

**Confirmed Minutes of the 181st Meeting of
the Advisory Council on the Environment
held on 17 October 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
Prof FUNG Tung
Mr Michael JEBSEN, BBS
Mr Edwin LAU, MH
Prof Joseph LEE
Dr MAN Chi-sum, JP
Miss Yolanda NG
Dr Alfred TAM
Mr TSANG Kam-lam, JP
Dr Carrie WILLIS, SBS, JP
Mr Simon WONG, 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
Ms Betty HO
Prof LI Xiang-dong
Ir Dr LO Wai-kwok, BBS, MH, JP

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 LAU Sing	Assistant Director/Technical Services, Planning Department

Ms Esther LI	Principal Information Officer, Environmental Protection Department (EPD)
Miss Evelyn LEUNG	Chief Executive Officer (CBD), EPD
Ms Joanne CHIN	Executive Officer (CBD), EPD

In Attendance for Agenda Item 3:

Mr Bernard Charnwut CHAN, GBS, JP	Chairman, Council for Sustainable Development (SDC)
Mr WONG Kam-sing	Convenor, Support Group on Combating Climate Change: Energy Saving and Carbon Emission Reduction in Buildings, SDC
Ms Margaret HSIA	Principal Assistant Secretary (Sustainable Development), Environment Bureau (ENB)
Mr Damian CHAN	Assistant Secretary (Sustainable Development), ENB
Ms Joyce CHOW	Senior Project Officer, The Kadoorie Institute, The University of Hong Kong [Programme Director]
Mr Darwin LEUNG	Project Officer, The Kadoorie Institute, The University of Hong Kong [Programme Director]
Mr Kevin CHEUNG	Project Officer, Office of Service-Learning, Lingnan University [Independent Analysis and Reporting Agency]
Ms Shirley KWOK	Vice President, Head of Group Corporate Affairs, Asia Financial

In Attendance for Agenda Item 4:

Mr C W TSE, JP	Assistant Director (Environmental Assessment), EPD
Mr Simon LEE	Deputy Law Officer (Civil Law) (Planning, Environment, Lands and Housing Unit), Department of Justice (DoJ)

Action

Agenda Item 1 : Confirmation of the draft minutes of the 180th meeting held on 19 September 2011

The draft minutes were confirmed without amendments.

Agenda Item 2 : Matters arising from the minutes of the 180th meeting held on 19 September 2011

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

Agenda Item 3 : Council for Sustainable Development's Public Engagement on "Combating Climate Change: Energy Saving and Carbon Emission Reduction in Buildings"
(ACE Paper 14/2011)

3. Two Members declared interest that they were members of the subcommittee and support group respectively under the Council for Sustainable Development (SDC). The meeting agreed that they should stay on as their affiliation with the work of the SDC should prove valuable in the discussion.

4. Mr Bernard Chan briefly introduced the public engagement exercise launched by the SDC in August 2011 which aimed to gauge public's views on possible incentives, concerns and action plans on energy saving and energy efficiency in buildings with a view to combating climate change. Recognizing that buildings accounted for 90% of electricity consumption in Hong Kong, four core building user groups (i.e. household, office, retail and catering) had been targetted by the SDC. The engagement exercise took a bottom-up approach to engage building users to work together to maximize energy efficiency and minimize carbon emission in buildings. The engagement process would end in December 2011. It was the SDC's plan to submit its report with recommendations to the Government by the first quarter of 2012. Mr WONG Kam-sing then briefed Members on the various issues raised in the Invitation for Response document for the public engagement.

5. In answering the enquiry from a Member on the relationship between this exercise and the activities of the Hong Kong Green Building Council (HKGBC) which promoted similar initiatives, Mr WONG Kam-sing first declared that he was one of the directors and founders of the HKGBC. He explained that the engagement by the SDC was focused on collecting views in the community so as to assist the Government in formulating policies, regulations or initiatives with regard to enhancement of energy efficiency and reduction in carbon emission in buildings. He said that the HKGBC would support and work with the Government in launching its environmental initiatives.

