

**Confirmed Minutes of the 165<sup>th</sup> Meeting of  
the Advisory Council on the Environment  
held on 9 November 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  
Prof CHAU Kwai-cheong  
Mr Oscar CHOW  
Ms Betty HO  
Mr Michael JEBSEN, BBS  
Mr Michael LEE  
Dr MAN Chi-sum, JP  
Mr TSANG Kam-lam  
Prof WONG Ming-hung  
Prof Ignatius YU  
Mr Carlson K S CHAN (Secretary)

**Absent with Apologies:**

Mr Edwin LAU, MH  
Prof Joseph LEE  
Dr Alfred TAM  
Mr Simon WONG, JP  
Dr YAU Wing-kwong

**In Attendance:**

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
Dr Tina MOK	Principal Medical and Health Officer, Department of Health (for agenda item 3)
Ms Esther LI	Acting Principal Information Officer, Environmental Protection Department (EPD)
Ms Josephine CHEUNG	Chief Executive Officer (CBD), EPD
Ms Loletta LAU	Executive Officer (CBD), EPD
Miss Kim KWAN	Executive Manager (CBD), EPD

### **In Attendance for Agenda Item 3:**

Mr W C MOK	Assistant Director (Air Policy), EPD
Mr Ivan TUNG	Assistant Director (Shipping), Marine Department
Mr K K LI	Acting Assistant Director (Electricity & Energy Efficiency), Electrical & Mechanical Services Department
Miss Alice AU YEUNG	Principal Transport Officer/Bus & Railway 2, Transport Department
Mr Benson YEUNG	Senior Environmental Protection Officer (Air Policy)1, EPD

### **In Attendance for Agenda Item 4:**

Mr Albert LAM, JP	Deputy Director of Environmental Protection (2), EPD
Mr C W TSE, JP	Assistant Director (Environmental Assessment), EPD
Mr H M WONG	Principal Environmental Protection Officer (Strategic Assessment), EPD

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### Action

#### **Agenda Item 1 : Confirmation of the draft minutes of the 164<sup>th</sup> meeting held on 12 October 2009**

The draft minutes were confirmed without amendment.

#### **Agenda Item 2 : Matters arising from the minutes of the 164<sup>th</sup> meeting held on 12 October 2009**

2. There were no matters arising from the minutes of the last meeting.
3. A Member noted a news article drawing on comments reportedly made by some Council members quoting the stance of another Member on the Hong Kong Zhuhai-Macao Bridge (HZMB) project during the Internal Discussion Session at the last meeting. He considered that the comments were not an accurate reflection of the situation and were not fair to the Member. The Member highlighted that his appointment to the Council was on personal capacity, not a delegated representative of any organization. The position portrayed in the article was inaccurate. As a matter of fact, no voting had been taken place for the discussion of the Environmental Impact Assessment (EIA) reports on the HZMB project.

4. The Chairman shared that the comments made in the article were not fair to the Member. He urged Members to uphold the integrity and principles of meeting proceedings of the Council. He highlighted that the appointment of Members to the Council was on personal capacity. While some Members might have other capacities, Members were expected to provide independent and professional advice on the wide range of environmental issues, including EIA reports. The Council had not held any voting on the EIA reports on HZMB project at the last meeting. Members were given ample opportunities to express their views and stance on various aspects of the project. It was of vital importance that Members should help uphold the integrity and professionalism of the Council, in particular on the consideration and examination of EIA reports under the statutory framework. Quoting the views of other Members to the media, in particular those made during the Internal Discussion Session, would be counterproductive to upholding this important principle.

**Agenda Item 3 : Review of Air Quality Objectives**  
***(ACE Paper 13/2009)***

5. A Member declared interest as he was engaged as an advisor by the consultancy company which conducted the Review on Air Quality Objectives (AQOs). The meeting agreed that the Member could continue to take part in the discussion as his advice was offered on the basis of his expertise in the field.

6. Mr W C Mok briefed Members on the background of the Review, principles for setting the new set of AQOs and proposed emission control measures to achieve the objectives.

7. The Chairman enquired about the estimated timeline for achieving the proposed new AQOs. Mr W C Mok explained that it would depend on the timing of implementing the control measures. For example, the proposed measure of increasing the ratio of natural gas in local electricity generation to 50% under Phase I would hinge on the completion of new gas-fired power generation units, which would take at least four to five years, and securing adequate supply of natural gas. Most importantly, the implementation of control measures would depend on public support, particularly in respect of transport management measures.

