

**Confirmed Minutes of the 179th Meeting of
the Advisory Council on the Environment
held on 13 June 2011 at 2:30 pm**

Present:

Prof Paul LAM, JP (Chairman)
Prof CHAU Kwai-cheong, JP (Deputy Chairman)
Ms Teresa AU
Dr Dorothy CHAN, BBS
Ms Betty HO
Mr Edwin LAU, MH
Prof LI Xiang-dong
Dr MAN Chi-sum, JP
Miss Yolanda NG
Dr Alfred TAM
Mr TSANG Kam-lam, JP
Dr Carrie WILLIS, SBS, JP
Ms Pansy YAU
Dr YAU Wing-kwong
Dr Ray YEP
Prof Ignatius YU
Mr Carlson K S CHAN, JP (Secretary)

Absent with Apologies:

Mr Oscar CHOW
Prof FUNG Tung
Mr Michael JEBSEN, BBS
Prof Joseph LEE
Ir Dr LO Wai-kwok, BBS, MH, JP
Mr Simon WONG, JP

In Attendance:

Ms Anissa WONG, JP	Permanent Secretary for the Environment
Mr Y K CHAN	Acting Assistant Director (Conservation), Agriculture, Fisheries and Conservation Department
Mr LAU Sing	Assistant Director/Technical Services, Planning Department
Ms Esther LI	Principal Information Officer, Environmental Protection Department (EPD)
Ms Josephine CHEUNG	Chief Executive Officer (CBD), EPD
Ms Joanne CHIN	Executive Officer (CBD), EPD

Miss Kim KWAN

Executive Manager (CBD), EPD

In Attendance for Agenda Item 3:

Mr Elvis AU, JP

Assistant Director (Nature Conservation and
Infrastructure Planning), EPD

Action

The Chairman informed Members that Prof Wong Ming-hung, Chairman of Waste Management Subcommittee, tendered resignation from the Council due to personal reasons. The Waste Management Subcommittee would have to elect a new Chairman.

Agenda Item 1 : Confirmation of the draft minutes of the 178th meeting held on 16 May 2011

2. The draft minutes were confirmed without amendments.

Agenda Item 2 : Matters arising from the minutes of the 178th meeting held on 16 May 2011

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

Agenda Item 3 : Arrangements to implement conservation and development proposals involving the priority sites for enhanced conservation (ACE Paper 9/2011)

4. A Member declared that the organization in which he served as the Chief Executive Officer was the conservation agent of the Sha Lo Tung project under the public-private partnership (PPP) scheme. The meeting agreed that he could stay for the discussion as the paper focused on the general policy and proposed arrangements of the PPP scheme instead of a particular project.

5. Mr Elvis Au briefed Members on the background and details of the proposed funding and land arrangements to implement the PPP scheme which was promulgated under the New Nature Conservation Policy in 2004.

6. A Member asked about the justifications from the perspective of the general public for implementing the scheme as developments would be allowed in some parts of ecologically important sites. Mr Elvis Au explained that the Government conducted a comprehensive review of the nature conservation policy and introduced the New Nature Conservation Policy which included the PPP scheme and Management Agreement (MA) scheme. The major objective of the PPP scheme was to identify practicable ways to better achieve the nature conservation objectives, and in particular, to enhance conservation of ecologically important sites which were in private ownership. The scheme provided incentives to landowners to enhance conservation of the priority sites by allowing developments of an agreed scale at the less ecologically sensitive portions provided that the developer undertook to conserve and manage the rest of the site that is ecologically more sensitive on a long-term basis.

7. A Member enquired about the selection criteria for a competent conservation agent to implement the Conservation Management Plan (CMP) for a project. Mr Elvis Au explained that the major consideration on the suitability of a conservation agent was its experience, knowledge and performance in managing nature conservation projects. The Agriculture, Fisheries and Conservation Department (AFCD) would be consulted on the suitability of a conservation agent.

8. The Member asked about the party which the conservation agent would report to. Mr Elvis Au explained that the conservation agent would have to report to several parties under a check and balance system. The agent had to submit CMP proposal and regular monitoring reports to the Environmental Protection Department (EPD) and AFCD as stipulated in the Environmental Permit for projects controlled under the Environmental Impact Assessment Ordinance (EIAO) as well as submitting funding application and regular reports to the Environment and Conservation Fund Committee (ECFC). The approved CMP and monitoring reports had to be made available to the public.