6. A Member commented that the issues put forward in the current exercise were apparently focused on those which would be implemented on a voluntary basis as underlined by the notion of “saving money by saving energy”. He said that usually there was a building ordinance and related legislations governing how to build buildings in energy-efficient ways in those cities which had turned greener. Given that air conditioning was a prime source of energy consumption in Hong Kong, there were rooms for improvement both in terms of the effectiveness and efficiency of the air conditioning system. The Government should show its determination in reducing energy consumption by introducing legislations to set mandatory requirements for “systemic enhancement” in buildings complemented by behavioural change in the community. International experience had shown that legislations had provided a level playing field obligating all members in the community to observe the energy-saving standards for a greener world.

7. Mr Bernard Chan said that while a top-down approach by way of full legislation would be an easier and effective way for the Government to bring about changes, it was increasingly difficult to pursue policies without a general consensus within the community in Hong Kong. He quoted the implementation of carbon emission tax in Australia and the resistance from the public as an example. He acknowledged that it was human nature for individuals to be driven by self interest, and the idea behind the issues put forward was to encourage them to save energy which was also a means of saving money. The SDC would analyze the views and responses collected during the engagement exercise and gauge the sentiments of the stakeholders on the issues. The SDC might consider recommending the Government to impose requirements by law if there was overwhelming support for such. Mr WONG Kam-sing added that out of the 11 potential action areas for further energy saving in buildings, about half required legislation to stipulate the relevant minimum energy-saving standards. The remaining ones were focused on facilitating behavioural change. Experience elsewhere had shown that a dual approach of regulations and offering incentives was generally adopted for attaining the energy efficiency measures.

8. A Member observed that unlike other major cities, the leadership for taking forward the environmental initiatives in Hong Kong was distributed among different departments. The Government should suggest ways to pool together all these energy and carbon saving measures for efficient implementation. On

electricity saving, suggestions should be made on how external lightings, e.g. advertisement and street lights could be better managed. Consideration could be given to reviewing the duration of street light operation and re-instituting summer and winter time arrangements. Concrete mechanisms should be established to implement these recommendations on the above.

9. A Member considered that the current mandatory Building Energy Code (BEC) was not very stringent in some aspects, e.g. the lighting energy code. The Government should conduct regular review, say, once every three years, so that the BEC could be enhanced to keep in pace with technological advancements. Besides, a timeframe should be knocked out for setting the different energy efficiency levels to allow the industries and the community to follow. He also suggested that as with the practice of the Consumer Council, the Government could consider conducting regular public announcements to give recognition to buildings which had achieved high energy efficiency, as well as to list out those which failed to reach the standard. This would exert pressure on the trade to bring up the standards in buildings as a whole. For greater transparency of energy efficiency measures in commercial buildings, occupants should also be required to report fitting out works in their own office units. As regards the financial tool for encouraging behavioural change, he was concerned that rebate of electricity bill across the board was more a disincentive to energy saving. He suggested that the rebate should be calculated on the amount of energy saved over the past year. The Government should also set an example by conducting carbon audit for the new offices at Tamar to show its determination in promoting building energy efficiency in Hong Kong.

10. Mr Bernard Chan said that according to his understanding, the Government had aimed at achieving “Platinum” energy efficiency level under the Building Environmental Assessment Method (BEAM) for the new offices at Tamar. On external lightings, he remarked that this was worth looking into. He quoted Korea as an example where signboards were requested to be switched off after 2 a.m. He also remarked that the above suggestions were worth further exploration.

11. A Member pointed out that the catering industry had invested heavily in the air-conditioning system and other electrical appliances used in the premises. Phasing out of energy-inefficient appliances would inevitably entail substantial investment. He suggested that the banking sector could be

encouraged to provide “green financing” and offer credits to those companies asking for loans for equipment replacement/improvement for environmental improvement purpose.

12. Another Member concurred that it was difficult to persuade companies to conduct carbon audit and switch to more energy-efficient equipment if these initiatives were pursued on a voluntary basis. Citing his experience with the small and medium enterprises (SMEs), these initiatives had to be supported by incentives such as green financing or tax relief if they were to succeed. He also quoted the example in Japan which recorded a saving of 20% energy through the self discipline of its nationals. He considered that there were rooms for improvement in energy saving at individual level in Hong Kong. As regards carbon audit, he advised that reference could be made to London where carbon audit report was mandatory for the sale of property. The report had to be made public for reference by any prospective buyers.

