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The Court of Final Appeal has ruled that planning restrictions contained in Outline Zoning Plans may be challenged on constitutional grounds as well as administrative law grounds. In this edition we review the judgment and its likely effect on future deliberations of the Town Planning Board.

The Editors

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PLANNING REGISTRAIONS MAY BE CONSTRITUTIONALLY REVIEWED

Background

Wan Chai ("WC") and Causeway Bay ("CB") are major commercial areas where Hysan Development Company Limited ("Hysan") owns a number of prominent sites.

Several years ago, the Town Planning Board ("Board") reviewed 8 town planning restrictions applying to new development within CB and WC, culminating in the gazetting of a Draft Outline Zone Plans ("DOZP") for each area: CB on 17 September 2010 and WC on 24 September 2010.

During the period of public consultation, Hysan delivered written submissions opposing many of the height and other restrictions mandated by the CB-DOZP and WC-DOZP. Hysan also made oral representations at the only public meetings of the Board on 11 March 2011 and 26 April 2011 respectively.

The Board rejected all of Hysan's submissions, other than in relation to one restriction in the CB-DOZP. Consequently, Hysan (and other related companies) applied for judicial review of the Board's decisions.

Hysan's judicial review application

Hysan (and others) applied for judicial review of the decisions to implement the DOZPs. On 14 September 2012 Reyes J. dismissed Hysan's application, finding there were no administrative law or constitutional grounds to support overturning the Board's decisions (with one minor exception): Hysan Development Co. Ltd. & Ors. v. Town Planning Board [2012] 5 HKC 432.

Hysan (and others) appealed, and by its judgment in CACV 232/2012 and CACV 233/2012 (heard together on 13 November 2014) the Court of Appeal allowed Hysan's subsequent appeal on administrative law grounds (primarily, procedural unfairness), quashed the Board's decisions and directed the Board to reconsider the decisions in accordance with the Court's judgment. Essentially, the Court determined: that the Board had failed to discharge its duty to make the proper inquiry referred to in Secretary of State for Education and Science v. Tameside Metropolitan Borough Council [1977] AC 1014 at 1054; that it had taken into account irrelevant considerations; and that there had been procedural unfairness in the way it reached its decisions.

Besides relying on traditional administrative law grounds in challenging the Board's decisions, Hysan had also argued that the disputed planning restrictions in the DOZPs ("Restrictions") were disproportionate to the planning objectives of the DOZPs and therefore were an unconstitutional infringement of Hysan's property rights, contrary to Articles 6 and 105 of the Basic Law. The Restrictions, which had not applied prior to implementation of the DOZPs, were:

- (a) building height restrictions ("BHRs") which limited the heights of buildings to 130 mPD in most cases;
(b) podium height restrictions ("PHRs") setting height limits of 32 mPD and 20 mPD on podiums at particular sites;

- (c) non-building areas (“NBAs”) of specified widths (2m and 5m at certain sites) prohibiting construction above ground in the designated areas; and
- (d) building setbacks of specified widths (1.5m and 0.5m in certain instances).

The Board argued that the Restrictions were necessary to facilitate air ventilation and pedestrian flow in CB and WC, which are densely built-up areas.

Hysan’s constitutional ground rested on the notion of citizens’ private property rights. Such rights are protected by the Basic Law, notwithstanding that, ultimately, all land in Hong Kong is publicly owned, i.e. by the government.

Article 6 provides: “*The Hong Kong Special Administration Region shall protect the right of private ownership of property in accordance with law.*”

The relevant part of Article 105 states: “*The Hong Kong Special Administration Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.*”

The Court of Appeal did not accept Hysan’s constitutional ground. The company therefore applied for leave to appeal to the Court of Final Appeal. On 18 November 2015 the Appeal Committee gave Hysan leave to appeal on the stated question of public importance: “*Whether in the determination of the lawfulness and validity of any restriction imposed by the Respondent by way of planning, Article 6 and/or Article 105 of the Basic Law are engaged, and if so, whether such restriction must satisfy the requirement of proportionality, and whether the Hong Kong Court should adopt the European jurisprudence on Article 1 of the First Protocol of the European Convention on Human Rights or some other test of proportionality, and if so, what.*”

### *Appeal to the Court of Final Appeal*

#### *Hysan’s constitutional right*

On 26 September 2016 the Court of final Appeal handed down its decision in *Hysan Development Company Limited & Ors. v. Town Planning Board* FACV Nos.21 & 22 of 2015. Justice Ribeiro PJ wrote the judgment, with which the other members of the Court agreed. He listed the questions for determination by the Court as follows:

- (a) *Are Articles 6 and 105 of the Basic Law engaged where landowners complain about planning restrictions imposed by the Board on the use of their land?*
- (b) *If so, must the restrictions be subjected to a proportionality analysis?*
- (c) *If so, what standards or tests should the Court apply in conducting a proportionality assessment in a case like the present, and in this context, is the jurisprudence of the European Court of Human Rights (“ECtHR”) on Article 1 of Protocol 1 (“A1PI”) of the European Convention on Human Rights (“ECHR”) of assistance?*

In essence, Hysan submitted that the Restrictions amounted to such a restriction of its *use* of its land (e.g. by limiting the height of buildings or their distance from the street) as to infringe its private property rights, contrary to Articles 6 and 105.

Whilst the Court of Appeal had accepted that property rights might be infringed by the Board’s decisions in theory, the Court held that the effect of the phrase “in accordance with the law” was to limit the protection of property rights under Articles 6 and 105 to “a requirement that property rights be protected by legally certain and accessible laws”.

The Court of Appeal ruled that these words, which are not found in the equivalent European legislation, constituted a qualification on the subject right, i.e. here, the right to use your property. Thus, the Court of Appeal distinguished European case law on the point. The Court concluded that a landowner “does not have a right to use his land in any manner beyond that permitted by the general law”.

Thus, the Court of Appeal ruled that the Restrictions did not engage Articles 6 or 105. However, the Court of Final Appeal did not agree, finding that “Articles 6 and 105 are plainly engaged and the Court of Appeal fell into error in holding otherwise”. Rather than the words “in accordance with law” qualifying the private property right, they provide affirmative protection of that right by requiring that “property rights are to be guaranteed by clear and accessible laws, and not, for instance, left to unchartered administrative direction”. The Court of Appeal’s interpretation requires the implied and unwarranted addition of the word “only” before the phrase, Ribeiro PJ added.

The Board had also argued that property rights are intrinsically subject to legal constraints, such as the Restrictions. Therefore, such restrictions, or interference with, the exercise of property rights should be disregarded as mere incidents of ownership which do not engage the Articles 6 and 105 rights. The Court of Final Appeal also rejected this argument; Ribeiro PJ said: “*A fortiori, in cases like the present, the fact that the statutory power to impose planning restrictions existed prior to the owner’s acquisition of the site does not mean that new and more intrusive constraints imposed by a TPB decision made after the land’s acquisition can be disregarded as mere incidents of ownership so as to exclude the protection of Articles 6 and 105. Interference with the owners’ protected right occurs when the new restrictions take effect, derogating from those rights and thus engaging those Articles.*”

The Court of Final Appeal recognised that constitutionally guaranteed rights – such as the prohibition against torture – are *absolute*, and may not be infringed upon by legislation. However, where the guaranteed right – such as private property rights – is not absolute, Article 39 of the Basic Law applies, allowing such rights to be restricted by legislation, provided such legislation satisfies the requirement of “legal certainty” and complies with international treaties applied in Hong Kong and the *Bill of Rights Ordinance* (Cap.383).

