

**Confirmed Minutes of the 115th Meeting of
the Advisory Council on the Environment
held on 13 April 2004 at 2:30 p.m.**

Present:

Prof. LAM Kin-che, J.P. (Chairman)
Prof. Peter HILLS
Prof. HO Kin-chung
Mr. Peter Y. C. LEE
Mr. LIN Chaaan-ming
Dr. NG Cho-nam
Mrs. Mei NG, B.B.S
Prof. POON Chi-sun
Mr. Otto L. T. POON, B.B.S.
Mr. Michael J. D. RUSHWORTH
Ms. Iris TAM, J.P.
Prof. WONG Tze-wai
Prof. WONG Yuk-shan, J.P.
Ms. Jessie WONG (Secretary)

Absent with Apologies:

Prof. LUNG Ping-yee, David, S.B.S., J.P.
Mr. Markus SHAW

In Attendance:

Mr. Thomas CHOW	Acting Permanent Secretary for the Environment, Transport and Works (Environment and Transport) (Environment)/Deputy Secretary for the Environment, Transport and Works (Environment and Transport)(E)2
Ms. Doris CHEUNG	Deputy Secretary for the Environment, Transport and Works (Environment and Transport)(E)1
Mr. Rob LAW, JP	Director of Environmental Protection
Mr. C C LAY	Assistant Director (Conservation) Agriculture, Fisheries and Conservation Department
Mr. Jimmy LEUNG	Assistant Director/Technical Services Planning Department
Mr. Matthew LEUNG	Secretariat Press Officer, Environment, Transport and Works Bureau (ETWB)
Ms. Polly LEUNG	Principal Information Officer Environmental Protection Department (EPD)
Miss Petula POON	Chief Executive Officer (E), ETWB

Mr. Eddie CHENG

Executive Officer (E), ETWB

In Attendance for Agenda Item 3 :

Mr. Thomas TSO	Deputy Secretary for Housing, Planning and Lands (Planning and Lands)1
Mr. James CHAN	Principal Assistant Secretary for Environment, Transport and Works (Works)3
Mr. P Y TAM	Assistant Director/NT, Planning Department
Mr. Jimmy WOO	Assistant Director/Estate Management, Lands Department
Mr. HUI Siu-wai	Assistant Director/Existing Buildings, Buildings Department
Dr. Michael CHIU	Assistant Director (Local Control), EPD

Action

Agenda Item 1 : Confirmation of Minutes of the 114th Meeting held on 8 March 2004

The draft minutes were confirmed subject to the amendment proposed by Mr. Jimmy Leung that the word “evacuation” in the fifth line of paragraph 42 should be replaced by “excavation”.

Agenda Item 2 : Matters Arising

Para. 52 Environmental education policy

2. The Chairman informed Members that ETWB would brief Members on the policy on environmental education once ready.

Agenda Item 3 : Land filling activities at She Shan Tsuen, Tai Po (ACE Paper 13/2004)

3. The Chairman welcomed the presentation team to the meeting. Mr. Thomas Tso briefed Members on the progress of actions taken/to be taken by the Administration on the land filling activities at She Shan Tsuen, Tai Po.

4. A Member pointed out that the paper sounded rather negative and the message sent to the public was not conducive to sustainable development. Considering that the paper would be uploaded onto the Internet, he doubted whether it should be withdrawn or modified before uploading. In response, Mr. Thomas Tso explained that the paper reported

actions taken/to be taken by the Administration in handling the case. While the paper set out the difficulties encountered under the existing legislation, it also pointed out that the Administration was exploring ways to deal with the issue including making legislative amendments where appropriate. In fact, a similar paper had already been presented to the Legislative Council Panel on Planning, Lands and Works and had been made available to the public.

5. In response to a Member's question on whether there were fishponds in the site before the land filling activities took place, Mr. P Y Tam said that the Planning Department, when preparing development permission area plans, would ascertain the land status of a site by checking the aerial photos. However, both Mr. Jimmy Woo and he were not sure whether there were fishponds in the area at the time when the outline zoning plan was prepared. Upon the Member's request, Mr. Thomas Tso said that the team would check and inform Members after the meeting the exact date on which the zoning plan was prepared and whether there had been fishponds in the site before.

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(Post-meeting note : Mr. P Y Tam advised that the Lam Tsuen Interim Development Permission Area (IDPA) plan No IDPA/NE-LT/1 was gazetted on 31 August 1990. At the northern part of and adjacent to where extensive land filling is currently found, there was on the date of gazettal of the IDPA a small pond. The pond, however, ceased to exist in 2002 before the land filling started and encroached onto the site. In that regard, no unauthorized pond filling was involved in the land filling activities concerned.)

6. A Member asked whether filling up of fishing ponds on agriculture land was allowed. Another Member considered that owners of agriculture land should be given the flexibility to conduct different agricultural activities to meet changing circumstances. Some agricultural activities would require construction of structures such as green houses, and that should be allowed. Mr. Thomas Tso informed the meeting that land use permitted for areas zoned as agriculture land included a wide variety of agricultural activities. He also pointed out that green houses and certain types of structures were allowed on agriculture land but each case had to be considered separately. Mr. P Y Tam added that according to the outline zoning plan in question, pond filling in agriculture zone might be allowed on application to the Town Planning Board. The Member asked whether the landowner would be prosecuted if pond filling had taken place in the site. In response, Mr. P Y Tam said that according to information available to him, there was no fishpond in that site.

