

# FRED KAN & CO.

Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

(Published since May 1992)

簡家驄律師行 · 城規環保簡訊

*We are confronted increasingly by examples of the government's reluctance to fairly and resolutely enforce our planning and environment-protection laws: from slow or no reactions to illegal roads in country parks and bending planning laws to accommodate developers' ambitions, to almost a state of denial of worsening air and water pollution. However, a long-standing record of inadequate penalties for environmental offences also contributes to this sorry state of affairs.*

The Editors

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### WEAK PENALTIES UNDERMINE ENFORCEMENT OF ENVIRONMENTAL LAWS

We often hear and read criticism of the apparent lack of political will in Hong Kong to monitor and resolutely enforce our environment-protection and planning laws. Over the years, the UPELQ has from time to time made the same criticism of Hong Kong's environmental agencies, mainly in the context of anti-pollution laws and laws designed to protect our natural environment.

We make no apology for doing so again. Specifically, in this edition we look at the courts' long record of – by and large – treating “environmental offences” very leniently, especially compared with, for example, their approach to “commercial offences”, such as offences under the *Copyright Ordinance* (Cap.118) (CO).

Having summarised in the UPELQ for 17 years penalties handed down in the magistracies, we have a strong and direct impression of very low average level of penalties imposed for offences under Hong Kong's anti-pollution laws. Without attempting an in-depth review of penalties statistics over the years, we shall consider examples of the two kinds of offences to illustrate the wide discrepancy between copyright and environmental penalties imposed by the courts.

#### Statutory penalties

The environmental “sample” offences we shall use are offences under :

- Sections 16, 16A and 17 of the *Waste Disposal Ordinance* (Cap.354) (WDO) – i.e. unauthorised importation or dumping of waste
- Sections 8(1), 8(2), 9(1) and 9(2) of the *Water Pollution Control Ordinance* (Cap.358) – (WPCO) – i.e. unauthorised polluting of public waters
- Sections 10, 12 and 13 of the *Air Pollution Control Ordinance* (Cap.311) (APCO) – i.e. unauthorised emissions of air pollutants

The prescribed penalties are :

- **WDO**  
1<sup>st</sup> offence - \$200,000 and 6 months imprisonment  
2<sup>nd</sup> (etc) offence - \$500,000 and imprisonment for 6 months
- **WPCO**  
1st offence - \$200,000 and 6 months imprisonment  
2nd (etc.) offence - \$400,000 (plus \$10,000 per day for continuing offence) and 6 months imprisonment
- **APCO**  
*Section 10(7)(a)* (failure to comply with abatement notice) –  
fine of \$500,000 (plus \$100,000 per day for continuing offence) and imprisonment for 12 months.  
Any other emissions offence –  
1<sup>st</sup> offence – fine of \$100,000  
2<sup>nd</sup> (etc.) offence – fine of \$200,000 (plus \$20,000 per day) and imprisonment for 6 months  
  
*Section 12* – fine of \$200,000 (plus \$20,000 per day) and 6 months imprisonment  
  
Offences and penalties under the CO are covered mainly by sections 118 and 119 :  
  
● *Section 118(1)* sets out a range of different offences which all, essentially, involve dealing in some specified way with a copyright work without the licence of the copyright owner, such as selling or possessing for sale (etc.) copies of copyright works.  
  
● *Section 118(2A)* makes it an offence to possess an infringing copy of a copyright work for the purpose of a trade or business.  
  
● Under *section 119(1)*, the penalty for offences against sections 118(1) or (2A) are a fine of \$50,000 and imprisonment for 4 years.

#### Courts' approach to penalties

EPD's published penalties statistics for the sample period of July-September 2008, include the following examples of pollution offences penalties :

## URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

Date of Offence	Nature of Offence	Fines(\$)/ other sentences
<b>APCO</b>		
11.6.2007	Failed to comply with the requirement of an asbestos abatement notice	3,500
17.12.2007	Failed to take measures to control air pollutant emission	10,000
4.1.2008	Emitted excessive dark smoke	8,000
3.1.2008	Emitted excessive dark smoke	5,500
29.6.2007	Failed to comply with the requirement of an asbestos abatement notice	4,000
18.2.2008	Emitted excessive dark smoke	6,000
29.5.2008	Emitted excessive dark smoke	15,000