Laws restricting non-absolute constitutional rights are also generally subject to a “proportionality analysis”: “*Where the constitutional right invoked is not absolute but no express guidance is given by the Basic Law or Bill of Rights as to the allowable limits of derogations from that right, principles have been evolved by the courts as to how the proportionality analysis is to be applied, drawing heavily on the jurisprudence of other jurisdictions*”.

#### *Proportionality test*

Once it is accepted the invoked right (here, the right to use your property) is derogated from by the law or regulation in question (here, the Restrictions) the court asks two questions:

- (1) *is the derogation rationally connected with the pursuit of a legitimate societal aim (the rationality test); and*
- (2) *are the means employed, the imposition of the reverse persuasive onus, no more than is necessary to achieve that legitimate aim (the proportionality test):-*

*HKSAR v. Lam Kwong Wai* [2006] HKCFAR 574.

However, subsequent decisions have converted those two questions to a three-step inquiry:

“*The proportionality test, which is a well known test in our courts, consists of the following analysis in respect of any restriction or limitation:*

- (a) *The restriction or limitation must pursue a legitimate aim.*
- (b) *The restriction or limitation must also be rationally connected to that legitimate aim.*
- (c) *The restriction or limitation must also be no more than is necessary to accomplish that legitimate aim.”:-*  
*Mok Charles v. Tam Wai Ho* [2010] HKCFAR 762.

The first two steps of the enquiry were not in issue. Hysan assumed (without conceding) that the Restrictions were for a legitimate purpose and were rationally connected to that purpose.

Following extensive consideration of jurisprudence from other parts of the world – such as Europe, Canada and the United Kingdom – Ribeiro PJ concluded that a proportionality enquiry should involve a fourth step: “Weighing the detrimental impact of the restrictions against the social benefit gained.” He reviewed the authorities concerning the courts’ vetting of legislation challenged under the *Bill of Rights Ordinance*, and emphasised that the three (or four) distinct elements of the proportionality test do not exist “in isolated air tight compartments, unaffected by each other” rather, they inevitably overlap.

Until now, Hong Kong’s courts have applied the traditional three-stage proportionality test. However, Ribeiro PJ concluded that after the first three requirements of: legitimate aim, rational connection and minimal impairment (of the right) are satisfied, courts should now also take the additional, fourth step, namely: “balancing the negative effects of the infringement of rights against the positive benefits associated with the legislative goal” (citing McLachlin CJ in *RJR – Macdonal Inc. v. The Attorney General of Canada* [1995] 3 SCR 199. He commented: “In my view, the case for accepting in principle the applicability of a fourth step in the proportionality analysis is logically compelling although in the great majority of cases, its application would not invalidate a restriction which has satisfied the requirements of the first three stages of the inquiry. One would hope and expect that most laws and governmental decisions at the sub-constitutional level internally reflect a reasonable balance between the public interest pursued by such laws and the rights of individuals of groups negatively affected by those laws. In such cases, where the law passes the first three tests, it would be unlikely to fail the test of proportionality “strict sensu” (in the narrow, overall sense) at the fourth stage. But one may exceptionally be faced with a law whose content is such that its application produces extremely unbalanced and unfair results, oppressively imposing excessive burdens on the individuals affected”.

The fourth step “requires the Court to examine the overall impact of the impugned measure and to decide whether a fair balance has been struck between the general interest and the individual rights intruded upon, the requirement of such a fair balance being inherent in the protection of fundamental rights”.

#### *Standard applied to assess “proportionality”*

The fourth step in the proportionality analysis inherently involves a value judgment: “The court must decide whether the means employed by the statute to achieve the policy objective is appropriate and not disproportionate in its adverse effect. This involves a “value judgment” by the court, made by reference to the circumstances prevailing when the issue has to be decided”: *Wilson v. First County Trust Ltd. (No.2)* [2004] 1 AC 816.

This in turn raises the question of the standard by which that value judgment is to be made. Ribeiro PJ considered European and other jurisdictions’ authorities and observed that two standards are potentially in play when assessing the proportionality of restrictive legislation:

- (i) the measure/legislation is “no more than necessary” for advancing the legitimate aim of the measure/legislation; or the stricter test of
- (ii) the measure/legislation is “manifestly without reasonable foundation”.

The European Human Rights Court has adopted a practice, or principle, of allowing member states a “wide margin of appreciation” in implementing restricting laws. That is, some leeway is extended to the state whose law is challenged, on the basis the legislature of that state knows better the circumstances in which the legislation was enacted and considered necessary than does the centralised European Court.

In his judgment, Ribeiro PJ noted that a similar principle applies to Hong Kong’s domestic legislation and domestic challenges to such legislation: “Along with domestic courts in the UK, this Court has recognised the existence of a domestic doctrine similar to that of the margin of appreciation at the supra-national level which I shall refer to as “the margin of discretion”.

Addressing Hysan’s appeal, Ribeiro PJ said: “What principles should the Court apply in choosing between the competing standards? If it should become necessary for the Court to determine whether, after re-considering the developers’ objections, the Board has acted in accordance with their Article 6 and 105 rights, Hysan and OGL contend that the Court should ask whether the restrictions then imposed are no more than reasonably necessary to achieve the legitimate aims advocated. The Board, on the other hand, argues that in such eventuality, the Court ought only to intervene if satisfied that such restrictions are manifestly without reasonable foundation. In principle, the choice of the standard for the Court’s intervention depends on the extent of the appropriate margin of discretion, determined by factors which affect the proportionality analysis in the circumstances of the particular case. In cases calling for a wide margin of discretion, the “manifest” threshold may well be apposite, whereas cases admitting of a narrow or no margin of discretion are more appropriately analysed on the basis of “reasonable necessity” Which standard or threshold to choose therefore depends on the appropriate width of the margin.”.

The Court noted that the margin of discretion involves principally two factors: “(i) the significance of and degree of interference with the right in question; and (ii) the identity of the decision-maker as well as the nature and features of the encroaching measure relevant to setting the margin of discretion”.

In other words, the lower the significance of the specific right relied on, the broader the margin of discretion is likely to be. And a decision-maker’s views, resulting in the promulgation of the impugned measure, may be given much weight and thus afforded a wide margin of discretion, reflected by use of a “manifest” standard, where the decision-maker is likely to be better placed than the court to assess what is needed in the public interest.

It was also noted that in some cases the interference (with the subject right) might be so great “that neither proportionality nor margin of discretion are meaningful concepts” because the very essence of the right has clearly been destroyed.

Where the standard of “reasonable necessity” is applicable, the government must show that the challenged measure impairs the right as little as reasonably possible in order to achieve the legislative objective: “If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement”. On the other hand, if the authority “fails to explain why a significantly less intrusive and equally effective measure was not chosen” the measure may fail. In these cases, the acceptable range of reasonable alternatives will depend on the factual context but one would expect such range to be significantly narrower than where the “manifest” threshold is applied. It is perhaps worth re-iterating that while for the purposes of elucidation, two differently named standards are referred to: “reasonable necessity” and “manifestly without reasonable foundation”, they indicate positions on a continuous spectrum rather than wholly independent concepts.”.

#### *Board is entitled to a wide margin of discretion*

In reference to the Board, Ribiero PJ noted: “the constitution and decision-making machinery of the Board as the originator of any potentially impugned planning restrictions would, in my view, strongly favour adoption of a broad margin of discretion near the “manifestly without reasonable foundation” end of the spectrum”.

He added: “*Planning decisions are made with entire districts, and not just the parties’ sites, in view. The system includes as part of its design, the possibility of an aggrieved party seeking administrative law remedies if material flaws occur in the way the Board arrives at its decisions, as occurred in the present cases. But if the statutory process is undertaken without judicially reviewable flaws, it is hard to see any reason for thinking that the planning restrictions imposed should be liable to be struck down as constitutionally invalid*”.