9. The Member was concerned about possible conflict of interest between the project proponent and conservation agent in the course of implementing the CMP. Mr Elvis Au explained that while the conservation agent was identified by the proponent project, the appointment of the agent had to be agreed by EPD and AFCD as the authorities. The performance of the conservation agent would be closely monitored by a transparent monitoring

system. For example, the agent was required to submit regular monitoring reports which would be evaluated against a set of targets, criteria and technical requirements laid down in the EIA report. Regular on-site inspections would be conducted by the authorities.

10. A Member asked about the scenario of unsatisfactory performance of the conservation agent. Mr Elvis Au explained that the project proponent would have to identify another agent. In the event that the project proponent could not identify a competent agent or the ECFC disapproved the application of the agent identified by the project proponent, AFCD would be prepared to identify a competent agent to apply for funding from the ECF, and would take up such work as the conservation agent during the interim period if necessary. On the possibility of having the conservation agent being terminated by the project proponent without agreement of the authorities, Mr Au explained that while the responsibility of identifying a conservation agent rested with the project proponent, EPD, AFCD and ECFC would consider the suitability of the agent and proposals submitted under established requirements.

11. In reply to the enquiry of a Member, Mr Elvis Au confirmed that the new conservation agent would need to re-apply for funding from the ECF for the project in the event that there was a change in the agent.

12. A Member supported the proposed funding arrangement of requiring conservation agents to apply for funding from the ECF direct as it could enhance effectiveness and transparency of the conservation works. She asked whether the authorities would take action in case the conservation agent was terminated by the project proponent because the conservation agent revealed some malpractices of the project proponent. Mr Elvis Au explained that EPD and AFCD would closely monitor the performance and relationship between the project proponent and conservation agent. Given the transparency of the monitoring mechanism, both parties had to fulfill their roles in accordance with established requirements. As shown in the experience of projects under the MA scheme, the funding approval was granted by the ECFC to the conservation agent and effectiveness of the agent would be assessed by objective criteria.

13. A Member asked about the scenario in which the general public was not satisfied with the performance of the conservation agent even though the project proponent felt otherwise. Mr Elvis Au explained that there was a

stringent control mechanism, including periodical allocation of funds from the ECF upon satisfactory performance of the conservation agent and submission of regular monitoring reports for evaluation by the ECFC in conjunction with EPD and AFCD with reference to objective criteria. Upon receipt of public complaints or comments, EPD and AFCD would conduct investigation, take appropriate follow-up actions and identify areas for improvement where necessary. Mr Y K Chan added that AFCD would closely monitor the work of the conservation agent and provide advice to the agent on an on-going basis.

14. A Member enquired about the duration covered by ECF's funding allocation. Mr Elvis Au said that the funding would normally cover a period of three years and might be renewed as in the case of projects under the MA scheme.

15. A Member noted that the proposed funding arrangement established a tripartite relationship between the project proponent, conservation agent and the Government under the PPP scheme. To ensure that the project could achieve the objective of enhancing conservation, it would be important to put in place a comprehensive management and monitoring mechanism to maintain check-and-balance and settle disputes, if any, in future.

16. Ms Anissa Wong said that the Council considered the EIA report on proposed development at Fung Lok Wai in 2008 and recommended EPD to develop necessary mechanism to ensure that the ecological mitigation and enhancement measures proposed in the EIA report would be fully implemented and sustained. The proposed arrangements aimed to draw up a funding and land management framework to address the concerns by providing a transparent mechanism to achieve the policy objectives. First, the funding for long-term management of the ecologically sensitive area could be secured under the proposal. While the private land would remain under private ownership, the project proponent was required to donate an upfront lump sum to the ECF to generate recurrent incomes to support the pledged conservation programmes. As a statutory trust, the ECF had put in place a credible and accountable mechanism for holding the donations by the project proponents. The second objective was to ascertain that the conservation plan would be implemented as pledged. This could be achieved by requiring the conservation agent to apply for funding from the ECF. The approved funding would be time-limited but might be renewed, provided that the application continued to meet the criteria. The ECFC would decide on the funding applications, in consultation with EPD and AFCD, having

regard to various factors including the performance and capability of the conservation agents.

17. A Member supported the proposed funding arrangement and the importance of maintaining a control mechanism. He shared with Members his experience in relation to the “Fung Yuen Butterfly Reserve” project under the MA scheme. Detailed funding proposals were submitted to the ECFC and half-yearly progress reports on site management were submitted to EPD and AFCD for evaluation against the targets. To enhance transparency, AFCD was invited to join the advisory committee for the project and attend on-site meetings to give advice. He considered that the proposed funding arrangement for PPP scheme could ensure effective cooperation between the project proponent, conservation agent and the Government.