Date of Offence	Nature of Offence	Fines(\$)/ other sentences
<b>WDO</b>		
20.10.2007	Imported controlled waste without a permit	25,000
12.12.2007	Imported waste for disposal without a permit	20,000
18.12.2007	Imported controlled waste without a permit	25,000
25.1.2008	Deposited waste unlawfully	2,000
3.1.2008	Deposited waste unlawfully	3,000
4.6.2008	Failed to engage services of waste collector	5,000
4.6.2008	Failed to engage services of waste collector	5,000
4.6.2008	Failed to engage services of waste collector	5,000
14.12.2007	Imported controlled waste without a permit	100,000
9.1.2008	Deposited waste unlawfully	2,000
15.4.2008	Deposited waste unlawfully	8,000
26.1.2008	Imported controlled waste without a permit	20,000
10.2.2008	Imported controlled waste without a permit	20,000
10.2.2008	Imported controlled waste without a permit	20,000
10.2.2008	Imported controlled waste without a permit	20,000
18.3.2008	Discharged substandard liquid livestock waste	5,000
3.1.2008	Deposited waste unlawfully	1,000
31.1.2008	Deposited waste unlawfully	2,000
25.4.2008	Deposited waste unlawfully	200
25.4.2008	Deposited waste unlawfully	200
21.2.2008	Deposited waste unlawfully	1,600
26.2.2008	Deposited waste unlawfully	10,000
28.2.2008	Deposited waste unlawfully	10,000
28.2.2008	Deposited waste unlawfully	10,000
4.6.2008	Exported controlled waste without a permit	2 months' imprisonment
4.6.2008	Exported controlled waste without a permit	2 months' imprisonment
4.6.2008	Exported controlled waste without a permit	2 months' imprisonment
4.6.2008	Exported controlled waste without a permit	2 months' imprisonment
4.6.2008	Exported controlled waste without a permit	2 months' imprisonment
4.6.2008	Exported controlled waste without a permit	3 months' imprisonment

Date of Offence	Nature of Offence	Fines(\$)/ other sentences
<b>WPCO</b>		
4.10.2007	Contravened the provisions of a licence	10,000
18.1.2008	Discharged waste/polluting matter into the water control zone	25,000
11.12.2007	Discharged waste/polluting matter into the water control zone	5,000
5.3.2008	Discharged waste/polluting matter into the water control zone	5,000
28.2.2008	Discharged waste/polluting matter into the water control zone	8,000
31.1.2008	Discharged waste/polluting matter into the water control zone	5,000
2.4.2008	Discharged waste/polluting matter into the water control zone	3,000

It can be seen from these examples that fines for environmental offences are, generally, under HK\$10,000, and imprisonment is rarely ordered. Terms of imprisonment are mainly, if not only, limited to the offences of importing or exporting hazardous waste. For such offences, Kwun Tong Magistracy on 4 June 2008 imposed imprisonment on 6 individual offenders. They could have been members of an organised gang and/or repeat offenders. We do not have those details.

In any event, the sample penalties cited above, and the penalties summarised over the years in each edition of the *UPELQ*, show fairly clearly that magistrates treat environmental offenders extremely leniently, by imposing low fines, despite the prescribed significant maximum penalties and the serious harm to the community (and its environment) caused by such offences.

On the other hand, the courts view copyright offences most seriously.

Prosecutions under the CO are less frequent than under our anti-pollution laws. Nevertheless, the examples we have considered illustrate clearly the courts' far more serious treatment of copyright offences, compared to a pervasively lenient judicial view of environmental offences.

In *HKSAR v. Chan Nai Ming* (TMCC 1268/2005) the defendant was convicted on three counts of an offence under *Section 118(1)(f)* of the Ordinance. The defendant had bought legitimate versions of three films and then uploaded them to a publicly accessible internet site, so that anyone with a computer could download the films for his own use. The uploaded versions were illegal copies, the court ruled.

Section 118(1)(f) prohibits possession of an "infringing copy of the work" for the purpose of distributing it, other than in the course of a business. So, as the magistrate pointed out, the offence was the use of an illegal copy for a non-commercial purpose. The defendant did not charge a fee for the down-loaded copies, and so did not stand to gain financially from the offences. However, the court noted that the prescribed penalty was the same as for distributing an illegal copy for commercial gain (section 118(1)(d)), and that it was the potential harm to the copyright owner which was the relevant sentencing factor to be taken into account.