The Court expressly held that the higher threshold for a finding of unconstitutionality, manifest unreasonableness, applies to town planning restrictions generally: “*I would therefore conclude that town planning restrictions, assuming them to be unassailable on traditional judicial review grounds would in general only be susceptible to constitutional review if the Court is satisfied that they are manifestly without reasonable foundation.*” However, “it is not the Board’s task to conduct a proportionality analysis, much less to mouth incantations about proportionality in rendering its decisions”. The courts have the “ultimate responsibility for determining whether any restriction subjected to a successful constitutional challenge”.

### **Conclusion**

Hysan’s appeal was upheld, with no order as to costs. The Court’s conclusions, recorded by Ribeiro PJ, included the following:

*“Articles 6 and 105 are engaged in cases where it is factually established that planning restrictions imposed by the TPB encroach upon a landowner’s property rights.*

*Where such encroachment on the right is established, the extent, if any, of the encroaching measure’s validity is determined by a proportionality analysis.*

*In Hong Kong, such a proportionality assessment has been viewed as involving a three-step process of asking (i) whether the intrusive measure pursues a legitimate aim; (ii) if so, whether it is rationally connected with advancing that aim; and (iii) whether the measure is no more than necessary for that purpose.*

*A fourth step should be added. In line with a substantial body of authority, where an encroaching measure has passed the three-step test, the analysis should incorporate a fourth step asking whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, asking in particular whether pursuit of the societal interest results in an unacceptably harsh burden on the individual.*

*At the third stage, assessing the permissible extent of the incursion into the protected right, two main standards have been applied. The first is the test of whether the intruding measure is “no more than necessary” to achieve the legitimate aim in question. This must be understood to be a test of reasonable necessity. If the Court is satisfied that a significantly less intrusive and equally effective measure is available, the impugned measure may be disallowed.*

*An alternative standard which may be applied at the third stage is one which asks whether the encroaching measure is “manifestly without reasonable foundation.*

*The “manifest” standard has been used in cases where the Court recognizes that the originator of the impugned measure is better placed to assess the appropriate means to advance the legitimate aim espoused. This has occurred in cases involving implementation of the legislature’s or executive’s political, social or economic policies but the principle is not confined to such cases.*

*The location of the standard in the spectrum of reasonableness depends on many factors relating principally to the significance and degree of interference with the right; the identity of the decision-maker; and the nature and features of the encroaching measure relevant to setting the margin of discretion.*

*The difference between the two standards is one of degree, with the Court in both cases, scrutinising the circumstances of the case and the factual bases claimed for the incursion.”*

To assuage fears that planning restrictions might too easily be challengeable on the basis of Articles 6 and 105, the judgment concludes with the following comment:

*“In general terms, where the Board reaches decisions which are not flawed on traditional judicially reviewable grounds, any imposed restrictions which encroach upon a landowner’s property rights should be subject to constitutional review applying the “manifestly without reasonable foundation” standard. It is considered to be highly unlikely that Board decisions imposing planning restrictions arrived at lawfully and in conformity with the principles of traditional judicial review, would be susceptible to constitutional review unless the measures are exceptionally unreasonable.”*

Thus, it is unlikely the Hysan decision will make any significant difference to the Board’s process for implementing DOZPs.

## **TOWN PLANNING**

### **Approved Sai Ying Pun and Sheung Wan Outline Zoning Plan amended**

The Town Planning Board announced amendments to the approved Sai Ying Pun and Sheung Wan Outline Zoning Plan on 21 October 2016.

The main amendment is:

- 1) Rezoning of a site at 122A to 130 Hollywood Road from "Government, Institution or Community" to "Government, Institution or Community (2)" and stipulation of building height restrictions.

[Town Planning Board Press Release, 21/10/2016]

### **Draft Yuen Long Outline Zoning Plan approved**

The Chief Executive in Council approved the draft Yuen Long Outline Zoning Plan on 28 October 2016.

The planning scheme area is approximately 561 hectares, bounded by the outer edge of Yuen Long Industrial Estate in the north, the Yuen Long Highway in the south, the Yuen Long Kau Hui group of villages in the east and Long Tin Road in the west.

Specific zones are:

- 1) 23.96 hectares are zoned "Comprehensive Development Area" for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities;
- 2) 62.21 hectares are zoned "Residential (Group A)" primarily for high-density residential development;
- 3) 33.82 hectares are zoned "Residential (Group B)" intended for medium-density residential development;

- 4) 4.63 hectares are zoned "Residential (Group E)" intended for the phasing out of existing industrial uses through redevelopment (or conversion) for residential use (on application to the Board);
- 5) 99.97 hectares are zoned "Village Type Development" covering existing villages and land suitable for village expansion ;
- 6) 44.61 hectares are zoned "Government, Institution or Community" ("G/IC") to serve local and/or district needs. The major facilities within this zone include the Yuen Long Swimming Pool Complex, Yuen Long Town Hall, Yuen Long Theatre and various schools;
- 7) 52.41 hectares are zoned "Open Space", intended primarily for the provision of outdoor open-air public space for active and/or passive recreational uses;
- 8) 104.5 hectares are zoned "Other Specified Uses" ("OU"). These include areas zoned "OU" annotated "Business", "OU" annotated "Industrial Estate", and other "OU" zones earmarked for various uses such as sewage treatment works, petrol filling station, light rail terminus with commercial/residential development, and public car park with ground floor retail shops; and
- 9) 38.8 hectares are zoned "Green Belt" to preserve their existing natural habitat.

[Town Planning Board Press Release, 28/10/2016]

### Approved Hung Hom Outline Zoning Plan amended

The Town Planning Board announced amendments to the approved Hung Hom Outline Zoning Plan on 28 October 2016. The main amendments are:

- 1) Rezoning of a site at Lee Kung Street from "Government, Institution or Community" to "Residential (Group A)";
- 2) Inclusion of "Art Studio (excluding those involving direct provision of services or goods)" as a Column 1 use under Schedule II of the "Other Specified Uses" annotated "Business" zone; and
- 3) Corresponding amendment to replace "Place of Recreation, Sports or Culture" under Column 2 by "Place of Recreation, Sports or Culture (not elsewhere specified)" of the said zone.

[Town Planning Board Press Release, 28/10/2016]

### Draft Central District Outline Zoning Plan approved

The Chief Executive in Council approved the draft Central District Outline Zoning Plan.

The planning scheme area is approximately 106 hectares, bounded by Victoria Harbour to the north, and adjoins Hong Kong Planning Area 24 along the Connaught Road Central/Harcourt Road corridor. The area is the centre of existing business activities and the heart of civic and government activities of Hong Kong.

Specific zones are:

- 1) 36.5 hectares are designated for road use;
- 2) 29.4 hectares are zoned "Commercial";
- 3) 1.9 hectares are zoned "Comprehensive Development Area", which covers three piers along the waterfront and the adjacent inland area;
- 4) 15 hectares are zoned "Government, Institution or Community" and "Open Space" to serve local and district needs;
- 5) 5.6 hectares are zoned "Other Specified Uses", covering the Central Market and Murray Building, which are designated for preservation and revitalisation;
- 6) 0.2 hectares and 0.8 hectares north of Kennedy Road near the Peak Tramway and adjacent to the British Consulate are respectively zoned "Residential (Group A)" and "Residential (Group B)"; and
- 7) 1.3 hectares of well-wooded hill slopes behind the military quarters at the southeast end of the area are zoned "Green Belt" to provide additional outlets for passive recreational activities.

[Town Planning Board Press Release, 11/11/2016]

### Approved Chai Wan Outline Zoning Plan amended

The Town Planning Board announced amendments to the approved Chai Wan Outline Zoning Plan on 18 November 2016.

