be opened to all for bidding and the Member had no personal or direct interest with the development at this stage. The Chairman suggested and Members agreed that the Member could stay and continue to take part in the discussion.

23. The Chairman informed Members that a letter from the Kowloon City Branch of Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) was received shortly before the meeting expressing their views on

the Kai Tak Development. The letter was tabled for Members' reference.

24. The Chairman of the EIA Subcommittee reported the recommendation of the Subcommittee on the EIA report on "Kai Tak Development".

25. A Member enquired about the normal procedures for the ACE to handle public comments in relation to EIA reports as the current submission was received after the EIA Subcommittee meeting. The Chairman said that under the EIA Ordinance, the project proponent had to make the EIA report available for public inspection for a period of 30 days and a member of the public might give the Director of Environmental Protection (DEP) written comments on the report before the expiry of the public inspection period. The DEP would also notify the ACE if an EIA report was suitable for public inspection and the ACE might give any comments it had on the report to the DEP within 60 days of its receiving a copy of the report. The consultation with the public and the ACE, as one of the statutory consultees, was conducted in parallel. The comments were for the DEP to consider. As an established practice, public comments received by the EPD before the relevant scheduled EIA Subcommittee meeting would be passed to Subcommittee Members for reference before the meeting as far as practicable. Those received by the EPD after the scheduled EIA Subcommittee meeting would be passed to all Council Members for reference before the following full Council meeting. As regards public comments directly addressed to the ACE, they would be passed to all Council Members for reference and would also be drawn to the attention of the EPD. After making reference to the comments, the Council could consider whether they warranted further consideration of the Council's recommendations.

26. The Chairman said that as far as the submission from the DAB was concerned, the key concerns were on odour emission and water quality issues. It would be important to consider whether the issues had been addressed in the EIA report and whether the EIA Subcommittee considered the findings of the studies and modelings acceptable.

27. The Chairman of the EIA Subcommittee said that the odour emission and water quality issues raised by the DAB were also the concerns of the Subcommittee Members. These issues had been discussed at length at the

Subcommittee meeting. The Subcommittee noted that a package of odour mitigation measures would be implemented, including in-situ bioremediation treatment, creation of a 600 m opening at the former Kai Tak runway, interception of polluted discharges in the hinterland and localized dredging within Kai Tak Approach Channel (KTAC) and Kwun Tong Typhoon Shelter (KTTS). The EIA report indicated that in-situ bioremediation treatment had been conducted in Shing Mun River Channel about four years ago and the odour condition remained satisfactory. Field trials were specifically conducted in KTAC to ascertain the effectiveness of the sediment treatment approach. The trial results proved that in-situ bioremediation treatment could successfully reduce odour emission from the sediment at KTAC and KTTS. On the opening of the 600 m gap at the runway, the project proponent confirmed that the opening would be constructed in phases and planned for completion after successful application of the in-situ bioremediation treatment at KTAC. The Subcommittee also considered that interception of polluted discharge in the hinterland was an important mitigation measure in the long run. The project proponent confirmed that the process of implementing the mitigation measures would be closely monitored. The Subcommittee recommended that the effectiveness of the package of odour mitigation measures should be evaluated on a regular basis having regard to changing circumstances.

28. Mr C W Tse informed the meeting that Subcommittee Members had discussed thoroughly the odour emission and impacts of the opening of the 600 m gap at the runway on the water quality. The project proponent reassured Members that the opening would be constructed in phases and planned for completion after successful application of the in-situ bioremediation treatment at KTAC. Moreover, the assessment results in the EIA report showed that the proposed 600 m opening at the runway would not adversely affect the overall water quality impact in the Victoria Harbour and its adjacent water as indicated in paragraph 5.3.4 of the Executive Summary of the EIA report.

29. The Chairman of the EIA Subcommittee reported the recommendations of the EIA Subcommittee on the EIA report on “Sludge Treatment Facilities” and “Development of a Biodiesel Plant at Tseung Kwan O Industrial Estate”.

30. The Chairman concluded that the Council agreed to the

recommendations of the EIA Subcommittee and endorsed the EIA report on “Kai Tak Development” with the advice set out in paragraph 9 of the paper; endorsed the EIA report on “Sludge Treatment Facilities” with the condition set out in paragraph 18 of the paper; and endorsed the EIA report on “Development of a Biodiesel Plant at Tseung Kwan O Industrial Estate” without condition.

Agenda Item 5 : Any other business

Visit to Waste Facilities in Tuen Mun

31. The Chairman informed Members that in order to let Members have a better understanding of the existing and planned waste facilities in Tuen Mun, a visit would be arranged to the existing West New Territories Landfill site and proposed extension, proposed Sludge Treatment Facilities and one of the potential sites of the Integrated Waste Management Facilities on 20 March 2009. Members would be informed of the details in due course.

Tentative items for discussion at the next meeting

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

Agenda Item 6 : Date of next meeting

33. The date of the next meeting was scheduled for 16 March 2009.

ACE Secretariat
February 2009