The magistrate commented a number of times that courts must act responsibly by imposing deterrent sentences for copyright offences. The magistrate cited, as support, dicta of the Court of Appeal in *Secretary for Justice v. Choi Sai-lok* [1999] 4 HKC 334, such as: "*We emphasise that custodial sentences of immediate effect [i.e. not suspended sentence] should be imposed for offences of this kind unless the circumstances can be said to be truly exceptional ... The open flouting of the law in this trade requires sentences, even for first offenders, to act as a deterrent to others.*"

The magistrate noted that sentences of 6 to 12 months are generally imposed for offences involving the sale of illegally copied ( i.e., "pirated" ) CDs and DVDs. He began his reasons for sentence by noting that: "*Hong Kong carefully guards intellectual property rights. These rights are not illusory, they are not something which exists only in theory and not in practice*".

At another point, he observed: "*The message has to be sent out by courts that the distribution of infringing copies, to the prejudice of copyright owners, particularly by seeding films onto the Internet, will not be treated leniently*".

The magistrate said that potential damage to the film industry (from illegal Internet distribution of films) is "huge", and that: "It would be *irresponsible* of the courts not to recognise that" (emphasis added).

The 38 year old defendant had a clean record. He was a family man, employed and providing for his family. He did not gain financially from the offences, and no serious harm was suffered by the copyright owners. Nonetheless, the magistrate sentenced him to three months gaol for each offence, to be served concurrently.

The defendant appealed, but the Court of First Instance upheld the convictions and sentences.

In *HKCAR v. Li Cheung*, [2005] HKCA 4 the appellant had been sentenced to concurrent terms of imprisonment of 12 months, 15 months and 18 months for various copyright offences, including section 118(1)(d) offences, involving the manufacture and distribution of “private VCDs”. The sentences were not disturbed or criticised on appeal.

In *HKSAR v. Ho Hon Chun & others* [2004] HKCA 137, the appellants appealed against their convictions and sentences in the District Court. The appeal was substantially dismissed, and the sentences undisturbed. The offences arose from, again, the operation of a facility for production and distribution of pirated copies of VCDs contrary to a number of sections of the *Ordinance*, including section 118(1)(a). The District Court had sentenced each of the three defendants to imprisonment terms from 21 months to 30 months.

## Conclusion

Even allowing for the somewhat higher prescribed penalties for copyright offences (which itself illustrates the government’s emphasis on commercial, as versus environmental, values) the comparative penalties records for environmental and copyright offences makes it blindingly clear that our courts – at least, the magistracies – by and large consider environmental offences to be almost trivial, whilst copyright/commercial offences are dealt with far more seriously.

No apparent reason or justification for this double-standard is offered by the judiciary or regulations, to our knowledge. And if, in the eyes of the courts, it would be *irresponsible* not to impose deterrent-level penalties for copyright offences because they harm private property rights, surely it is even more so to trivialise offences against the environment, which are offences against the whole community.

In this sorry state of judicial affairs, our illustrious environmental agencies are complicit. There has never been, to our knowledge, an application for review of sentence, no matter how patently inadequate are the sentences imposed by irresponsible magistrates.

Were the higher courts able to give comment and guidelines, the sentencing imbalance might possibly be redressed, so that offences which deliberately harm our environment – that is, the “public environment” – attract realistic, deterrent sentences, as do offences which prejudice private property rights.

We can only hope!

## TOWN PLANNING

### Hopewell II ‘blocks mansion’

The road improvement plan for the Wan Chai development Hopewell Centre II is under challenge from a mansion owner, who said a proposed flyover would block the mansion’s entrance and render his approved redevelopment plan unviable.

On end of the flyover, to connect Hopewell Centre II’s 55-storey conference hotel podium to Kennedy Road, would be positioned at the entrance of the mansion at 64 Kennedy Road.

The mansion’s owner, Henry Ngan, whose father founded China Motor Bus, said at a residents’ meeting that the flyover would clash with his redevelopment plan, which was approved by the Town Planning Board and Buildings Department in 2004. His approved plan entails demolition of the grade-three historic building to make way for two 15-storey residential buildings.

Dr Ngan said the flyover landing would be too close to the entrance for fire engines to get into a planned emergency access area, and merging traffic would create a black spot. “Our plan came before his [Sir Gordon Wu of Hopewell Holdings]. A developer should not take away our right to develop when he comes late.”

Dr Ngan’s consultant architect, Vincent Ng Wing-shun, said he was concerned the Fire Services Department would not endorse such a blocked emergency access. “It would be unfair if the government allows one plan to defeat an approved one.”

A Hopewell spokesman said a “halt” sign would be added at the flyover landing so vehicles leaving the hotel would stop and give priority to cars accessing Dr Ngan’s site. He also said that the mansion’s entrance was not located where the land lease required.

[SCMP, 19/01/2009]

### Church seeks court review after plans get scaled down

The Union Church of Hong Kong is seeking judicial review of a Town Planning Board decision blocking its plans for a 24-storey residential development at its Kennedy Road site.