The main amendments are:

- 1) Rezoning of a site at the junction of Chai Wan Road, Wing Ping Street and San Ha Street from "Open Space" to "Residential (Group A)" with stipulation of building height restrictions;
- 2) Rezoning of a site at Cape Collinson Road from "Other Specified Uses" annotated "Funeral Parlour" to "Other Specified Uses" annotated "Columbarium" with stipulation of building height restrictions; and
- 3) Incorporation of "Art Studio (excluding those involving direct provision of services or goods)" as a Column 1 use in the "Industrial" zone and Schedule II of the "Other Specified Uses" annotated "Business" zone.

[Town Planning Board Press Release, 18/11/2016]

## WEST KOWLOON CULTURAL DISTRICT

### Members of the M+ Board appointed

The M+ Board announced the re-appointment of six existing members by the Board of West Kowloon Cultural District Authority ("WKCD") for a two-year term from 23 October 2016 to 22 October 2018 and the appointment of two new members with effect from 1 November 2016 until the next Annual General Meeting of M Plus Museum Limited. The M+ Board consists of 17 members at present.

The M+ Board is responsible for formulating the vision and mission, as well as the strategies, policies and guidelines in relation to museological matters and professional standards of operations for the museum.

[WKCD Press Release, 07/11/2016]

### The 55<sup>th</sup> Board Meeting of West Kowloon Cultural District Authority

The Board of the WKCD held its 55<sup>th</sup> meeting on 8 November 2016.

Members were informed that the second exhibition at the M+ Pavilion, *Shifting Objectives: Design from the M+ Collection*, will be held from 30 November

2016 to 5 February 2017. The exhibition will outline the growing contours of the M+ design collection, which is the first of its kind in Asia and a core pillar of the M+ Collection.

It was reported to the meeting that the new season of Freespace Happening, featuring an array of programmes including outdoor cinema, music, literature, dance, dogs and kids activities, was very well-received. A total of over 22,200 visitors attended the first and second events in September and October.

The Board approved the launching of a competition amongst Hong Kong young architects and designers to design a temporary pavilion at the Nursery Park in the West Kowloon Cultural District. Open to Hong Kong residents who are studying or have graduated within the past seven years, the competition aims to showcase emerging local talent on an international stage and create an innovative new space within the district that can be enjoyed by the public.

The Board also approved the programming framework and opening plan of Xiqu Centre as well as the procurement strategy for facility management services, the guidelines for the commercial leasing process and the establishment of a commercial letting panel.

[WKCD Press Release, 08/11/2016]

## HONG KONG BRIEFING

### Calls for early implementation of ivory ban

Hong Kong is under international pressure to speed up implementation of a proposed full ban of the ivory trade, as a wildlife trafficking adviser for the US president criticised the government's five-year action plan as too slow.

Patrick Bergin, chief executive of the African Wildlife Foundation, urged the Hong Kong government to speed up measures and end the business in one or two years. "The future of elephants and the future of ivory are really in the hands of the people and the government of Hong Kong," he said.

The government announced this year that it planned to take steps towards a full ban by the end of 2021. But Bergin said the problem called for swifter action. "We thank the Hong Kong government for what you are doing, but it is not fast enough... With respect, it's not good enough," Bergin said, noting that Hong Kong was the world's largest market for ivory.

Over the past hundred years, Africa has lost 96 per cent of its elephants. The population has plummeted from 10 million to some 400,000. "When you have lost 96 per cent of the resource, you don't say we will phase this thing out, slowly, over the coming five years," Bergin said, "This is an emergency."

The American activist, who has lived in Africa for the past three decades, gave the example of the US, where Obama imposed an almost full ban in about two years. He said a similar time frame would also be reasonable in Hong Kong. Hong Kong green groups have urged the government to bring forward a total ivory ban to 2018, and legislators have questioned why a ban on the domestic trade cannot come earlier than 2021.

The government has said the proposed time frame is fair, and allows traders to get rid of their stocks, while avoiding legal challenges from a trade that is subject to licensing to possess or sell.

There are reportedly 370 licence holders in Hong Kong, who have 70 tonnes of legal ivory between them. Bergin said much of this cannot be legal. "The maths does not work," he said. "There have been only two sales of ivory in the last 30 years that were legal, and the amount of ivory available from those sale exceeds those two experimental sales."

He said the conservation community was so against ivory trade of any kind because it provided for laundering ivory. "It creates the possibility of doubt. The shopkeeper goes 'oh, this is legal ivory'. There is no way to differentiate legal and illegal ivory. The only way to solve the problem is to shut down the trade completely," he said.

Poachers kill 30,000 elephants every year to meet global demand for ivory. China is the largest consumer. Interpol estimates illegal wildlife trade is the fourth most lucrative black market in the world.

Bergin said Hong Kong could make a much greater change. "We need individual countries to take action," he said. I think the behaviour of Hong Kong could be powerful in providing an example and leading. If Hong Kong understands its responsibility to the global community in being part of the solution, that behaviour could have an impact in the rest of China."

Last year, President Xi Jinping promised measures to halt the domestic trade of ivory, but no timeline was announced.

[SCMP, 25/09/2016]

### Des Voeux Road becomes pedestrian zone

On 25 September 2016 a 200-metre section of Central's Des Vouex Road Central transformed into a temporary pedestrian and tram precinct, as over 14400 citizens walked and realised their imaginations on the usually busiest road in Hong Kong. More than 47 collaborators brought to the site community activities, such as street sports and live orchestra performance, while designers and architects restructured the space with awe-inspiring architectural interventions.

The temporary pedestrian zone resulted in cleaner air and also a significant increase in pedestrian traffic. The temporary car-free zone recorded 40% less air pollution than nearby roads on PM 2.5 reading. More than 1230 people walked along the pedestrianised road every 15 minutes on average, which is 92.19% higher than usual on weekends and holidays.

In light of the success of this experiment, Clear Air Network will be more confident in pushing for a permanent tram and pedestrian precinct in Des Voeux Road Central.

[Press release, Clean Air Network, 29/09/2016]

### Call for tougher action on air pollution in schools

Parents are calling for tougher action on air pollution in schools, as air pollution has reached serious levels for two consecutive days as a result of Typhoon Megi. The Environmental Protection Department (EPD) subsequently issued a warning for children and elderly people to remain indoors as much as possible.

Despite the warning, schools took no action to safeguard students from the effects of air pollution. Parents suggested the government should make it mandatory to cancel school on days when pollution is high. They complained that there were no by-laws or policies requiring schools to test the air quality. Also, the EPD failed to promote installation of air purifiers in schools.

In response, the Education Bureau said it has issued guidelines to schools on how to protect children when pollution levels reach 7 or above, but it did not recommend the cancellation of school.

Campaign group Hong Kong Clean Air Network does not recommend air purifiers as a solution to the problem as they may not be affordable for low-income families. Instead, they advocate for change of policy at the government level to ensure everyone can enjoy clean and quality air, regardless of their social status.

[SCMP, 30/09/2016]

### Chemical waste allegedly in recycling sites found

The EPD conducted an operation named “Operation Dawn” and discovered that 500 pieces of LCDs had been allegedly stored in nine recycling sites in the New Territories without approval. The EPD said it was investigating the people involved and gathering evidence for prosecutions.

Whilst general and normal selling of LCD monitors would not constitute environmental danger, the collection, storage, dismantling and disposal of a large quantity of such waste would cause pollution and adversely affect health, as they contain heavy metals, such as mercury and cadmium, as well as toxic organic compounds.

The EPD has been criticised for failing to enforce transboundary laws preventing the import of electronic waste, following a report by Basel Action Network revealing that large volumes of electronic waste were exported from the U.S. to Hong Kong.

