COMPLAINT AGAINST VARIOUS DEPARTMENTS

*Case No. OCAC 64/94

Complaint against the Administration and the Urban Council (UC) - maladministration in planning of the redevelopment of the Hong Kong Stadium leading to excessive noise being generated from pop concerts staged at the stadium

A group of residents complained against the Administration and the UC for -

(a) failure to give due regard to the noise problem in the design and redevelopment stages of the new Hong Kong Stadium (the Stadium);

(b) allowing pop concerts to be staged in the Stadium without sufficient noise-abatement measures; and

(c) imposing a self-financing policy on the operation of the Stadium thus making it a necessity for UC to rent out the Stadium for pop concerts for income.

The old Stadium was built in 1955. On 12 May 1992, a Memorandum of Understanding was signed between the Government, the UC and the Royal Hong Kong Jockey club (RHKJC) to the effect that the Club would fund entirely the redevelopment on site of the Stadium. The building project was estimated to cost about $850 million. It was to be managed and constructed by HKJC. Both the Government and HKJC publicly also announced that they would work closely to firm up a design of the new Stadium which would take into account traffic and environmental issues.

The redevelopment of the Stadium could be divided into four main stages:

This Office found that there were at least two occasions during the design and construction stages where the issue of noise problem surfaced but was not properly addressed by the relevant government departments.

First occasion:

(a) On 18 February 1992, an Environmental Noise Assessment report, produced by RHKJC’s sound consultants, was submitted to the Environmental Protection Department (EPD) for approval.

(b) On 4 May 1992, EPD gave its comments to RHKJC’s Project Architect and the Architectural Services Department (ASD). It concluded that noise mitigation measures proposed were inadequate and objected to the Stadium being used for amplified concerts.

(c) ASD then referred EPD’s comments to the Urban Services Department (USD) on 6 May 1992 who replied on 12 May 1992, copied to the Recreation and Culture Branch (RCB), that UC had not yet decided to take up the future management of the new Stadium.

(d) RCB, though having seen the need to bring the noise issue to the attention of RHKJC’s Property Controller and the Stadium Project Steering Committee, had not pursued the matter further.

Second occasion:

On 29 August 1992 when the RHKJC’s Project Architect, on realizing that UC would formally take up the future management of the Stadium, wrote to USD about EPD’s comments on the noise issue. Although two meetings were held among USD, EPD, ASD and the Project Architect on 10 and 23 September 1992 respectively to discuss EPD’s concern, no definite action plan had been drawn up. The matter was then left unattended until the appointment of Wembley International Ltd. as manager of the new Stadium in early 1993. Despite the subsequent efforts of Wembley, little could be done as the design of the new Stadium had already been finalised and construction was at an
advanced stage.

This Office considered that there was impropriety on the part of RCB, USD and EPD in handling the noise issue on these two occasions. In particular:

RCB had failed to bring the matter to the attention of the Stadium Project Steering Committee which was the only proper authority to review the project requirements and agreed on the detailed design. Having initiated the project, it had not actively pursued the matter and had not held any discussions with all concerned departments to examine the issue and its implication. RCB explained that the noise issue was a technical matter and not a policy issue. This Office considers this explanation not acceptable because it simply missed the point that whether it was a policy matter or not, a problem is a problem and needs attention. RCB, as the client policy branch and project overseer, prior to a client department being identified, should not have interpreted its role narrowly.

USD, being a member of the Stadium Project Steering Committee, had also adopted a passive role. It neither actively pursued the matter with RCB nor brought it to the attention of Committee. Although UC had not formally accepted the management of the new Stadium until July 1992, it actually had indicated no objection in principle to the Government’s proposal to redevelop the Stadium in January 1992 subject to UC continuing the management of the new Stadium. Moreover, with its expertise and knowledge in management and usage of the old Stadium, USD should be able to offer valuable advice and give forewarning to the Steering Committee about any imminent problems. For instance, DUS was fully aware of complaints about concert noise in the past.

EPD had taken about 2½ months to study the report and had not accorded the subject the right priority. It had also failed to alert RCB which was the client policy branch.

This Office considered that complaint point (a) was substantiated.

With regard to complaint point (b), this Office noted that a total of six pop concerts were held at the new Stadium in the first 1½ months after its official opening on 11 March 1994. There were also rehearsals before each of these concerts. Noise emitted from the concerts had all exceeded the statutory limit
of 65 dB(A) allowed between the hours from 1700 hrs to 2300 hrs.