The church filed its application in the High Court on 11 February 2009 asking the court to quash the decision the Board made last October. The church, at 22 Kennedy Road in Mid-Levels, wants to convert its two-storey building into a 24-storey residential tower that would include a church and a kindergarten.

Its application revealed that the church had been planning the redevelopment of the site since 1994 and that its plan was approved by the Board in June 1997. In June 2007, the Board extended the redevelopment rights to June 6 this year.

Last March, the Board released a draft zoning plan for public consultation which imposes a height restriction of three storeys on the church site. The Board decided not to amend the draft plan despite a request from the church that the height limit be removed. The Board said it considered a portion of the site a “government, institution and community (GIC)” zone which serves as open space and for ventilation of the area in general.

The church is now seeking to challenge the Board’s decision, arguing that reasons cited for imposing the height restriction were irrelevant. The judicial review application states that height restriction is too stringent when compared with much higher building-height limits for other non-GIC zones within the area. It says the Board failed to consider the development potential of the site and to give proper weight to the need for expanding the church’s facilities to provide community services.

It was the church’s intention that some of the flats in the proposed building be used by staff members and others would be rented to fund the church. The Union Church, set up in 1844, has been providing religious and community services at the site since about 1890. The two-storey building on the site has a floor area of about 3,500 square metres.

[SCMP, 13/02/2009]

### Developer wins bid to rezone Tai Po green belt

The Town Planning Board approved a developer’s proposal to rezone a Ting Kok site for a spa resort project, sparking concerns among environmentalists about further encroachment on rural Tai Po. The 3.3-hectare site facing Plover Cove is the first area to be rezoned for a spa resort in the city.

Originally zoned as green belt and farmland, the site lies northeast of a mangrove site of special scientific interest, and northwest of a controversial artificial beach planned at Lung Mei. To its immediate south, another planned hotel resort is due to be assessed by the Board.

Although the Board approved the rezoning, proposed by developer Wheelock Properties, members raised concerns about the cumulative impact of the developments in the area during discussion. “A spa hotel will discharge huge amounts of sewage compared to other developments, but the sea water quality was said to be poor when the government proposed the man-made beach,” board member Ng Cho-nam said.

Another board member, Tony Kan Chung-nin, said a giant Kwun Yum statue would be built at a nearby temple and he questioned whether the roads could cope with the future increase in traffic flow.

The hotel will discharge 377 cubic metres of sewage a day. Kenneth To Lap-kee, a consultant for the developer, said sewer and pumping stations’ capacity would be enlarged and nearly half the sewage would be recycled for irrigation. The hotel would not open until this work was completed, he said, adding that road widening would absorb the traffic.

According to Wheelock’s submission, the plan is based on a plot ratio of 0.6 and involves four three-storey hotel blocks and 20 villas for 237 guests. They will be built around a swimming pool, with a commercial complex on the corner of the site. With the rezoning approved, the developer still has to submit another application for building the hotel and acquire the remaining 13 per cent of private land from villagers.

The project has drawn opposition from villagers and green groups. Hong Kong Wildlife Forum member Yiu Vor said he was worried about the cumulative impact on wildlife. “This part of Tai Po will inevitably be paved with concrete, reducing the breeding and feeding grounds for all sorts of wildlife,” he said.

The department said in the paper, released earlier this week, that the low-density resort should not worsen traffic and environmental conditions. The Tourism Commission supported the plan and said it would attract overseas tourists.

But the Agriculture, Fisheries and Conservation Department did not support the project, saying the development seems to deviate from the green belt zoning intention, which defines the limits of suburban development, and it “will irreversibly destroy the farmland”.

[SCMP, 28/02/2009]

### Planners lose appeal on ‘toothpick tower’ limits

Town planners are being too picky about Swire’s “toothpick tower” plan for Mid-Levels and they had no right to consider the visual impact and effect on traffic of the development, a three-judge panel ruled.

The Court of Appeal judges upheld a lower court ruling that the Town Planning Board had been wrong to insist on a 12-storey height limit on part of the site of the 50-storey block of flats in Seymour Road, which critics have dubbed a “toothpick tower”. A spokeswoman for Swire said it would start work on the tower as soon as possible.

People living near the site of the proposed tower said the court had ridden roughshod over their concerns.

The judgment by Mr. Justice Frank Stock, Mr. Justice Michael Hartmann and Madam Justice Carlye Chu Fung stemmed from an appeal launched by the Board in December last year against a 2007 Court of First Instance

ruling in favour of Swire.