[SCMP, 07/10/2016]

### Environmental agreement with Macau

The EPD announced that Hong Kong has signed the Hong Kong – Macao Environmental Protection Co-operation Agreement with Macau on 26 October 2016 to facilitate exchanges and collaboration in various areas of environmental protection, including: air pollution; environmental impact assessment, waste management, sewage management, environmental monitoring and research; environmental promotion and education; environmental training and exchanges; and notification on major cross-boundary environmental incidents and environmental industry co-operation.

The Agreement further strengthens the cooperation between the two cities through the annual Hong Kong – Macao Environmental Protection Co-operation Liaison Meetings held since 2008.

[Press Release, Environmental Protection Department, 26/10/2016]

### First plastic bags criminal conviction

On 1 December 2016, a grocery store proprietor was convicted and fined \$5,000 by Kwun Tong Magistrates’ Courts for contravening the *Product Eco-responsibility Ordinance* (Cap 630) (“PERO”) by failing to charge for plastic bags at the time of sale.

Under the PERO, retailers are required to charge customers at least 50c for each plastic bag provided for retail sale of goods. Merely stating the price of the plastic bag without actually collecting the charge or providing a rebate to offset the charge is an offence.

The EPD said this was the first case in which criminal proceedings were instituted since the full implementation of the Plastic Bag Charging Scheme in April 2015. Fixed penalty notices were issued to the grocery store proprietor in December 2015 and February 2016 for failing to charge customers for the plastic bags provided, and for offering a rebate to customers to offset the charge. However, during an inspection at the store in July 2016, EPD officers found that the store still failed to comply with the legal requirements. As a result, the EPD decided to prosecute the store proprietor to prevent repeated contraventions.

[Press Release, Environmental Protection Department, 01/12/2016]

### Syringes and drug vials found among beach debris

Since 12 July 2016, medical waste, including 399 syringes (96 of them with needles), more than 200 drug vials, and plastic medicine bottles containing drugs were found on Sam Pak Wan beach in Discovery Bay.

In addition to the syringes, tests tubes containing blood were also found. Some had markings with Chinese characters indicating the pharmaceutical companies concerned might be located in Jiangxi and Shandong, while others carried markings of Hong Kong clinics with patients’ names shown.

The concern group Plastic Free Seas said a significant portion of the medical waste appeared to come from the mainland and that illegal disposal was involved. Having needles and syringes on beaches is a serious issue as stepping on them could cause injury and infection.

The EPD said the latest discoveries were a worry and would therefore investigate the matter.

[The Standard, 07/12/2016]

## ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

*Summary of Minutes of the 217<sup>th</sup> Meeting of the ACE held on 3 October 2016 at 2:30 pm.*

The main item of the meeting was to review the Fifth Technical Memorandum (“TM”) for Allocation of Emission Allowances for Power Plants.

Mr. W C Mok of EPD briefed members on the legislative framework and the best practical means (“BPM”) adopted in the review of the Fifth TM for allocation of emission allowances for power plants and sought members’ support on the proposal to further tighten emission allowances of three pollutants: sulphur dioxide, nitrogen oxides and respirable suspended particulate, through issuing a new TM i.e. the Sixth TM.

Mr. Mok advised the Committee that local electricity demand had been increasing at about 1% per year. However, due to potential impacts of the “Energy Saving Plan for Hong Kong’s Built Environment 2015~2025+” released in 2015 and other Energy Efficiency and Conservation initiatives, local electricity demand is expected to increase by around 4.8% between 2015 and 2021, as opposed to 6%.

In relation to tightening of the emission allowances, Mr. Mok said that it was necessary to maintain a reliable and safe electricity supply. He agreed that power plant emissions should be regulated based on best practical means (“BPM”) instead of imposing emission reduction targets disregard of the practicability to do so. Therefore, the TM should review the practicability of adopting new emissions technologies that had become available since the preceding TM review.

Noticing that the two power companies were allocated different emission allowances, a member expressed his concern over the equity and fairness of present arrangements. Mr. Mok explained that the two companies were subject to the same BMP scrutiny. The different allocations of emission allowances reflected their different make-up of coal-fired units and gas-fired units.

A member suggested that source- apportionment should be undertaken in order to estimate air quality improvements and health benefits brought about by emission reductions at power plants. Mr. Mok advised that the EPD had already conducted emission source- apportionments for understanding the sources of particulates.

Also, there was a brief discussion on setting an emission cap for PM<sub>2.5</sub>, which had a higher toxicity than PM<sub>10</sub>. Mr. Mok explained that the major obstacle was the lack of a reliable method to measure its concentration.

A member expressed his concern about the dominating effect of regional influence over local emissions, which makes it more difficult for Hong Kong to combat air pollution. Mr. Mok explained that among air pollutants, ozone and particulates had a strong effect on local air quality. He also relied on a local university’s findings that over 60% of particulates measured in Hong Kong were due to regional influence.

Regarding carbon emissions, a member referenced the U.S *Clean Power Act*, which regulates greenhouse gas emissions including carbon dioxide, and questioned whether the government had any plans to regulate carbon emissions to meet the objectives of the Paris Agreement. Mr. Mok replied that it is difficult to set an emission cap for CO<sub>2</sub> due to lack of proven effective technology to reduce carbon emissions, apart from revamping the fuel mix to use less carbon intensive fuel (e.g. natural gas) and enhancing energy efficiency.

*Report on the 134<sup>th</sup> Environmental Impact Assessment Subcommittee Meeting (ACE Paper 16/2016) (by EIA Subcommittee Secretariat, November 2016)*

The EIA Committee considered two reports at the meeting, namely (a) Kai Tak Multi-purpose Sports Complex and (b) Sha Tin Cavern Sewage Treatment Works.

#### **(A) EIA report on Kai Tak Multi-purpose Sports Complex (“Kai Tak Project”)**

The main objective of the Kai Tak Project is to accommodate community demands for more sports facilities and to help nurture local athletic talent which is compatible with the government’s policy objective for sports development. According to the EIA report, the Kai Tak Project could provide open space and extensive green areas for the public to enjoy. Also, it will become a landmark feature along the Harbor view of Hong Kong.

#### **(B) EIA report on Sha Tin Cavern Sewage Treatment Works**

According to the EIA Report, the existing Sha Tin Sewage Treatment Works located at the estuary of the Shing Mun River will be relocated in anticipation of increased maintenance needs. The relocation will not only release valuable land for housing and other beneficial uses, but also provide environmental benefits, such as opportunities for developing a green and vibrant waterfront living environment for the community and removing the potential odour problem from the existing site.

## CLIMATE CHANGE

### Climate change ‘sickens oceans’

Global warming is making the oceans sicker than ever, spreading disease among animals and humans and threatening food security across the planet, a recent scientific concluded.

The findings, based on peer-reviewed research, were compiled by 80 scientists from 12 countries, experts said at the International Union for Conservation of Nature’s world conservation congress in Hawaii, which has drawn 9000 leaders and environmentalists to Honolulu.

The report, *Explaining Ocean Warming*, is the “most comprehensive, most systematic study we have ever undertaken on the consequence of this warming on the ocean,” one of the lead authors, Dan Laffoley, said yesterday.

The world’s waters have absorbed more than 93 per cent of the enhanced heating from climate change since the 1970s, curbing the heat felt on land but drastically altering the rhythm of life in the ocean, he said. “The ocean has been shielding us, and the consequences of this are absolutely massive,” said Professor Laffoley, marine vice-chairman of the World Commission on Protected Areas at IUCN.

The study included every major marine ecosystem, containing everything from microbes to whales, including the deep ocean. It documents evidence of jellyfish, seabirds and plankton shifting toward the cooler poles by up to 10 degrees latitude.