7. In response to a Member's question, Mr. Thomas Tso said that the landowner had confirmed in writing that the land filling activities were

for agricultural purpose. Another Member informed the meeting that that as far as he was aware, the landowner intended to build a car park and had submitted an application for changing the land use. That being the case, it was quite clear that the landowner had no intention to use the land for agricultural purpose. He doubted how the landowner could claim that the land filling activities were for agricultural use under such circumstances. In response, Mr. P Y Tam clarified that the planning application which was received only recently would not constitute sufficient proof that the land filling was not intended for agricultural use, because after the planning application was rejected, the owners could use the site for agricultural use as originally intended. In reply to the Member's question as to whether the owners would be prosecuted for using the site as a car park without planning permission and proper site formation, Mr. P Y Tam said that changing the site into a car park without planning permission would be subject to enforcement and prosecution.

8. In response to the Chairman's question, Mr. C C Lay reaffirmed that according to the preliminary views of agricultural experts in AFCD, the land filling activities at the site should in no way be regarded as agricultural activities.

9. A Member queried the advice of the Department of Justice that prosecution action was not possible. The Chairman noted that different departments had sought legal advice from the Department of Justice on issues under their purview. He wondered whether a holistic approach should be adopted instead. In response, Mr. Thomas Tso said that the Department of Justice was in full picture of the case and had explained the constraints on prosecution actions to all departments concerned. He reiterated that prosecution was part of the criminal proceedings and there had to be sufficient evidence and a reasonable prospect of conviction to support a prosecution action. As the landowner could argue that the platform formed was for animal rearing, plant nursery, etc, in the view of the Department of Justice, the prospect of a successful conviction was small.

10. A Member asked whether the Public Health and Municipal Services Ordinance and the Land Drainage Ordinance could be invoked for taking prosecution actions. In reply, Mr. Thomas Tso said that the Administration could take prosecution action under the Public Health and Municipal Services Ordinance if a considerable amount of rubbish was accumulated at the site. In that regard, the Food and Environmental Hygiene Department had inspected the site but could not find sufficient evidence. Mr. James Chan informed the meeting that under the Land Drainage Ordinance, authorized officers could enter Drainage Authority Areas designated under the Ordinance to install drainage systems and carry

out necessary maintenance work. However, the site in question was not a Drainage Authority Area and even if it were, there had to be proofs that the landowner had deliberately blocked the main watercourse within the area before prosecution actions could be taken. Nonetheless, the Drainage Services Department would monitor the situation closely and would clear the public drains when blockage was detected. In addition, a letter had been issued to individual landowners forewarning them of the flooding risk and advising them not to block the drainage.

11. The Chairman remarked that the departments concerned had made a lot of efforts in monitoring the situation but it seemed that no other action could be taken. In response, Mr. Thomas Tso admitted that the existing legislation could not tackle the case effectively. The Administration was exploring ways to improve the legislation but that would take some time. Meanwhile, departments were closely monitoring the situation to ensure that the problem was contained. In addition, they were also gathering evidence so that if the landowner had breached any law, immediate prosecution action could be taken.

12. A Member pointed out that permission was required for using agriculture land for storage purpose. In her view, the current land filling activities at She Shan Tsuen could be regarded as storing of soil. She asked whether prosecution actions could be taken in that context. She also suggested defining “land filling” as a type of land use so that land filling in agriculture land beyond a certain level could be regarded as changing the land use. The proposal could at least help prevent recurrence of the problem. Mr. P Y Tam responded that whilst there were stringent controls on land filling and pond filling in environmentally and ecologically sensitive zones, there should be flexibility in other zones taking into account the need for economic activities and development from a practical point of view. Nevertheless, Mr. P Y Tam undertook to explore the suggestion further. The Member said that land filling was different from pond filling in that it could take place virtually everywhere while pond filling was limited to ponds only. She considered that if there was a need to fill up an area for agricultural purpose, the main objective should be to prevent flooding and so there should be a height limit. Any height beyond that limit should be outside agricultural use and considered as “land filling”.

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(Post-meeting note : As regards the question on whether prosecution action could be taken, Mr. P Y Tam has advised that land filling is part of a site formation process and is not a land use or development in itself. It is not possible to invoke planning enforcement action against it.)

13. In reply to a Member’s question on whether the operation of a

landfill in private land would require a licence, Dr. Michael Chiu explained that the exemption in Section 16(2)(b) of Waste Disposal Ordinance was related to landfills operated by the Government. If the disposal of waste was within private land with the consent of the owner, no licence was required nor prosecution actions could be taken under that Ordinance. Mr. Rob Law clarified that the Waste Disposal Ordinance dealt with waste disposal, which meant something useless being thrown away or abandoned. As regards the present case, the materials concerned were inert materials being used to fill up an area and could not be regarded as waste.