8. A Member considered that setting a target time frame for individual control measure was important to let the public visualize the way forward and make efforts to achieve the targets. Mr W C Mok explained that the Government

aimed to implement the measures as early as possible. Nonetheless, feedback from the community was essential in formulating the time frame for implementing the measures because a quicker pace of implementation could bring along a greater cost implication.

9. A Member asked about actions to be taken in case the general public did not support the implementation of the 19 proposed measures in one go and whether a staggered approach would be adopted. Mr W C Mok explained that the plan was to roll out individual measures once they were ready for implementation. For example, action had been taken to seek the approval of the Legislative Council (LegCo) in strengthening volatile organic compounds (VOC) control, which was one of the control measures. Mr K K Li added that some energy efficiency enhancement measures under Phase I had been in progress, including introduction of the initial phase of the Mandatory Energy Efficiency Labelling Scheme in mid-2008, submission of the proposed mandatory implementation of Building Energy Codes to the LegCo and invitation of tenders for the district cooling system for Kai Tak Development.

10. A Member asked whether a timetable would be worked out for implementing the control measures if it was the request of the public in the public consultation exercise. Mr W C Mok said that the strong aspiration in the community for improving air quality and reviewing the appropriateness of the current AQOs was well recognized. The purpose of the public consultation was to gauge public comments on the Review, including the guiding principles, proposed set of new AQOs and control measures to be taken forward, pace of implementation and the community's willingness to pay for the measures. Having regard to the feedback received in the public consultation, the Government would consider how best to take forward the recommended measures including the timetable for their implementation.

11. The Chairman enquired about the time frame for implementing the proposed transport management measures, including low emission zones, bus route rationalization and car-free zone/pedestrianization scheme. Miss Alice Au Yeung explained that the measures had major implications in terms of area covered, impact on transport trade and public affected. Strong objections were expected. Bus route rationalization was an on-going initiative which the Transport Department conducted on a regular basis in consultation with the bus companies. Based on experience, the Government had been unable to take forward some of the rationalization plans such as reduction of bus frequency or

cancellation of duplicated bus routes due to strong objections of local communities.

12. A Member considered that adjustment of number of buses in each bus route could be put in place immediately. Miss Alice Au Yeung explained that bus route rationalization was an ongoing and long-term strategy to help reduce traffic volume and improve air quality. Through the forward planning programme, regular reviews were conducted in consultation with bus operators to optimize bus routes and frequency, reducing the number of buses in each route and rationalizing the number of bus stops along busy roads.

13. A Member noted that the emission reduction potential of using natural gas in electricity generation was significant and considered that priority should be accorded to the implementation of this measure. Given the known time line of the construction of a natural gas pipeline from Xinjiang to Guangdong and life expectancy of coal-fired plants, it should be possible to work out the timetable for increasing the ratio of natural gas in electricity generation. Mr W C Mok explained that the Government had a standing policy to require new electricity generation units to be natural gas-fired. It was expected that construction of infrastructures for receiving natural gas from the Mainland would complete by 2013. The power companies advised that construction of a gas-fired power generating unit would take about four to five years. Thus, based on the sole consideration of the set-up time, the earliest possible time to raise the ratio of natural gas in electricity generation should be four to five years from then, subject to the acceptance of the public on the consequential increase to the electricity tariff.

14. A Member welcomed the Review of AQOs. He noted that the emission reduction potential of the 19 measures varied a lot. He considered it necessary to prioritize the measures in terms of its emission reduction potential in view of the resource constraints facing the Government. Moreover, actions should be taken to reinforce the existing community support programmes which had proved to be cost-effective in reducing emissions. For example, the Cleaner Production Partnership Programme which aimed at supporting Hong Kong-owned factories in the Pearl River Delta region to reduce emissions had proved to be very cost-effective. As an illustration, a printing company was able to reduce emission of some 170 tonnes of VOC by adopting low VOC generating machines with the support of the programme.

15. A Member considered that the impacts of putting in place a new set of AQOs on other aspects had to be seriously considered and planned for. With the tightening of AQOs, the number of days with Air Pollution Index (API) exceeding the new AQOs was expected to increase and thus would cause great concern to the general public and tourists. The assessment of air quality impacts under the EIA mechanism would be greatly affected. High and frequent exceedances of the standards were expected. Actions had to be taken to address the difficulty for infrastructure projects to comply with the tightened standards under the EIA framework. Moreover, industries should be given sufficient time to adjust operating practices to meet the tightened standards.