The Board had based its decision on explanatory notes attached to the outline zoning plan containing the 12-storey height limit for land adjacent to Castle Steps, a steep, stepped street.

But in his ruling, in November 2007, Mr. Justice Andrew Cheung Kui-nung, of the Court of First Instance, said the explanatory notes were concerned only with the site's accessibility and there was little to indicate that traffic issues were behind the Board's decision to limit development on the site.

He ruled that the development's effect on traffic and its visual impact were irrelevant to the Board's consideration of Swire's application and ordered the Board to relax the 12-storey height limit.

Swire had applied for approval to build a 54-storey tower, but only received approval for one 50 storeys tower. A Swire spokeswoman said it would develop the site according to the planning and building approvals it had received.

A Board spokeswoman said it would study the possibility of a further appeal.

[SCMP, 28/02/2009]

### Cycle Track planned for Central harbourfront

Heavy traffic on Hong Kong island has made it difficult for the promotion of bicycles as a means of transport. The Hong Kong Cycling Federation, quoting an official from the Planning Department, said that a 2-kilometre cycle track has been planned for the New Central Harbourfront. The Federation said that successful lobbying for the building of a cycle track in the Central promenade, together with other studies on construction of more cycle tracks on Hong Kong island, will be beneficial to the realisation of their vision of building a promenade cycle track stretching from Kennedy Town to Sau Kei Wan.

In the public forum held by the Planning Department on its Urban Design Study for the New Central Harbourfront, many cycling enthusiasts expressed support for the cycle track building plan and considered that the idea would be worthwhile both for public leisure and for relieving traffic congestion. The Federation quoted an assistant director of the Planning Department that both the Transport Department and the Leisure and Cultural Services Department had not raised objection to the idea.

The Chairman of the Federation, Martin Turner, said that the agreement in principle by the Planning Department was a major step forward for the grand plan of building an extended cycle track along the north coast of Hong Kong island. He said that a recent survey conducted by the University of Hong Kong showed that residents in the Western District were in favour of a cycle track connecting Central and Kennedy Town. The Eastern District Council has also considered similar harbourside cycle track ideas at recent meetings.

[Sing Tao Daily, 02/03/2009]

### Jockey Club opposes height limit for Central Police Station scheme

The Jockey Club has formally discarded its controversial plan to build a 150-metre tower at the old Central Police Station site, according to its submission to the Town Planning Board. But its submission, one of 207 from concerned groups over the past month, opposed a suggested 77-metre height limit on development at the site. The Town Planning Board will discuss the height limit proposal on April 17.

The Jockey Club, which has undertaken to preserve the old police station site and transform it into a cultural

complex, proposed the tower in 2007 to house an auditorium, a theatre and other facilities. It says this plan is now outdated and has been discarded, and it has begun to formulate a revised scheme for the site that would respect the heritage values and views expressed during last year's public consultation.

The 77-metre height restriction was proposed by an alliance of 13 non-governmental organisations, including green groups and heritage concern groups.

But the Jockey Club said such a limit would be premature, because it "attempts to prejudge a revised conservation scheme that the Club has only just begun", and would preempt the Board's due process. The Club would submit its revised scheme to the Board for approval.

Submissions that favoured a height limit argued that the limit would prevent a new structure from obstructing views or attracting too many visitors, who would overload nearby roads.

Last year the Jockey Club bowed to public pressure and promised to reduce the height and bulk of the new structure, after a six-month public consultation. Those calling for the height limit say it would respect the "open character" of the old prison courtyard, in keeping with a suggestion from the Antiquities and Monuments Office.

[SCMP, 10/03/2009]

### Controversial Repulse Bay hotel plan dropped

The government has abandoned plans to turn the Seaview Building in Repulse Bay into a hotel development and will revitalise the building, the Planning Department says in a submission to the Town Planning Board.

The original plan - rezoning the vacant, 60-year-old building as a comprehensive development area comprising a hotel, barbecue spots and restaurants - encountered strong public opposition, with the Board receiving more than 900 objections during the public consultation period, including those of the Southern District Council. Opponents feared that the beach could be privatised by the hotel development and that traffic congestion would get worse.

The Planning Department says the government will not pursue the land disposal plan and will explore ways to reuse the Seaview Building. The Transport Department has also agreed to study the possibility of converting part of the public car park along Beach Road into a drop-off area for coaches to ease traffic congestion.

But the study will start only after the opening of a new commercial complex on the former Lido site. The site, next to the Seaview Building, was once a low-rise commercial area for bars and boutiques. It was later redeveloped by the Emperor Group but it has remained a construction site for the past eight years.