The movement in the marine environment is “1.5 to five times as fast as anything we are seeing on the ground,” Professor Laffoley said. “We are changing the seasons in the ocean.”

The higher temperatures will probably change the sex ratio of turtles in the future because females are more likely to be born in warmer temperatures. The heat also means microbes dominate larger areas of the ocean.

More than 25 per cent of the report’s information is new, published in journals since 2014, including studies showing that global warming is affecting weather patterns and making storms more common. The study includes evidence ocean warming “is causing increased disease in plant and animal populations,” it said.

Pathogens, such as cholera-bearing bacteria and toxic algal blooms, that can cause neurological illnesses, such as ciguatera poisoning, spread more easily in warm water, directly impacting human health.

[*The Australian*, 07/09/ 2016]

### Climate change now proved beyond doubt

“I refer to the letter by Wyss Yim (“Carbon dioxide has beneficial role on earth”, 28 September).

Carbon dioxide obviously has a functional role in nature’s grand scheme of things, but the catch is always to maintain a certain balance in the ecosystem and not to overstretch its limits out of humans’ excessiveness.

Your correspondent’s argument focuses on short-term fluctuations but ignores the broader picture of long-term trends. The climate myth of “Warming stopped/paused since the year 19xx” has been well debunked by the Escalator on the Skeptical Science website ([www.skepticalscience.com/graphics.php?g=47](http://www.skepticalscience.com/graphics.php?g=47)) which shows a long-term warming trend despite several short-term cooling periods.

If Mr. Yim browses the internet for the vast number of scientific papers, reports and publications on the impact of climate change, he will readily find that the adverse effects on the biosphere and ecology will be very significant and are expected to increase over time.

For example, the Intergovernmental Panel on Climate Change concluded in its fifth assessment report that the negative impacts of climate change on crop yields had been more common than positive impacts. The third National Climate Assessment of the US (<http://nca2014.globalchange.gov/>) also said that “ecosystem perturbations driven by climate change have direct human impacts, including reduced water supply and quality, the loss of iconic species and landscapes, distorted rhythms of nature, and the potential for extreme events to overwhelm the regulating services of ecosystems”.

Given all these scientific facts and findings, a sensible conclusion would be to curb greenhouse gas emissions and to take responsible action against climate-change effects, as demonstrated by the commitments of 191 countries in signing the Paris Agreement, and not to head towards the opposite direction in encouraging the craving for carbon dioxide by exaggerating its “benefits”.

[SCMP, letter to the editor from Lee Sai-ming, senior scientific officer, Hong Kong Observatory, 15/10/2016]

### Climate change could drive 122 million more people into extreme poverty by 2030

The 2016 State of Food and Agriculture report published by the Food and Agricultural Organisation (“FAO”) of the United Nations warned that climate change could drive 35 to 122 million of the global population into extreme poverty by 2030; farming communities in sub-Saharan Africa would be among the hardest hit.

The FAO report indicated that climate change has become a major and increasing threat to global food security, and its negative impact will become more severe as it accelerates, particularly in vulnerable places such as small islands and regions subject to large-scale extreme weather and climate events. Possible consequences include significant reduction in crop yields and increasingly high and volatile food prices.

The report also stated that global poverty cannot be eradicated without worldwide adoption of sustainable use of land, water, fisheries and forestry practices. In order to alleviate the food insecurity problem, FAO proposed assisting small-scale farmers in adopting adaptation strategies, such as diversifying crop production, better integration of farming with the natural habitat, agroecology and sustainable intensification. It also emphasised the importance of social protection programmes in helping smallholders better manage risk, reducing vulnerability to food price volatility and enhancing employment prospects of rural people who have migrated to urban areas.

[*The Guardian*, 17/10/2016]

### Uncertainty of U.S. climate change policy

Incoming U.S. President, Donald Trump, recently revealed in an interview that he had an “open mind” over U.S. involvement in the Paris Agreement (“**the Agreement**”), which has been effective since 4 November 2016. During his election campaign, Trump proclaimed that he would cancel the Agreement. World leaders gathered for the COP 22 Climate Summit in Marrakech expressed concern over Trump’s position as U.S. accounts for about 18 percent of global greenhouse gas emissions. Its involvement is therefore critical to the success of limiting the temperature rise to below 2 °C, which is the principal goal of the Agreement.

Procedurally speaking, it is possible for the U.S. government to withdraw from the Agreement in two ways. Firstly, according to Article 28, withdrawal is permissible, but only from the third year following the entry into force of the Agreement, which means not until November 2019.

Secondly, more radically, the U.S. government could withdraw from the United Nations Framework Convention on Climate Change (UNFCCC). Withdrawal from the UNFCCC would automatically result in withdrawal from the Agreement.

Alternatively, Trump’s government could simply ignore its commitments under the Agreement as the Agreement does not impose any sanction on states in case of failure to meet the emission reduction target. However, the U.S. could not withdraw from the Agreement without bearing any consequences. Two major risks are identified, namely diplomatic and legal risks.

It is likely that the U.S. would face the risk of diplomatic isolation. Global leaders have reinforced their determination to deal with climate change at COP 22 Climate Summit following the COP 21 held in Paris last year. Should the U.S. withdraw from the Agreement, it will not be part of this common path, leaving the field open for challengers, including China and the European Union, which may take the leadership in developing low carbon economies.

As well, the U.S. government could face climate change lawsuits initiated by victims of global warming brought in U.S. courts, or even domestic courts of other countries. The courts could attribute liability to the U.S. for causing or contributing to global warming damage by withdrawing from, or failing to implement, the Agreement.

[*The Huffington Post*, 29/11/2016]

### Climate change will cause “unimaginable refugee crisis”

Climate change is playing an increasing role in driving migrants to Europe and beyond, which may cause a refugee crisis of unimaginable scale.

It has already been seen that climate change can be an accelerant of instability around the world by multiplying problems like food scarcity and water insecurity, which in turn provoke conflicts and migration. In fact, climate change is directly associated with recent conflicts and unrest in the Middle East and Africa, such as the Arab Spring, the war in Syria, and the Boko Haram terrorist campaigns in sub-Saharan Africa.

The U.K. and U.S. governments have expressed concern about the adverse consequences of climate-induced migration on state security. In 2015, a U.K. foreign office report assessed the dangers posed by climate change, including very large risks to global food security, increased risk of terrorism as states fail, and unprecedented migration that would require international assistance. In view of the dangers, the U.K. government regards climate change as a strategic security threat that is no less serious than terrorism and state-on-state conflict. U.K. military will be deployed more often to conflict and disaster zones as a result.

Similarly, in September this year a coalition of 25 U.S. military and national security experts warned that climate change would not only pose a threat to U.S. national security but also international security.

[*The Guardian*, 01/12/2016]

## REGIONAL & INTERNATIONAL

### CHINA

#### Cadres grilled over pollution

More than 1,500 government officials have been called to account for major environmental problems in Heilongjiang, Henan and Jiangsu - the first group among 8 regions that the Ministry of Environmental Protection plans to inspect. Inspections found insufficient implementation of pollution control laws in these 3 regions.

It was noted that China has increased its efforts to fight pollution in recent years. In the past year, the Chinese government punished numerous factories and polluting industries for breaches of environmental controls.

[*The Standard*, 17/11/2016]

#### China sends environmental inspection teams to seven more regions

The Ministry of Environmental Protection announced that another 7 environmental inspection teams will be sent to Beijing, Shanghai, Guangdong, Chongqing, Shaanxi, Gansu and Hubei.

It was also reported that previous inspections of the 8 Chinese regions has led to more than 3,000 officials being disciplined and 198 million yuan in penalties being handed out.