16. Ms Anissa Wong noted Members' concerns about the time line for implementing the control measures and relative priority of the measures. She explained that the setting of new AQOs required legislative amendments of relevant ordinances. Upon enactment of the set of new AQOs, it would be an important and powerful tool for achieving emission reduction, including applications for approval under the EIA Ordinance (EIAO). However, the achievement of the new AQOs had to be accompanied by a set of emission control measures. Subject to the findings of the current consultation, the intention was to implement the 19 measures under Phase I as soon as practicable. Regarding the increasing use of natural gas in electricity generation, a Memorandum of Understanding had been signed between the HKSAR Government and the National Energy Administration of the Central People's Government to secure a stable and long-term supply of natural gas to Hong Kong. Nonetheless, views of the public were necessary to consider the pace of replacing the coal-fired power generation units by gas-fired ones as early replacement would have tariff implications. The comments of the public and stakeholders were important to understand the extent to which the public were prepared to support the proposal and share the social responsibility.

17. Ms Anissa Wong further explained that a package of transport management measures was recommended by the consultants, which would inevitably have implications on the trade and the public. The support and views of the trade and the public were necessary in the implementation of these measures, such as the pace, degree and extent of implementation as well as the acceptance of restrictions on the use of vehicles in designated areas. Detailed proposals and implementation arrangements of individual measures had to be guided by public views to cater to the needs of different areas.

18. Regarding the relative priority of various control measures, Ms Anissa Wong explained that this aspect had been discussed in detail by the “Advisory Panel on the Review of the AQOs” which offered advice on the direction, approaches and methodologies of the study. The view of the Advisory Panel was that a comprehensive approach should be adopted. While the emission reduction potential of increasing the ratio of natural gas in electricity generation was significant, vehicular emissions had greater impact on roadside air quality and the health of the general public. Equal priority should be accorded to measures with more significant emission reduction potential as well as those with major health benefits to the local communities but lower emission reduction potential. This rationale was reflected in the comprehensive range of measures proposed under Phase I. Successful implementation of the measures would depend very much on the willingness of the public to pay for the price, which included not only higher electricity tariff or bus fares, but also adjustments in life style to changes brought about by the measures.

19. A Member suggested implementing measures to encourage cycling and walking in a strategic approach especially in large-scale development projects such as Kai Tak Development. She considered Electronic Road Pricing (ERP) an important measure for improving air quality in congested areas. She was disappointed to note that it was not included in the package of measures under Phase I. Mr W C Mok explained that the Environmental Protection Department (EPD) would work together with relevant departments in implementing the transport management measures, including cycling tracks. ERP was included under Phase II as its implementation would require the availability of alternative routes. Moreover, the initial stage of ERP would probably focus on private vehicles and thus the anticipated emission reduction potential would not be significant as the major source of roadside pollution was commercial vehicles.

20. Miss Alice Au Yeung explained that overseas experience showed that the availability of alternative routes was important for successful implementation of ERP. Moreover, implementation of ERP would affect a large number of stakeholders. Detailed planning would be required to balance the interests of affected parties. Effort would continue to be made to examine the feasibility of implementing the scheme. A Member recalled that the construction of the Central-Wan Chai Bypass (CWB) running along the northern shoreline of Hong Kong Island was meant to serve as an alternative route. Introduction of ERP under Phase II would miss the chance once the CWB was in operation and used as an ordinary road. Miss Au Yeung assured Members that ERP was being

critically examined and the availability of CWB would be taken into account in evaluating the long-term strategy for implementing ERP with a view to improving both traffic volume and air quality.

21. A Member was concerned about the quality of motor fuel in the Mainland and the use of inferior fuel by local trucks which would affect the air quality in the region. He considered it important to standardize the fuel quality in the region. Mr W C Mok explained that Guangdong Province was now using the National III standard motor fuels which were on a par with the Euro III standards. The Guangdong authorities were looking into the feasibility of introducing Euro IV standards and harmonizing the fuel standards with those of other advanced countries as soon as possible.