Paul Zimmerman, a co-founder of concern group Designing Hong Kong, welcomed the government's change of plan but urged it to draw up a holistic plan for Repulse Bay. "I am disappointed the government has not identified a body to resolve all relevant issues in Repulse Bay." He added that the Lido site redevelopment should be expedited. "The traffic on Beach Road is intolerable. It affects our quality of living," he said, referring to the disturbances caused by idling coaches and double parking along the road.

The Planning Department said some proposals to revitalise Repulse Bay - including the possibility of offering a longer lease term for the Seaview Building and upgrading adjoining public buildings managed by the Food and Environmental Hygiene Department - fell outside the Board's purview and had been referred to government departments.

Southern District Council member Ronald Chan Ngok-pang said he hoped the Board would accept the Planning Department's advice and reject the hotel plan. He said at least three companies had expressed interest in running the Seaview Building and turning it into a beach club and dining facilities.

[SCMP, 18/03/2009]

### More incentives sought to save privately owned heritage sites

The government should give more incentives to owners of graded historic sites to prevent the King Yin Lei saga happening again, an Antiquities Advisory Board member said. Ng Cho-nam said that although the government had made a breakthrough and extended coverage to sites that were not buildings in the latest batch of graded sites, grading alone could not ensure preservation because it did not give the sites statutory protection.

"Grading is only the first step," Dr Ng said. "The government needs to continue to put in resources to protect privately owned heritage. To get to the root of the problem, the town planning policy should be changed to enable heritage owners to transfer their development rights."

There are at least two graded buildings under threat - a mansion at 64 Kennedy Road and Jessville on Pokfulam Road. The owner of the Kennedy Road site has received approval to redevelop it, while the owner of Jessville has threatened to demolish it and build residential towers.

Board chairman Bernard Chan said he was worried some privately owned heritage would be threatened and appealed to the public to keep an eye on the sites. Seventy per cent of graded buildings are privately owned.

The government has talked of a heritage trust to acquire private sites or to compensate owners for not tearing them down, but Development Bureau deputy secretary, Janet Wong Wing-chen, said the trust would not be set up for at least five years.

She said owners could apply for public grants to maintain their historic buildings and the existing mechanism would keep the government informed if an owner attempted to alter a building's structure or demolish it. The government could then declare the site a proposed monument and buy a year's time to negotiate with the owner.

However, if the owner did not alter the structure but defaced the building, as in the case of King Yin Lei, at 45 Stubbs Road, he could escape government attention. It was only after media reports that the government declared the mansion a proposed monument and saved it last year.

[SCMP, 20/03/2009]

## WEST KOWLOON CULTURAL DISTRICT (WKCD)

### Members of the consultation panel appointed under West Kowloon Cultural District Authority

The West Kowloon Cultural District Authority on 16 February 2009 announced the appointment of 21 members to its consultation panel. The term of appointment is one year from 1 March 2009.

The chairman of the board of the Authority said that the members of the consultation panel come from a wide spectrum of backgrounds with rich experience and in-depth understanding in different fields, such as: arts and culture; education; district affairs; social policies; retail; tourism; sustainable development; environmental protection; and arts for the disabled. Their expertise and

experience in public service will facilitate the Authority in carrying out public engagement exercises and tapping views from different sectors of the community.

The board has embarked on preparatory work for the project's overall development plans, including public engagement exercises in three different stages. It will be the work of the consultation panel to plan the specifics of these public engagement exercises in detail, review the progress of their implementation from time to time and collect and collate the views of the public and stakeholders in a transparent and impartial manner to assist the board to devise the development plan proposals.

Three board members - Ronald Arculli, Chairman of the Development Committee; Victor Lo, Chairman of the Museum Committee; and Allan Zeman, Chairman of the Performing Arts Committee - were included in the 21-member consultation panel. Professor Stephen Cheung was appointed as chairman of the consultation panel.