13. Mr Bernard Chan responded that his company had completed a carbon audit at reasonable costs. He believed that for most SMEs, the reason for not conducting carbon audit might partly be attributed to the perceived lack of monetary benefits. He hoped that enterprises would make better use of the SDC’s Carbon Manager, an online carbon calculating tool designed by the Hong Kong Productivity Council which was available free of charge.

14. A Member remarked that after it had submitted its recommendations to the Government, the SDC should request the Government to set the timeline for implementing the various recommendations set out in the report. The community should also be informed of the implementation timeframe.

15. A Member supported the SDC’s approach in combating climate change especially in respect of facilitating behavioural change. He also agreed that adequate information such as electricity tariff had to be provided to occupants to convince them to support the initiative. He suggested developing separate benchmarks for office, retail and catering sector in view of the different operations in their own regimes so that they could readily compare their performance with their respective counterparts. As regards the Mandatory Energy Efficiency Labelling Scheme, the general public might not fully understand the meaning of the different classes of label. He suggested that the information be translated into savings in money terms for easy comprehension. The SDC could also

consider including different sources of energy consumption other than electricity in the engagement, as there were appliances using other sources of energy such as gas.

16. Ms Anissa Wong said that the Administration and the SDC had worked closely on this project as part and parcel of the overall strategy in promoting measures in combating climate change. The SDC's exercise had focused on the demand-side measures. She said the Administration would take the lead in promoting green buildings and carbon audit, for example the Tamar Government Offices had been designed to meet the highest level of platinum grading in green building system. The Environment Bureau would promote carbon auditing in government buildings in addition to collaborating with the private sector on carbon auditing as well. The objective would be to develop a database on carbon emission amongst different types of buildings for benchmarking. In response to comments from some Members that mandatory approaches were necessary to achieve environmental objectives, she said indeed the Government would not be hesitant in introducing legislative proposals where appropriate in circumstances that they were necessary to effect the change in the community. She cited the examples of banning idling engines and the environmental levy on plastic shopping bags. She however shared with Members that there were divergent views collated in public consultation on whether market forces or mandatory measures should be adopted on proposals to raise energy efficiency. On external lighting, she reported that a Task Force was looking into the issues and possible measures to address concerns on light pollution. Finally, as regards tightening of technical standards for building energy efficiency, she said this would be examined taking into account the feedback of the SDC's engagement exercise and technological developments.

17. Mr Bernard Chan concluded that the role of SDC, as an advisory body to the Government, was to reach out to the community to gauge public's views on means of achieving various building energy efficiency measures in combating climate change and to forge a consensus in the community for the Government to take forward the relevant initiatives. He said that the SDC would aim at coming up with some recommendations for the Government by the first quarter of 2012.

18. The Chairman summarized Members' views as follows –

- (a) the Council was supportive of the action areas set out in the document which aimed to combat climate change through energy saving and carbon emission reduction in buildings;
- (b) the Council considered that facilitating behavioural change on a voluntary basis might not be sufficient. Legislation and/or provision of financial incentives such as tax relief for electricity saved and equipment financing should be explored;
- (c) the Council suggested that the BEC should be regularly reviewed and tightened up as appropriate in view of advancement in technology;
- (d) the Council considered that the feasibility of mandating the switching off of external lightings during certain hours should be looked into;
- (e) the Council considered that sufficient information should be provided to the public to convince them of the benefits of energy saving, and a database on performance in carbon auditing should be set up to facilitate the private sector to compare performance among different buildings of similar nature; and
- (f) the Council invited the SDC to keep the public informed of the Government's responses to its recommendations, including the timeframe for implementation of the various recommendations in the SDC's report.

Agenda Item 4: Briefing on the Court of Appeal Judgment of the Hong Kong–Zhuhai–Macao Bridge Judicial Review

19. Mr Simon Lee was invited to brief Members on the latest development of the judgment handed down by the Court of Appeal (CA) on 27 September 2011 in respect of the Hong Kong-Zhuhai-Macao Bridge (HZMB) Judicial Review (JR). He first stated that as the case was still within the 28 days period within which the JR applicant might apply for leave to appeal, it would not be appropriate for him and he would not discuss or comment on the merits of the CA judgment. He recapped that the Applicant of the JR case challenged the