22. A Member considered that while attention was focused on the sulphur content of diesel, effort should also be made to reduce the sulphur content of petrol. The sulphur content of some types of petrol was still too high to cope with the requirements of some advanced vehicle engines capable of higher fuel efficiency and lower emission capabilities. Mr W C Mok explained that clean fuel, be it diesel or petrol, was a prerequisite for bringing in cleaner vehicles. The Administration had been monitoring international developments with a view to tightening local vehicle emission and fuel standards as soon as practicable. A proposal to tighten the specifications of motor vehicle diesel and unleaded petrol to Euro V standards had been circulated to Members for advice. The plan was to implement the proposal with effect from 1 July 2010.

23. A Member noted that the response to incentives for early replacement of old diesel commercial vehicles was not as forthcoming as expected. He suggested imposing a time frame for banning the use of Euro I and Euro II vehicles as a driving force. Mr W C Mok explained that a proposal to increase the licence fees of old diesel commercial vehicles so as to provide additional driving force to phase them out had been submitted to the LegCo earlier. However, the proposal was not supported by the LegCo. The feasibility of adopting a mandatory retirement age limit on these vehicles would be considered.

24. A Member considered that it was necessary to pay attention to the anticipated changes in traffic flow and pattern arising from changes in the Mainland and Macao in view of the close relationship of Hong Kong with these areas. He also suggested that serious consideration be given to changing



right-hand drive to left-hand drive in order to be in line with the Mainland as well as international practices. The longer the time for the change, the higher the price to pay. Miss Alice Au Yeung agreed to consider the suggestions.

25. A Member asked whether reference had been made to the experience of other cities or conglomerates of cities sharing an air shed in the implementation of emission reduction measures, in particular on the increasing use of natural gas in electricity power generation. Mr W C Mok explained that similar to other urban cities, Hong Kong was facing two major air pollution sources which were emissions from power plants and vehicles. Measures adopted in Hong Kong in tackling air pollution sources were in line with international practices. Increasing the ratio of natural gas in electricity generation was an international trend as natural gas was cleaner and produced less greenhouse gas. In controlling vehicular emissions, measures taken by Hong Kong were similar to those adopted by overseas countries, such as introducing stringent vehicle emission standards and cleaner fuels, retrofitting old vehicles with emission reduction devices, and stepping up enforcement against smoky vehicles.

26. A Member enquired about the plan of collaboration between Hong Kong and Guangdong Province on reducing regional air pollutants in view of the regional influence. Mr W C Mok explained that a regional air quality monitoring network was set up by the HKSAR Government and Guangdong Provincial Government. With implementation of air quality improvement measures by both sides in recent years for meeting the 2010 emission reduction targets for the whole Pearl River Delta region, the air quality data gathered by the regional air quality monitoring network had recorded a reduction of Respirable Suspended Particulates (RSP) and Sulphur Dioxide (SO<sub>2</sub>) concentration by 11% and 19% respectively from 2007 to 2008. The HKSAR Government had started working with the Guangdong counterpart on the post-2010 emission reduction arrangement including targets and control measures.

27. The Chairman asked about the relationship between reduction of pollutants, such as RSP and SO<sub>2</sub>, in ambient concentration and that in emission quantity. Mr W C Mok explained that the reduction of 11% of RSP and 19% of SO<sub>2</sub> referred to changes in the ambient concentrations of the air pollutants. However, the changes in emission quantity over the same period were not available. The Chairman noted that the relationship between reduction of pollutants in emission quantity and that in ambient concentration was not a

one-to-one direct correlation. Studies showed that reduction in emission quantity by say 30% to 40% might achieve only 10% to 20% reduction in ambient concentration. Care should be taken in assessing the effectiveness of emission control measures.

28. A Member asked whether toxic chemicals such as dioxin and mercury would be included in the set of new AQOs. He noted that lead, which was included in the new AQOs, was on a decreasing trend while mercury was on an increasing trend. Mr W C Mok explained that a study focusing on toxic air pollutants was completed in 2002. The findings of the study showed that emission control should focus on PM<sub>2.5</sub> (fine suspended particulates) rather than mercury or dioxin. Moreover, there was on-going monitoring on the ambient level of dioxin and mercury and the data showed that the levels were acceptable.

29. A Member enquired about the estimated reduction of PM<sub>2.5</sub> brought about by the control measures as PM<sub>2.5</sub> had greater adverse impact on human health than PM<sub>10</sub>. Mr W C Mok explained that PM<sub>2.5</sub> accounted for about 70% of PM<sub>10</sub> in Hong Kong. Thus, the estimated reduction of PM<sub>2.5</sub> brought about by the control measures would be about 70% of that of PM<sub>10</sub>.