Brief profiles of the other 17 consultation panel members are as follows:-

- Chan Ngok-Pang, Ronald:- a member of the southern District Council and part-time member of the Central Policy Unit since 2008
- Cheng Chi-ming:- a visual artist and educator with expertise in various areas of arts; a member of the Panel of Film Censorship Advisers
- Ho Hing-kay, Oscar:- a consultant with the Department of Cultural and Religious Studies, Chinese University of Hong Kong
- Hui Wah-kit, Michael:- chairman of the Hong Kong United Youth Association and a member of the Harbour-front Enhancement Committee and the Advisory Committee of the Continuing Education Fund
- Hung Chiu-wah:- elected District Council member for Tsim Sha Tsui West Constituency; chairman of Yau Tsim Mong District Council Working Group on West Kowloon Cultural District Collaborations
- Ko Po-ling:- chairman of the Kowloon Federation of Associations, and a member of the Yau Tsim Mong District Council and the Women's Association
- Kwan Pak-hoo, Bankee:- a member of the Consumer Council; the Small and Medium Enterprises Development Fund Vetting Committee and the China Trade Advisory Committee of the Hong Kong Trade Development Council
- Lam Choi-chu, Ida:- chairperson of the Arts with the Disabled Association Hong Kong; a member of the Committee on Performing Arts under the Home Affairs Bureau
- Lee Wing-tat:- a Legislative Council member (NT West); the incumbent vice-chairman of the LegCo Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project under the Panel on Home Affairs and Panel on Development; member of the Commission on Strategic Development and Kwai Tsing District Council
- Leung Wing-cheung, William:- deputy chairman of the council of the Hong Kong Academy for Performing Arts and chairman of the Board of the Hong Kong Dance Company Limited; a member of the Banking Industry Training Advisory Committee, Estate Agents Authority and the Sports Commission
- Man Ying-ling:- an assistant professor of the Faculty of Languages of the Hong Kong Institute of Education and the vice-chairperson of the Committee on Home-School Cooperation
- Charles Peter Mok:- vice chairman of the Professional Commons, an independent professional think-tank which monitors the government through analysis and research; a member of the Digital 21 Strategy Advisory Committee; the Hospital Authority; and the Transport Advisory Committee
- Tai Hay-lap:- the principal of Yan Oi Tong Tin Ka Ping Secondary School; a member of the Council for Sustainable Development and the Council of the

Hong Kong Institute of Education

- Tse Wai-chun, Paul:- LegCo member representing the Tourism Constituency; a member of the LegCo Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project under the Panel on Home Affairs and Panel on Development, and the Tourism Strategy Group
- Tse Wing-ling, John:- associate professor in the Department of Applied Social Studies, City University of Hong Kong; a member of the Fight Crime Committee and Municipal Services Appeals Board
- Wong Ying-kay, Ada:- the convenor of the People's Panel on West Kowloon; member of: the Committee on Performing Arts of the Home Affairs Bureau; the Council of the Hong Kong Academy for Performing Arts; and the Steering Committee on Review of the Urban Renewal Strategy
- Yau Wing-kwong:- a member of the Tai Po District Council; a member of: the Country and Marine Parks Board; the Intangible Cultural Heritage Advisory Committee; and the Advisory Council on the Environment and its three subcommittees- Environmental Impact Assessment Subcommittee, Nature Conservation Subcommittee and Waste Management Subcommittee

[IS Department, Hong Kong SAR Government Press Release, 16/02/2009]

### Art hub panel markup too narrow

Members of the consultation panel for the West Kowloon Cultural District Authority were announced yesterday but the composition was immediately criticised as being not sufficiently representative.

The panel of 21 members is expected to carry out public engagement exercises and solicit views on the overall development plans from different sectors of the community.

Members came from the arts, education, tourism, retail, environmental protection sectors and District Councils and the Legislative Council. However, there was no member appointed from the architectural, urban planning or engineering sectors, despite the forthcoming consultation on the arts hub development models. During the consultation, the public will be asked to choose a preferred model from the three models selected by the government early this year.

An associate professor in government and public administration at the Chinese University said that considering the purpose of setting up the panel is to advise on drawing up a development plan, the panel lacked key professionals from the architectural, design and planning sectors.

The former vice-president of the Hong Kong Institute of Planners considered the panel's composition as very "conservative". He said it would be difficult to collect a full range of professional views if no representatives from architectural, planning and engineering sectors were involved in the authority.

[SCMP, 17/02/2009]

### "No comments" on the West Kowloon Cultural District proposal

A recent survey revealed that 46.2% of the residents in Hong Kong did not consider the development of the West Kowloon Cultural District had any close connection with their daily livings; 33.6% thought the development affected their daily living and only 10.2% considered the effect as significant.

The organisation which conducted the survey said that the government should increase public participation in the project so that more residents would benefit from it.