18. A Member asked whether the fund management could make use of the donations across different projects especially when the number of projects increased. Mr Elvis Au explained that ECF was a statutory trust established under the ECF Ordinance. The ECF Investment Committee would follow the requirements and exercise discretion where appropriate to consider investment strategies and allocate the use of fund. For administrative purpose, a certain amount of fund would normally be set aside and earmarked for a particular project.

19. A Member supported the proposal which facilitated the Government to partner with private sector to protect the environmentally important areas under private ownership. He asked about the yardsticks in determining the upfront lump sum from the project proponent and the review mechanism. Mr Elvis Au explained that the project proponent was required to set out the proposed CMP in the EIA report and estimates on the amount of capital and recurrent expenses required. AFCD would then scrutinize the funding proposal. The actual amount of upfront lump sum would be reviewed in light of the final CMP to be submitted to EPD and AFCD as well as the estimated investment rate of return.

20. A Member was concerned about the arrangement in meeting shortfall of funds to cover the operating costs of CMP on a long-term basis as the recurrent costs in the long run would be much higher than the initial capital outlay. To avoid possible impacts arising from the selling of the development, he wondered whether it would be necessary to require the developer to notify the

small individual buyers in the agreement contract about the possible legal liability for long-term management of the ecologically sensitive portion of the area.

21. Mr Elvis Au said that the experience of conservation projects was that after the initial capital outlay, the recurrent expenses would gradually decrease over the years. The setting up of the wetland and maintenance in the first few years required the highest amount of funding. Under the PPP scheme, the project proponent was required to provide estimates on the initial capital outlay as well as recurrent costs in maintaining the operation on a long-term basis. The proposed funding arrangement of injection of an upfront lump sum to the ECF was to ensure that the amount would be sufficient to generate recurrent incomes to support the recurrent expenses. As regards legal liability of individual buyers of developments, it was important to note that there would be a condition in the modified lease for the privately owned land within the conservation portion that alienation would be restricted except as a whole and unless with the prior approval of the Director of Lands to ensure that the land would remain in the ownership of the project proponent. Mr Y K Chan added that experience in conservation projects showed that the initial capital outlay and maintenance costs of a habitat in the first few years was higher. Once the habitat was stabilized, the recurrent costs would be relatively stable.

22. Ms Anissa Wong said that the funding requirements for a project usually included initial capital outlay and recurrent costs. The arrangement of the capital costs could be sorted out at the early stage of the project. The purpose of the proposed funding arrangement was to ensure that recurrent costs would be secured on a long-term basis for ongoing management and maintenance works. The amount of the upfront lump sum donation to the ECF would be determined on the basis of the estimated recurrent cost for implementing the CMP set out in the EIA report and the assumed long-term rate of investment return of the ECF. The amount of the lump sum would be evaluated by professionals and to be agreed between the Government and project proponent. The ECF Investment Committee would be invited to review its investment strategies with a view to generating incomes to support the recurrent funding requirements of the conservation programmes as pledged for the specific sites in the long term. The proposed funding and land arrangements, including the non-alienation of the private land, were designed to ensure that the land would remain in the ownership of the project proponent without shifting the liability to small individual owners if the developments were sold.

23. A Member enquired about the applicability of the funding arrangement to other conservation projects outside the 12 priority sites. Mr Elvis Au explained that the funding arrangement basically applied to the 12 priority sites under the PPP scheme. Nonetheless, there might be other sites that were in private ownership and were considered to have ecological merits as indicated in their respective land use zonings. The proposed funding and land arrangements could also be extended to cover them though each case would need to be assessed on its merits.

24. A Member supported the proposal. He asked whether project proponents of future applications under the PPP scheme would be required to submit EIA reports under the EIAO given that the development proposals would involve priority sites on ecologically sensitive sites. He made reference to the proposed development at Sha Lo Tung. The original scope of the works proposed by the project proponent in 2008 did not constitute the project a designated project under the EIAO. No Environmental Permit could be issued though the project proponent submitted an environmental assessment report for the consideration of the EPD and the Council. Subsequently, the project proponent made certain revisions to the proposal and the changes constituted the project to become a designated project under the EIAO. The example showed that it would be difficult to control the project by means of Environmental Permit if the development did not constitute the project as a designated project under the EIAO.

25. Mr Elvis Au explained that projects which were not covered by the EIAO would be controlled by other mechanisms. For example, the developments would require approval of the Town Planning Board (TPB) which placed much emphasis on conservation of ecologically sensitive areas and sustainability of conservation measures. Moreover, the development proposals would require land exchange or lease modifications which would be subject to the approval of the Director of Lands.