30. The Chairman asked about the social cost of not implementing any measure to improve air quality. Mr W C Mok explained that findings of studies conducted in 2002 showed that the estimated medical cost attributed to poor air quality was about \$1.7 billion per year, estimated premature deaths were 800 and hospital admissions were 8,000 per year. If the control measures were implemented, it was estimated that some 4,200 hospital admissions would be avoided.

31. A Member asked whether it would be possible to separate the anticipated benefits of each measure into savings in government expenditure and savings for the public. He also asked whether the savings arising from the reduction of 4,200 hospital admissions would be spent on implementation of emission control measures. This would help the public visualize the level of benefits brought about by a particular measure though there was price to pay. Mr W C Mok explained that the measures were in the conceptual stage and the cost-benefit analysis represented only a broad estimation by the consultant based on the information available. It was difficult to differentiate between the portion of benefits for the Government and those for the general public, and the savings so estimated could just be theoretical. Moreover, he understood that public

expenditure on health care was allocated on the basis of actual requirements.

32. The Chairman summarized Members' views as follows –

- (a) the Council considered that air quality was an important environmental issue in view of its implications on public health and high public aspiration. The Council supported the Review of AQOs and the proposed emission control measures;
- (b) the Council considered that a clear time frame should be laid down as soon as possible for implementation of emission control measures so that stakeholders and the general public could visualize the way forward and make efforts to achieve the targets, while adjustments could subsequently be made to the time frame in light of changes in circumstances and public feedback;
- (c) the Council considered that concerted efforts from various government departments was crucial to taking forward the measures under different policy portfolios in order to achieve effective results;
- (d) the Council agreed that a comprehensive package of measures was necessary to tackle air pollution problems. Priority should be accorded to measures with more significant emission reduction potential, such as increasing the ratio of natural gas in local electricity generation, to inspire confidence of the public and show the Government's commitment;
- (e) the Council considered that other emission control measures, such as ERP and promotion of cycling and walking, should be seriously considered at an early stage to tie in with the timing of development projects. Continuous efforts should also be made to encourage community support programmes, such as education programmes to induce changes in life style and programmes on cleaner production in the Pearl River Delta region;
- (f) the Council considered it important to plan ahead for aspects which would be affected by the setting of new AQOs, such as the yardsticks in air quality assessment under the EIA mechanism,

assessment of API and preparation of industries to meet the tightened standards; and

- (g) the Council considered that a strong message should be sent to the public, with concrete facts and figures, that while we need to shoulder the cost and responsibilities for improving air quality, the cost of doing nothing would be even higher. The costs involved not only health costs but also economic costs in affecting Hong Kong's competitiveness as a world class city. Improvement of air quality called for support of the community.

**Agenda Item 4 : EIA report on Proposed Development at Fung Lok Wai, Yuen Long**

*(ACE Paper 18/2009)*

33. A Member declared interest as the organization that he participates in was involved in the Fung Lok Wai (FLW) development proposal. However, he had no direct or personal involvement in the project. The meeting agreed that the Member could stay at the meeting but should abstain from the discussion of this item in view of his indirect relationship with the project.

34. Mr C W Tse briefed Members on the background, updated progress and proposed way forward of the FLW development proposal. The EIA report on "Proposed Development at Fung Lok Wai, Yuen Long" was discussed at the Council meeting on 8 October 2008. The Council endorsed the EIA report with some conditions. One of the conditions was to require the project proponent to provide an undertaking to take sole responsibility for the management of the Wetland Nature Reserve (WNR) until a successor could be found to the satisfaction of the EPD. On top of the conditions, the Council also recommended EPD to follow up with the project proponent to provide an undertaking to ensure that the parent companies of the project proponent would take up the responsibility if the project proponent failed to do so. The EPD sought legal advice which indicated that imposing the "undertaking" or a "parent company guarantee" under the EIAO was inappropriate. In light of the legal advice, EPD proposed the courses of action as set out in paragraph 11 of the paper.

35. The Chairman considered that the creation, management and maintenance of the WNR were an integral part of the development project because the site was an ecologically important area. The Council had the responsibility

to ensure that the ecological impacts of the project were adequately mitigated. He noted that the project proponent had confirmed at the EIA Subcommittee meeting held in September 2008 that until a successor was identified, the parent companies would undertake to provide long-term back-up of the financial responsibility for the WNR. In view of the legal advice, the Council had to give advice on the proposed way forward.