Director of Environmental Protection (the Director)'s decisions in approving the Environmental Impact Assessment (EIA) reports relating to the designated projects and in granting the environmental permits (EPs) for the construction and operation of the said projects. The Court of First Instance (CFI) held that the Applicant's contention on the first issue¹ was correct and therefore quashed the Director's decisions. The Applicant's contentions on the second to seventh issues were rejected. The Director appealed against the CFI decision on the first issue. The CA handed down a unanimous judgment in September 2011 which allowed the Director's appeal with costs against the Applicant. The CA did not agree that a stand-alone assessment was required as a matter of construction of the Technical Memorandum (TM) and the Study Briefs (SBs). Members were briefed on the salient points as set out the CA judgment.

20. In response to a Member's enquiry, Mr Simon Lee said that the judge of the CFI had not touched on the method of measuring air quality in Hong Kong. Regarding Air Quality Objectives (AQOs), the CFI noted that there was no correct or universal yardstick for measuring air quality.

21. In response to a Member's enquiry, Mr C W Tse clarified the confusion between a standalone analysis and the baseline study. The TM had clear and specific requirements for EIA reports to include baseline study information which referred to existing environmental conditions without a project. The HZMB EIA reports had included the necessary baseline information. The term "standalone analysis" of the CFI judgment is not defined under the TM. In using the term, the CFI judgment referred to a prediction of the future environmental conditions that would be expected in the absence of the project and a comparison be made with the future environmental conditions with the project in place to identify the extent of the change to the environment caused by the project. In the TM, this type of analysis would be required for certain environmental parameters or under certain circumstances, but not a mandatory requirement for all assessments. The CA judgment concluded that it was not necessary to construe that the TM and/or the SB required a standalone analysis for

¹ The 7 contended issues regarding the EIA reports are:

Issue 1: Absence of quantitative "stand-alone" analysis

Issue 2: Lack of presentation of input data in PATH model used in the assessment of air quality

Issue 3: The choice of 2031 as reasonably worst-case scenario

Issue 4: Failure to assess ozone

Issue 5: Failure to assess sulphur dioxide

Issue 6: Lack of assessment of the projects' impact on public health (PM_{2.5}), and

Issue 7: Lack of assessment of health risk posed by pollutants outside Air Quality Objectives

each and every EIA report.

[Mr C W Tse and Mr Simon Lee were excused from the meeting at this juncture.]

22. The Chairman said that a number of the EIA reports had been held up as a result of the HZMB JR case. He sought Members' views on how to alleviate the situation without compromising the integrity of the EIA process. The Chairman of EIA Subcommittee explained that as set out in the Modus Operandi of the EIA Subcommittee, the Subcommittee Members normally would be given three weeks to study the reports before the scheduled meeting. He considered that three weeks were the minimum time necessary for Members to go through all the recommendations and findings in the EIA reports. Flexibility could be exercised in convening special meetings to accelerate the consideration of the EIA reports. Special meetings for the full Council might also be called for if the situation so warranted. Members agreed to observe the established practice as set out in the Modus Operandi and to hold ad hoc meetings of the EIA Subcommittee and the full Council as and when required.

23. A Member opined that there was a lack of clarity between the baseline study and the standalone analysis and sought clarification of what was required under the EIA Ordinance and the TM. Ms Anissa Wong suggested that as the legal proceedings on the JR case had not been completed yet, discussion on the matter should be dealt with separately after the expiry of the appeal period in late October 2011. This was agreed at the meeting.

24. A Member considered that the integrity of the EIA process, at least in the eyes of the public, had somewhat been undermined as a result of the JR case. He considered that it was judicious for the Council to go over the debate to help restore public confidence in the EIA mechanism after the legal proceedings had been concluded. Another Member agreed and suggested an overall review of the EIA Ordinance enacted in 1998 for areas of possible improvement. The Chairman agreed and would explore with the Administration in lining up a retreat/separate meeting for this purpose.

Agenda Item 5: Any other business

Proposed meeting schedule for 2012

25. The proposed meeting schedules of the Council for 2012, which had been circulated to Members, were endorsed.

Tentative items for discussion at the next meeting

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

Agenda Item 6 : Date of next meeting

27. The Chairman called the meeting to a close. He informed Members that the next meeting was scheduled for 14 November 2011.

ACE secretariat
October 2011