[*Reuters*, 24/11/2016]

#### Mega-city part of rail plan

As part of the Jing-Jin-Ji project to integrate Beijing, Tianjin and Hebei into a mega-city, the authorities approved a 247 billion yuan (HK\$277.3 billion) railway plan improving transport links between the three areas. The National Development and Reform Commission said that the railway plan will span 9 projects totalling 1,100 km long and these projects are expected to finish in 2020. It was noted that the current population of the three areas is approximately 110 million, and when completed, the Jing-Jin-Ji project will span 212,000 km<sup>2</sup>.

[*The Standard*, 29/11/2016]

#### Rivers about to be given powerful protectors

A document endorsed by the Chinese Communist Party's Central Committee has revealed that "river chiefs" will be appointed to protect waterways, prevent pollution and restore the ecology. These river chiefs will be held accountable if damage occurs in rivers under their supervision. It was also revealed that more officials will be hired at provincial, city, county and township levels for duties in specific parts and at lakes.

[*The Standard*, 14/12/2016]

### EUROPEAN UNION

#### EU to attach CO2 limits to power reserve subsidies

EU regulators plan to attach emission limits and set stricter rules on capacity mechanisms (a mechanism to fund electricity generation utilities that is needed to guarantee supply during periods of peak demand) as the EU pushes to implement its 2030 goals for reducing greenhouse gases.

It was also revealed that the draft law published by the European Commission will set a limit of 550 grams of carbon dioxide per kilowatt-hour for new plants and give EU member nations time to adapt existing capacity mechanisms already cleared by regulators.

[*Reuters*, 28/11/2016]

### GERMANY

#### Germany to spend 250 mln Euros on hydrogen car support scheme

The Transport Ministry of Germany will invest 250 million Euros by 2019 in researching the feasibility of hydrogen-fuelled cars suitable for mass production. Some of the money will be invested in research and development with the aim of making such cars competitive, while some will be used to develop infrastructure such as fuelling stations.

It was said that the German government had agreed to give financial support for fuel-cell cars manufacture that would run until 2026.

[*Reuters*, 13/12/2016]

## NETHERLANDS

### Dutch to stop subsidising renewables in long-term climate strategy

A government paper revealed that the Netherlands will gradually phase out subsidies for renewable energy and will shift its policy to energy saving and carbon capture. Offshore wind turbines will no longer be eligible for subsidies by 2026, but it remains the government's aim to develop the North Sea for wind energy.

The paper also revealed that a 100 million-euro fund that provides loans and guarantees to projects that reduce carbon dioxide will be expanded and is likely to receive additional funding from the European Investment Bank.

[Reuters, 07/12/2016]

## SWEDEN

### Government to abolish solar energy tax

The Swedish government, after heavy criticism from environmental experts, has proposed to slash the solar energy tax by 98% in 2017, thereby abolishing the solar energy tax, in effect.

Sweden's centre-left government had previously introduced an energy tax on solar power production above 255 kilowatt early this year, affecting many companies and commercial landlords.

[Reuters, 21/11/2016]

## VIETNAM

### Vietnam abandons plan for first nuclear power plants

The National Assembly of Vietnam voted to abandon its plans to build 2 multi-billion-dollar nuclear power plants with Russian and Japanese assistance.

The Vietnamese government said that the decision was taken for economic reasons and not because of any technological considerations. It was reported that the Vietnamese government lacks sufficient funds to finance the hugely expensive nuclear plants, as public debt approaches the permitted limit.

The decision dealt another heavy blow to the nuclear industry, as countries from Germany to Indonesia have decided to either pull out of nuclear energy or cancel development plans following the Fukushima nuclear disaster in Japan in 2011.

[Reuters, 22/11/2016]

## SOUTH-EAST ASIA

### Rubber and palm oil threaten forests

In South-East Asia's natural forests, 40 per cent of wildlife species have less than 10 per cent of their habitats protected from future development, according to a Duke University-led study published this month. The study newly identified more than 200 species as being at high risk of extinction, including 147 amphibian species, 42 mammal species and 28 bird species.

The study researchers reported: *"More than 56 per cent of the world's rubber and 39 per cent of its palm oil are now produced in South-East Asia, much of it on land that that formerly was natural forest. Compared to the lush and diverse natural forest, few species can thrive in these green deserts."*

Rubber is native to the Amazon basin, but was imported to Asia in the 19<sup>th</sup> century. Global cultivation increased about one third from 2003 to 2013, mostly to provide rubber for automobile tyres, reported the Yale University publication *Environment 360*. However, with a decline in sales to China, one of the largest purchasers of rubber for tyres, rubber production has fallen, according to a 2016 market report by ReportBuyer.

Problems that come with cultivation of rubber include: water depletion (rubber trees' deep roots suck up subsoil water more quickly than rainforest trees); soil erosion (because the trees are often planted on hillsides in monocultures, leaving topsoil exposed); and altered river PR levels (due to soil washing into rivers).

Oil palms are native to Africa and were brought to South-East Asia in the mid-20<sup>th</sup> century. An increased use of palm oil in snack foods and cosmetics has led to a boost in cultivation, and concomitant deforestation.

Conservation efforts in the region have included: reconvertng under-performing rubber plantations back to natural forest; diversifying by mixing other crops in with rubber trees or oil palms; and planting trees along streambeds to prevent erosion.

Remote-sensing technologies helped the Duke researchers better identify conservation priorities. Without access to the new and frequently updated information remote sensing provides, between 20 per cent and 40 per cent of our current conservation priority areas could turn out to be a waste of effort because there are no forests, or natural forests, in them.

[The Epoch Times, 25-31/08/2016]

## INDIA

### Wildlife saved from car rally

A car rally which was to partly occur in the Aravalli Hills in the State of Haryana, India has been re-routed away from ecologically sensitive areas.

The MRF Rally de North 2016 Car Rally would have involved dozens of rally cars and their support vehicles travelling through the Aravalli Hills. The area serves as a wildlife corridor between the Asola Bhatti Wildlife Sanctuary and the Sariska Tiger Reserves, and is home to leopard, hyena, civet cat, jackal, as well as being in the catchment of Damdama Lake, home to nearly 200 bird species.

Legal Initiative of Forest and Environment (LIFE) urgently called the matter to the attention of the National Green Tribunal, which scheduled a hearing just days before the car rally was to begin. ELAW Staff Scientist Mark Chernaik provided LIFE with documentation illustrating how off-highway vehicles can negatively affect sensitive wildlife and impair water quality of nearby lakes.

In a last minute decision, the National Green Tribunal declared that the car rally would not be allowed inside the Aravalli forest area.

[*ELAW press release*, 20/09/2016]

### **Phone apps to track pollution**

New Delhi – labeled as the world’s most polluted city – is trying something new to help clean up its air. A smartphone app that allows citizens to report the presence of construction dust or the burning of leaves and garbage in public parks to authorities was launched last week.

The “Hawa Badlo” – or “Change the Air” – app has two versions. One allows people to take pictures of pollutants. The other allows authorities to investigate valid complaints.

Over the last few years, New Delhi has struggled with ways to handle the pollution, which becomes especially obvious during the colder winter months as the city’s air turns to a grey haze. The newest measure, the phone app, was launched by the Environmental Pollution (Prevention and Control) Authority, a monitoring group set up on the order of India’s Supreme Court in April.

In the last decade or so, India, like neighboring China, has seen pollution soar as its economy has boomed and it has continued to rely on burning coal to generate electricity. The number of vehicles on the road has skyrocketed, while hundreds of millions of impoverished people still use wood, kerosene or whatever they can grab at the rubbish dump to build fires for cooking or keeping warm on winter nights.

During the last two years, the government has tried a range of measures to control the air pollution. These include stricter emission norms for cars and a tax on diesel-fuelled trucks that enter the city.