36. A Member sought clarification on the stance of the project proponent in undertaking the responsibility of managing the WNR. Mr C W Tse explained that the project proponent had provided a letter stating their position to honour their undertaking as shown at Annex C of the paper. However, the legal advice was that it would not be appropriate to include the “undertaking” as one of the conditions for approval of the EIA report as recommended by the Council.

37. A Member recalled that the EIA report on “Proposed Comprehensive Development at Wo Shang Wai, Yuen Long” endorsed by the Council in 2008 was similar to the FLW project in which the project proponent was responsible for the construction and maintenance of a Wetland Restoration Area as part of the development. Mr C W Tse replied that similar to the case of FLW, the project proponent of Wo Shang Wai had provided a letter of undertaking for the management of the Wetland Restoration Area. For the FLW case, since a recommendation by the Council was to seek an undertaking by the parent companies, a third party in the context of EIA mechanism, legal advice was sought on the form of undertaking needed and drafting of the conditions. However, the subsequent legal advice was that it would not be appropriate to include such undertakings as conditions for approval of the EIA report.

38. A Member asked how the original intention of the Council in maintaining the sustainability of the WNR could be reflected in the proposed courses of action. Another Member asked whether there would be a process making the condition relating to the undertaking enforceable in future. Mr C W Tse said that the legal advice was that demand for an undertaking did not fall under the scope of the EIAO and it was not appropriate to impose the undertaking as a condition for approval of the EIA report. The EIAO, however, enabled the imposition of any technical measures required to mitigate the impacts and to protect the WNR. The Government would pursue a proper vehicle to assure long-term commitment on management of the WNR through other mechanisms such as the planning process and land lease mechanism.

39. Mr P Y Tam made the following comments from the planning perspective –

- (a) the Government would probably have to deal with a party other than the project proponent in handling the long-term management and maintenance of the WNR after the properties were sold;
- (b) whilst the paper suggested that the detailed design, maintenance and management plan with implementation proposals and detailed proposals would be subject to the satisfaction of AFCD, he queried what measures could the latter take to remedy the situation and enforce the compliance on the private land, in case of non-performance by the project proponent;
- (c) the Town Planning Board (TPB) was not an implementation agent and had to rely on other relevant ordinances and government departments in the enforcement of approval conditions. Similar to EPD, the TPB was also not in a position to impose a condition or requirement on a third party. Hence, the TPB would not be an effective platform for securing commitment from the project proponent or its parent companies for the long-term management of the WNR;
- (d) he recalled that in April 2008 when the Council considered the Sha Lo Tung case where a conservation proposal involved the private sector, a high level official said that regarding the concern about lack of commitment, 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 project proponent. And that in October 2008 when the Council further considered that case, Mr Tam said that the Government should consider setting up institutional mechanisms such as a high level committee comprising representatives of relevant bureaux and departments, including EPD, Development Bureau and Lands Department, to steer and monitor the process and lay down effective administrative measures to guide and control the development;
- (e) he was amazed that the paper still placed the burden on the TPB

approval condition despite the Planning Department's advice, and that no mention was made regarding the possibility or otherwise of lease enforcement and any role of the Lands Department;

- (f) the undertaking of the Wo Shang Wai project in managing the Wetland Restoration Area, to his understanding, was not included in the lease conditions;
- (g) a precautionary approach was usually adopted in considering protection of wetland and conservation sites and thus care should be taken to ensure that the tools to be employed are implementable; and
- (h) further discussion among relevant government departments should be made to explore an innovative approach to ensure that the enforcement of long-term management and maintenance of the WNR by the project proponent or future management agent could be secured.

40. A Member asked whether the project proponent's undertaking at Annex C could be treated as a self-contained legally binding document to secure the project proponent's obligation for the long-term management of the WNR. She recalled that the project proponent was required to set up a foundation or trust with seed money to ensure the sustainability of the WNR. She wondered whether this could be included as a condition in the EP. Another Member asked whether it would be possible to engage the project proponent in a perpetual commitment with legal back-up to ensure its long-term commitment in managing the WNR. Given that the company was set up for the project, it was necessary to have a secured mechanism to ensure that it was a long-term commitment.