14. In reply to the Chairman's question on the possible abuse of the trip ticket system, Mr. Rob Law said that the system was adopted for government projects and large private sector projects. The issue at hand was mainly the change of land use rather than disposal of waste. Unless the land filling activities would give rise to pollution, EPD had no authority to take any prosecution actions.

15. Quoting paragraph 10 of the paper, a Member queried whether land lease conditions would be more effective than environmental laws in controlling the type of land filling activities at She Shan Tsuen. In response, Mr. Thomas Tso explained that the breach of lease conditions could at most result in re-entry of the land which would involve complicated civil litigation process and would normally take a long time. Environmental laws would be more effective in controlling illegal activities on private land, as the penalty was more severe and the prosecution process was much simpler. The current case, however, showed that the existing legislation could not tackle the situation effectively and the Administration was exploring means to improve the legislation concerned.

16. A Member noted that the Legislative Council Bills Committee was vetting the Town Planning (Amendment) Bill 2003. He asked whether the Administration would make use of the opportunity to amend the legislation so as to provide a better definition of the term "agriculture use" and prevent recurrence of similar incidents. In response, Mr. Thomas Tso explained that the Town Planning (Amendment) Bill 2003 aimed at speeding up the prosecution process for breach of land use so that the landowner concerned could not prolong the process by submitting applications under section 16 of the Town Planning Ordinance. To avoid complicating the processing of the Bill, it would not be appropriate to introduce any new proposals such as changing the definition of "agriculture use" in the current exercise. In addition, in revising the definition of "agriculture use", the Administration had to provide sufficient flexibility for the landowner to conduct various kinds of agricultural activities to meet changing circumstances. In response to the Member's proposal to review the

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definition of “agricultural use” in the context of the statutory plans, Mr. P Y Tam undertook to consult relevant parties. Mr. Thomas Tso clarified that while the proposals to change the definition of “agriculture use” and define land filling as a land use might or might not need a change in legislation, they had to be endorsed by the Town Planning Board. The proposals would not be included in the current legislative amendment exercise for the Town Planning Ordinance but would be dealt with as soon as possible.

17. In response to a Member’s question on the Black Spot Task Force, Mr. Thomas Tso informed the meeting that the task force was temporary in nature and was recently disbanded when the provision of resources for it lapsed. Its enforcement and monitoring work had been taken up by the Lands Department. The Member suggested setting up a task force on black spots on agriculture land to better coordinate efforts in tackling the issue in the long run. In her view, risk assessment should also be conducted for such black spots in case of typhoon and heavy rainfall. In response, Mr. Thomas Tso said that setting up a task force might not help tackling the issue. The crux of the problem was that at present too much land was zoned for agriculture use while in reality not much land was needed for that purpose. The Administration would instead consider re-zoning some agriculture land. The Chairman suggested that a task force on land filling activities might be useful.

18. A Member stressed that a solution to the problem had to be worked out before the implementation of the construction waste disposal charging scheme. In response, Mr. Thomas Tso said that the Administration had accorded high priority to the issue. However, while it was important to stop such activity, a balance had to be maintained so that landowners’ rights were protected. Mr. Thomas Chow assured the meeting that all relevant departments were working closely together to try to tackle the problem. He added that the Legislative Council had set up a Bills Committee to examine the Waste Disposal (Amendment) Bill. One of the proposed amendments was to empower the Director of Environmental Protection to enter without warrant any places (other than domestic premises and private land for dwelling purpose) to remove the waste deposited illegally in cases where there was an imminent risk of serious environmental impact and immediate remedial actions were required. Members’ further suggestions to deal with the issue would be welcomed. In reply to another Member’s question, Mr. Rob Law clarified that the power mentioned by Mr. Chow might not be effective in solving the case in question because the materials involved were inert materials rather than waste. However, it would help tackle black spot problems in the New Territories.

19. A Member said that the Administration should proceed to

amend the legislation or to make new interpretations to the existing legislation so as to better control land filling activities in agriculture land. He said that green groups might perhaps motivate their members to send petition letters to the landowner concerned. Another Member, however, considered that the proposal which might cause nuisance to the landowner might not be proper.

20. The Chairman thanked the presentation team. He said that Members were disappointed with what little that could be done under the existing legislation. Having regard to the flooding risk in the coming rainy season and the possible implications on the implementation of the proposed construction waste disposal charging scheme, he hoped that the departments concerned would continue to work together to resolve the problem. At the same time, he considered that the Town Planning Ordinance should be reviewed, and the proposals to re-define “agriculture use” and define land filling as a land use should be further examined. The Council would like to receive further progress reports on the issue.

Agenda Item 4 : Any Other Business

Resignation of Mr. Lin Chaan-ming

21. The Chairman informed Members that Mr. Lin Chaan-ming had tendered resignation to leave the Council with effect from 1 May 2004. He thanked Mr. Lin for his most valuable service to the Council during the past seven years.

Visit to Dah Chong Hong Vehicle Emission Testing Centre

22. The Chairman reminded Members that the visit would be held after the meeting.

Agenda Item 5 : Date of Next Meeting

23. The next meeting would be held on 10 May 2004.

ACE Secretariat
April 2004