Before these concerts were held, both Wembley and UC should be fully aware that the noise abatement measures at the Stadium were insufficient. They however still allowed pop concerts to be held.

This Office therefore found complaint point (b) was also substantiated. UC should be held responsible by virtue of its responsibility to supervise Wembley in the operation of the Stadium.

On complaint point (c), the investigation revealed that the Government’s position in the management of the Stadium was that the new Stadium should be managed on a commercial basis to ensure that it could at least be self-financing.

In August 1992, an agreement was reached between the Government and UC on the principles of managing the Stadium. The key principles that have implication on the operation of the Stadium are: (a) it should be managed on a self-financing basis; (b) UC would absorb any deficits in case of losses and would not apply for an increase in rates to cover such deficits; and (c) any surplus arising from the management of the Stadium would be shared between UC and Government.

According to the agreement signed between UC and Wembley in January 1993, Wembley would receive: (a) a basic fee which would be unpayable in the event of losses; and (b) an incentive fee which would increase with the net profit. It also provided that if Wembley failed to stage certain agreed number of events, or continued to incur losses for several consecutive years, UC had the right to terminate the management agreement.

This Office observed that:

(a) Both UC and Wembley face the pressure to run the Stadium profitably. For UC, it has to shoulder all financial responsibilities and according to USD’s estimate, the Stadium might be in serious financial difficulty if all pop concerts were banned. For Wembley, their ability to make profits would directly determine the fee they would receive from managing the Stadium.
(b) The purpose of the self-financing arrangements is to ensure that the Stadium is to be run on a commercial basis. Since the yardstick to measure the success or otherwise of a commercial entity is its ability to make money, it follows naturally that pop concerts, being significant revenue-raisers, would be actively promoted by Wembley unless and until other equally profitable events are identified to replace them. This was evident as six concerts were held during the first 1½ months of the opening of the new Stadium.

(c) The Stadium was originally designed for multi-purpose usage, including the holding of pop concerts. Whether self-financing arrangements are in place or not would not alter this intended usage. The main thrust of the issue here is whether the Stadium can hold a concert within the statutory noise level. The self-financing policy would be perfectly alright if the design of the Stadium would ensure noise generated would not exceed the statutory limits. Unfortunately, as it turns out, this was not the case.

This Office therefore considered that although it was not a must for UC to rent out the Stadium for pop concerts for income, the self-financing policy had imposed pressure on both UC and Wembley to organise pop concerts at the Stadium.

In the circumstances, complaint point (c) was partially substantiated.

In summary, complaint points (a) and (b) were substantiated and complaint point (c) was partially substantiated. Given the fact that complaint point (a) was the key issue in this complaint which was substantiated, this Office concluded that this complaint was substantiated overall.

This Office made the following observations and recommendations.

RCB, as the client policy branch and the project promoter, failed to see the need for proper coordination within the Government especially when the end user of the project could not be confirmed until a very late stage. It did not seem to have discharged its function as a project coordinator diligently nor had it appointed a department to discharge this role.
Even when a proper project co-ordinator was not available, the problem could have been minimised had there been an inter-departmental working group set up to support the RCB’s and USD’s representatives at the high-powered Project Steering Committee.

The lack of adequate communication and clear understanding and appreciation of their respective responsibilities amongst the RCB, USD and ASD further added to the problem.

This Office fully recognised the wish and desire of the RHKJC to implement this project in the shortest time possible. Whether the RHKJC design and management approach/arrangement was preferable and value for money were outside the scope of this investigation. Apparently, this fast-track and RHKJC led approach had seemingly led the Administration to take a back seat and had not pursued the noise issue as properly and vigorously from the outset as it should have done.

Given the composition and procedure of the Project Steering Committee, it was clear that the RHKJC was in complete control of the project - the Chairman was a RHKJC Steward, the quorum of at least three must include two RHKJC representatives and the Chairman had the casting vote. Since the project would be handed over to the Government and eventually be operated as a public facility whether on a self-financing and commercial basis or not, this Office had reservations on the Government’s handling of the project management. Though RHKJC had undertaken to fund the entire project at the outset, it should be noted that UC had to pay $175 million eventually to meet the fitting-out costs.

This Office observed that in major public sector building and development projects, the Government has clearly laid down procedures for application of the environmental impact assessment to these projects. This Office recommended that the Administration should learn from this experience and, in future, whether a public sector/government project is funded and managed by the Government or not, the major steps in planning the project should follow the established government procedures as far as possible and should be properly coordinated.