41. Mr C W Tse agreed that there were limitations under different legislation and jurisdictions. The proper vehicle to assure long-term commitment on management of the WNR would require further discussions among relevant government departments at a later stage. In view of the complexity of the issue, time was required for the detailed exploration of the appropriate mechanism, including the possibility of setting up a trust fund or similar mechanisms. Under the EIAO, EPD had to decide on the approval of the EIA report at the present stage. Administratively, it was the intention of EPD not to issue an EP for the project until the issue of assuring long-term management

responsibility of the WNR could be settled. The project proponent could not start the construction works now even with the approval of the EIA report.

42. A Member asked whether it would be feasible to request the project proponent to incorporate its commitment to the long-term management responsibility into the EIA report. In approving the EIA report, the requirement was part and parcel of the commitment of the project proponent without the need for a separate undertaking.

43. Ms Anissa Wong said that some innovative approaches would be required to ensure that the commitment of the project proponent could be honoured in light of the legal advice. There was no disagreement among government departments on the importance of identifying appropriate legal mechanism and enforceable tools to require the project proponent to honour its commitment. As far as the EIA process was concerned, the timing for approving the EIA report would due on 1 December 2009. The proposed way forward was set out in paragraph 11 of the paper. It was recommended that the EPD would approve the EIA report with appropriate conditions but without putting the “undertaking” from the project proponent as an approval condition. Nonetheless, the EP would not be issued until the issue of assuring long-term management responsibility could be settled. TPB might, in considering the planning applications, impose such conditions of approval as it considered fit. Other than the town planning process, there might be other mechanisms, such as the land lease arrangement or other agreements to be made.

44. Mr P Y Tam emphasized that although he was not speaking on behalf of the TPB, he understood that the TPB, in giving planning approvals, would not impose conditions in the approval conditions that were not implementable and enforceable. Mr C W Tse said that the Government was committed to protect the WNR. After the approval of the EIA report, EPD would work with relevant government departments to follow up with the project proponent on the details of the proper vehicle to assure long-term commitment on management of the WNR, including funding arrangement, monitoring programme and an effective enforcement mechanism.

45. A Member suggested making reference to the collective responsibilities of building owners in ensuring the safety of a slope in the jurisdiction of the management area. It was not unusual for property owners to share some responsibilities, sometimes with legal obligation, for the maintenance



of common areas. The project proponent had to sort out its legal obligation with the property owners. The Chairman considered that it might be a possible alternative, but not a desirable one. If the responsibility was passed to the property owners, he doubted whether the same ecological function and effectiveness of the WNR could be achieved. The rationale of the Council in making the recommendation was to ensure that the parent companies would provide a back-up to take over the responsibility to secure the integrity of the WNR in a holistic manner on a long-term basis.

46. A Member considered that the crux of the matter was the lack of tools to secure the commitment of the project proponent and its parent companies in a legally binding approach. It was necessary to explore alternative tools outside the EIA mechanism to ensure that the project proponent and its parent companies would honour their promise. He suggested the Government entering some contractual agreements with the project proponent outside the framework of the EIAO, or the Government might require the project proponent to set up a trust fund, such as an environmental trust fund with seed money, to ensure the sustainability of the WNR on a long-term basis.

47. A Member supported the proposal of another Member of setting up a trust fund. The other Member considered that it was a matter of trust. With the setting up of a trust fund, the key issue was the implementation and enforcement from the EIA point of view and the Council had to rely on the authority's advice.

48. Ms Anissa Wong said that the proposed option of setting up a trust fund had to be discussed with the project proponent, in particular on the management and funding arrangements and commitments in relation to the maintenance of the WNR. Moreover, views of relevant government departments had to be sought on the means to effect the requirement of setting up a trust fund in the approval process of the project, including the town planning process, granting of land lease and issue of EP.

49. Upon the Chairman's enquiry, Ms Anissa Wong said that EPD would take up the coordinating role in liaising with relevant parties and government departments to work out feasible options and discuss with the project proponent. EPD would report back to the Council. She assured Members that when approving the EIA report of the project, EPD would reflect the concerns of the Council.

50. The Chairman was concerned about the legal advice that the issue of assuring long-term management responsibility did not fall under the scope of the EIAO as it would have implications on the processing of future EIA projects. The purpose of creating the WNR was to compensate for the loss of ecologically important area and thus the long-term management of this compensation should form part and parcel of the mitigation measures in the context of the EIA framework.