26. A Member noted that the conservation parts of the priority sites were usually zoned as Site of Special Scientific Interest, Green Belt or village zones. She asked whether there would be corresponding zoning for the conservation parts in terms of planning process upon implementation of the projects. Mr Elvis Au referred to the development proposal of Fung Lok Wai. The TPB amended the Outline Zoning Plan and rezoned the site from

“Conservation Area” to “Other Specified Uses (Comprehensive Development and Wetland Enhancement Area)” which allowed limited low-density private residential/passive recreational development in exchange for committed long-term conservation and management of the remaining fish ponds or wetland within the development site. For the Sha Lo Tung case, the development portion of the site was currently zoned as “Green Belt” and the developer had indicated that they would apply for zoning amendment where necessary to reflect the appropriate land use of the development proposal.

27. In response to a Member’s enquiry, Mr Elvis Au confirmed that the private land owners of the priority sites would not be allowed to develop their land unilaterally without agreement of the Government as the nature of the land use was restricted by planning zones or land leases.

28. In response to another Member’s enquiry, Mr Elvis Au confirmed that access to the site by members of the public would be confined to the ecologically sensitive site under private ownership for nature appreciation or education purposes with suitable control such that the ecological features of the site would not be adversely affected.

29. The Chairman was concerned about the scenario that the project proponent, which was usually a newly set up subsidiary company under the parent developer for a particular project, would close down or might go bankrupt after selling the developments in the development site. Moreover, it might be difficult to secure the cooperation of the subsidiary company after the lapse of time to maintain the tripartite relationship under the PPP scheme. Ms Anissa Wong explained that the proposed funding and land arrangements aimed to draw up a framework to address the potential problem. At the start of the project, the proponent was required to inject an up-front lump sum to the ECF which was sufficient enough to support the recurrent funding requirements in the long run without the need of seeking contributions on an annual basis. The proposed land arrangement would require lease modification for the privately owned land within the ecologically sensitive portion of the site which would remain in the lessee’s ownership and alienation would be prohibited unless with prior approval of the Lands Department. In case the subsidiary company closed down or went bankrupt, actions would be taken in accordance with the land title and relevant clauses.

30. A Member considered that it would be important to stipulate clearly in the user clause of the land lease that the conservation portion of the site could not be used for purposes other than conservation, no alienation would be allowed and the Government could enter the site for appropriate actions if the lessee went bankrupt.

31. A Member enquired about the scenario that the project proponent declined to continue the partnership under the PPP scheme after a certain period of time. Mr Elvis Au explained that the responsibilities of the project proponent were clearly laid down in the Environmental Permit issued under the EIAO, in the approved conditions by TPB or under the lease conditions.

32. A Member considered the term “contribution” would be more appropriate than “donation” as stated in the paper in reflecting the nature of the upfront lump sum to be injected into the ECF. He asked about the estimated number of projects to be taken forward under the PPP scheme in the coming five years as there was not yet a project being implemented since the promulgation of the New Nature Conservation Policy in 2004. He also noted that the number of non-government organizations (NGOs) with the expertise and manpower to serve as conservation agents was limited. Mr Elvis Au said that two projects at Sha Lo Tung and Fung Lok Wai were being taken forward. It would be difficult to forecast the number of projects in the coming years. As regards the availability of competent NGOs to serve as conservation agents, the implementation of the MA scheme showed that experience in conservation works had been widely shared among interested parties. Mr Y K Chan added that NGOs who were interested in participating in the PPP scheme but lacked expertise in specific areas could seek external expert advice as necessary.

33. The Chairman summarized Members’ views as follows –

- (a) the Council supported the proposed funding and land arrangements to implement the PPP scheme with the objective to conserve the ecologically important sites under private partnership;
- (b) the Council considered it important to put in place a vigorous and comprehensive management and monitoring mechanism to maintain check-and-balance to ensure the project could achieve the objective of enhancing conservation on a long-term basis; and

- (c) the Council considered it necessary to include relevant terms in relevant lease conditions and agreements to ensure that the conservation portion of the land could not be used for purposes other than conservation, no alienation of the site would be allowed and the Government could enter the site for appropriate actions if the lessee went bankrupt.

Agenda Item 4: Any other business

Tentative items for discussion at the next meeting

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

Agenda Item 5 : Date of next meeting

35. The Chairman informed Members that the next meeting was scheduled for 11 July 2011.

(Post-meeting note: The meeting scheduled for 11 July 2011 was cancelled.)

ACE secretariat
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