[*SCMP*, 23/10/2016]

## **KENYA**

### **Bid to stop railway project**

About 300 peaceful protesters marched to the Chinese embassy in the Kenyan capital, Nairobi, to urge the Chinese government not to build a railway across the Nairobi National Park and surrounding areas.

Kenya is re-engineering rail line from Nairobi to the port city of Mombasa, and the line would cross over the park as it approaches the town of Naivasha, where the government wants to construct an industrial hub.

The Chinese-funded project would cross six kilometres of the park and environmental groups have vowed to fight it. A spokesman for the peaceful protesters who included conservation groups, said the construction of the railway through the park was a guise to grab land. He said there are six alternative routes that are viable.

[*The Standard*, 19/10/2016]

## **AUSTRALIA**

### **New marine park for Western Australia**

Western Australia has created its newest marine park; but also it is the first oceanic marine park not to contain a sanctuary zone.

Premier Colin Barnett launched the Yawuru Nagulagun/Roebuck Bay Marine Park in the waters around Broome: home to threadfin salmon, dugongs, turtles, mud crabs and a group of 140-odd rare snubfin dolphins. The park, from Gantheaume Point in the north to Cape Villaret in the south, will be jointly managed with the Yawuru people.

An energetic online campaign by Save Our Marine Life, an alliance of 20 conservation groups that includes the Australian Conservation Foundation, Wilderness Society and World Wildlife Fund, pleaded for a no-fishing sanctuary zone to allow stock to breed and sustain both recreational fishing and the local dolphin population.

Most of the 15,000 submissions were made via stock online forms, but the government also received submissions from the WA Museum, Murdoch University’s Cetacean Research Unit, the University of WA’s Centre for Marine Futures and the Australian Marine Sciences Association, the latter stating that the lack of a sanctuary was a “fundamental and critical flaw”. It had also received a letter from a group of 32 eminent scientists, as well as another from a group of 18 tourism businesses, asking for a sanctuary.

Save Our Marine Life member Pew Charitable Trusts, welcomed the plan’s emphasis on the participation of traditional owners, but voiced concern over the lack of a sanctuary and called for a review of the zoning.

Cameron Birch, who founded Broome’s whale watching industry almost a decade ago and began Australia’s first snubfin dolphin tours at Roebuck Bay a year ago, also voiced disappointment.

“For the past 12 months the drive has been to get eight per cent of the park made into a sanctuary,” he said. “But there was a lack of solid data plus a lot of pressure from the local fishing community.”

“But there might be another chance in the future as that data comes in and hopefully the park’s managers should have the infrastructure to monitor that now.” He said the end of commercial gillnet fishing in the bay in late 2013 had caused a “fantastic resurgence” in fish stocks, but this had also brought about a great deal more recreational fishing.

“A sanctuary zone would have ensured an opportunity to create a breeding ground,” he said. “We are only talking about eight per cent of the park so it shouldn’t interfere with the fishing community.”

He has volunteered to help with data collection, as his tours already record interactions with bottlenose, snubfin, humpback and indo-pacific humpback dolphins, dugongs, manta rays and sea turtles.

Questions to the government in Parliament from the Greens have revealed that no recreational – catch data exists to estimate current fishing pressure on Roebuck Bay, or project future fishing pressure.

Opposition environment spokesman, Chris Tallentire, said he was “dismayed” by the decision and that if elected in 2017 Labour would conduct a science-based review of the marine park to determine the location of sanctuary zones.

Environment Minister Albert Jacob said he was confident in the plan, which considered submissions' comments, context and rationale, not just the numbers. He said it was designed in close liaison with the native title holders and was based on careful consideration of the specific nature of Roebuck Bay, identified pressures and the objectives of the park.

The government has committed \$2.7 million over the next four years to ensure effective management. A five-year review will assess the plan's adequacy, an approach supported by the traditional owners.

Creation of all of the Liberal-National Government's proposed new marine reserves will increase the total area of the State's marine parks and reserves from approximately 1.5 million hectares to over five million hectares since the government came to office in 2008, a more than 200 per cent increase.

Gillnet fishing is still allowed elsewhere in the Kimberley, including in North Kimberley Marine Park, which is part of the network of new marine parks. This is despite calls from tour operators to end the practice in the region. A tour operator recently found a dead crocodile floating caught in a net while conducting a tour.

[*Huffpost Australia*, 20/10/2016]

## **SRI LANKA**

### **Haul of bird nests**

Sri Lankan custom officers have destroyed 45kg of rare bird nests that are considered a delicacy in China and have a street value of nearly half a million dollars. The officers burnt the pile of swallows' nests confiscated mainly from passengers' airport luggage and parcels intended for overseas delivery over the past four years.

“We destroyed this stock to demonstrate our commitment to protect endangered species,” customs spokesman Dharmasena Kahandawa said. “There may be a street value of up to US\$10,000 for a kilo of birds' nests, but for us it has no value at all because this is an illegal trade.”

Another 40kg of feathers from exotic birds and other animal parts that are used in Chinese medicine were also destroyed, together with the edible nests, at a Colombo cemetery's crematorium. The nests are the main ingredient in bird's nest soup, considered a delicacy in China and other Asian countries. But removing, owning or exporting birds is outlawed under Sri Lanka's strict flora and fauna regulations.

The cup-shaped collections of twigs are held together by dried swiftlet saliva, which is made into a gelatinous soup credited in China with everything from alleviating asthma to arresting the ageing process.

In January, Sri Lankan customs officers publicly destroyed the country's biggest ever illegal ivory haul – more than 350 tusks weighing about 1.5 tonnes – in what officials said was an attempt to show poachers that the island would not tolerate the illegal trade.

[*SCMP*, 21/10/2016]

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**Convictions under environmental legislation: September to December 2016 (January 2017 data not available)**

**[Note: the EPD no longer classifies second (and subsequent) offences.]**

The EPD's summary of convictions recorded and fines imposed during the above period is as follows:

***September 2016***

Forty-three convictions were recorded in September 2016 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Seven of the convictions were under the Air Pollution Control Ordinance, 7 were under the Noise Control Ordinance, 26 were under the Waste Disposal Ordinance, and 3 were under the Water Pollution Control Ordinance.

The heaviest fine in September was \$50,000, assessed against a company that deposited the construction waste on private lot without valid permission.

***October 2016***

Fifty-one convictions were recorded in October 2016 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Five of the convictions were under the Air Pollution Control Ordinance, 1 was under the Environmental Impact Assessment Ordinance, 1 was under the Hazardous Chemicals Control Ordinance, 5 were under the Noise Control Ordinance, 38 were under the Waste Disposal Ordinance, and 1 was under the Water Pollution Control Ordinance.

The heaviest fine in October was \$50,000, assessed against a company that used powered mechanical equipment otherwise than in accordance with conditions in the Construction Noise Permit.

***November 2016***

Fifty-four convictions were recorded in November 2016 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Nine of the convictions were under the Air Pollution Control Ordinance, 9 were under the Noise Control Ordinance, 33 were under the Waste Disposal Ordinance, and 3 were under the Water Pollution Control Ordinance.

The heaviest fine in November was \$20,000, assessed in two convictions respectively against a company that used powered mechanical equipment otherwise than in accordance with conditions in the Construction Noise Permit.

***December 2016***

Thirty-five convictions were recorded in December 2016 for breaches of legislation enforced by the Environmental Protection Department (EPD).

One of the convictions was under the Air Pollution Control Ordinance, 3 were under the Noise Control Ordinance, 2 were under the

Product Eco-responsibility Ordinance; 27 were under the Waste Disposal Ordinance, and 2 were under the Water Pollution Control Ordinance.

The heaviest fine in December was \$60,000, assessed against a company that imported controlled waste without a permit.

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