51. A Member shared the Chairman's concern. He worried that in case the project proponent in a future project refused to commit to the long-term management of an ecologically important site which was part of the development project, the Council would face a difficult situation as there were insufficient justifiable grounds to reject the EIA report. Mr C W Tse explained that the FLW project was relatively unique. Under normal circumstances, it would not be necessary to have an undertaking by the project proponent to ensure the compliance of conditions in the EIA process. In case the project proponent failed to comply with the conditions, legal actions could be taken against the project proponent. In light of the special circumstances of the FLW project, considerations had to be given to explore and establish an appropriate mechanism to deal with the case and similar cases in the future.

52. The Chairman considered that one of the approaches in examining EIA reports of similar nature in future was to require the project proponent to submit a more detailed management plan, including the long-term management and maintenance regime as well as funding arrangements, to avoid the need of asking for an undertaking, particularly from a third party other than the project proponent.

53. A Member enquired about guidelines on cultivating fish ponds within the WNR. He said that if the fish ponds were drained, it would attract more birds in view of the worms and benthic organisms being exposed in the ponds. Mr C C Lay explained that the project proponent was required to submit a Habitat Creation and Management Plan for management of the WNR. In vetting the plan, AFCD would ensure that the fish ponds would be properly managed for the benefits of the birds.

54. After discussion, the Chairman concluded Members' views as follows –

- (a) the Council considered that the creation, management and maintenance of the WNR was an integral part of the FLW development proposal. The WNR should be carefully designed, properly managed and adequately funded in the long-term to serve its ecological function;
- (b) in examining the EIA report on FLW project in 2008, the Council considered that it was important to ensure that the project proponent would take the responsibility for the long-term management of the WNR and the parent companies would take up the responsibility if the project proponent failed to do so. The Council had not changed this position;
- (c) the Council noted with disappointment about the legal advice that imposing an “undertaking” or a “parent company guarantee” under the EIAO was inappropriate. The Council was particularly concerned about the advice that the issue of assuring long-term management responsibility of the WNR did not fall under the scope of the EIAO as it would have implications on the processing of future EIA reports;
- (d) in light of the legal advice and given the ecological importance of the site, the Council considered that the integrity of the WNR should be assured and its long-term management should be guaranteed;
- (e) the Council suggested that in parallel with the approval of the EIA report, relevant government departments, under the coordination of EPD, to examine and work out proposed mechanism to ensure the sustainability of the long-term management and maintenance of the WNR and report to the Council; and
- (f) the Council encouraged the project proponent to demonstrate to relevant authorities and the public about the viability and sustainability of the long-term management proposal of the WNR.

55. A Member said that while she supported the proposed way forward, she was concerned about the availability of expertise of the project proponent to manage the WNR in the long run. Mr C W Tse responded that for the FLW project, the WWF(HK) was involved as a conservation partner and had been

providing expert advice on the management of the WNR.

**Agenda Item 5 : Report on the 111<sup>th</sup> EIA Subcommittee meeting**  
**(ACE Paper 19/2009)**

56. The Chairman informed Members that the paper reported on the recommendation of the EIA Subcommittee on the EIA report on “West New Territories Landfill Extensions”.

57. The Chairman informed Members that the public inspection period of the EIA report was from 25 August to 23 September 2009. All public comments received by the EPD had been circulated to Subcommittee Members for reference before the Subcommittee meeting. The Subcommittee had decided that the project proponents would not need to attend the full Council meeting.

58. The Chairman of EIASC reported on the recommendation of the Subcommittee on the EIA report.

59. A Member considered that landfill disposal was not an optimal solution to waste management problem. The Government should work out a comprehensive package of measures to deal with the problem in the long run. The Chairman agreed that a comprehensive approach had to be taken to tackle the waste management problem. Extension of landfills should only be one of the many measures and landfill disposal should only be limited to the disposal of unavoidable waste in the long run.

60. The meeting agreed the recommendation of the EIA Subcommittee on the EIA report. The Chairman concluded that the Council endorsed the EIA report with the conditions and recommendation set out in paragraphs 11 and 12 of the paper.

**Agenda Item 6 : Any other business**

**Proposed meeting schedule for 2010**

61. The proposed meeting schedule of the Council for 2010, which had been circulated to Members, was endorsed.

Tentative items for discussion at the next meeting

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

**Agenda Item 7 : Date of next meeting**

63. The next meeting was scheduled for 14 December 2009.

**ACE Secretariat  
November 2009**