1,155 residents were interviewed for the survey:-

- 33.9% did not agree with the proposition that Hong Kong is a cultural desert
- 32.4% thought otherwise
- 53.9% expressed their interest in arts and cultural activities
- 23.3% had no interest
- 49.1% considered the government is concerned about arts and cultural development in Hong Kong
- 44.5% thought otherwise
- 41.8% stated that at present, arts and cultural activities offered in Hong Kong do not satisfy their needs
- 37.7% were not satisfied with the government's policy on arts and cultural development
- 37.6% of those surveyed were not content with the government's policy for the development of traditional Chinese arts and cultural activities
- 22.1% thought the government could improve its policy for development of Western arts and cultural activities

The survey revealed that the public in Hong Kong generally are not concerned about the creation of the West Kowloon Cultural District. One respondent suggested that the planning and development of the District should be made more transparent to the public and that more resources should be allocated to improve communications between the public and the government concerning the project. There was even a suggestion of launching 19 "local West Kowloons" in each of the 19 districts in Hong Kong so that more arts and cultural activities will be held in all districts.

[Wen Wei Po, 06/03/2009]

## HONG KONG BRIEFING

### Singapore beats Hong Kong in survey of Asian expats

Singapore appears to have finally achieved its dream of being better than Hong Kong at something. In a survey conducted by ECA International, the Lion City was on 12 March 2009 named the most desirable destination for expatriates from Asia.

According to the survey, Hong Kong would have been in contention for first place were it not for its serious air pollution. Instead, Hong Kong now ranks 11th on the list. The ranking put Hong Kong behind Sydney, Vancouver, Copenhagen, Wellington, and even Canberra, which some say is the world's most boring city.

Hong Kong shares its 11<sup>th</sup> position with Antwerp, Bern, Brussels and Dublin. Hong Kong has actually moved up in the rankings since the last survey in 2007. The rise was due to an improved perception of health care services in the city, and diminished concerns about bird flu.

The survey ranked 254 cities according to a number of criteria including health care, air quality and crime. It was designed to be used by firms to determine whether they need to provide their expatriate workers with so-called hardship allowances. Hong Kong was not considered a place where salaries needed to be augmented in that way. The organisation said if you are coming from anywhere in Asia, then Hong Kong is definitely not a hardship posting.

A government spokeswoman defended the city. She said Hong Kong's positioning as "Asia's world city" was founded on the basis that Hong Kong is where opportunity, creativity and entrepreneurship converge, and were further underpinned by the rule of law.

[SCMP, 12/03/2009]

### Artificial island for new crossing

An artificial island is proposed for east of the airport in

Chek Lap Kok where border crossing facilities for the Hong Kong- Zhuhai- Macau Bridge will be located. The proposal is opposed by residents of Tung Chung and by conservationists.

Representatives of Hong Kong, Macau and the mainland signed a contract on 13 March 2009 with a consortium established by China Communications Construction Company and CCCG Highway Consultants Company for preliminary design and study of the 29.6-kilometre span.

It is estimated that the main structures of the bridge will cost HK\$37 billion. The three governments will also finance border crossing infrastructure, including roadways within their own boundaries. Some HK\$22 billion out of the HK\$37 billion estimated construction cost for Hong Kong will be financed by loans.

The Hong Kong government said that constructing an artificial island covering 130 hectares east of the airport would create an economic benefit. The island will also be connected to the planned Tuen Mum- Chek Lap Kok Link and the Hong Kong- Shenzhen Airport Rail Link which will facilitate passenger connections with Hong Kong Airport. Automatic passenger movers will connect the island and the Hong Kong Airport.

However, the Hong Kong Dolphin Conservation Society chairman said the 200 Chinese White dolphins, whose habitat is close to the site, will be affected by noise and water pollution caused by the project. Residents in Tung Chung also are concerned about the noise.

An environmental impact assessment of the island proposal will be completed by June. The government will then hold public consultations concerning the proposal.

Officials expect the preliminary design for the bridge to be completed within nine months. The actual construction cost for the bridge will be more accurately estimated once the preliminary work is completed. The eventual bridge tolls may be lower than earlier estimates, as the cost of raw materials has been reduced recently.

It is expected that between 50,000 and 60,000 vehicles, and between 230,000 and 250,000 passengers, will use the bridge every day by 2035.

[China Daily Hong Kong Edition, 13/03/2009]

### The “19- measures” incur an extra cost of HK\$2.85 billion

Consultants to the Environmental Protection Department proposed to adopt minimum targets set by World Health Organisation for air quality, and 19 new measures have been proposed to achieve this. Compliance with the WHO guidelines could give rise to extra costs of HK\$2.85 billion in total. For example, average electricity costs would rise by 20%, and bus fares by 15%.

Environmental groups criticised the government for failing to offer a timetable for meeting the minimum targets. They described the estimates as “scare tactics”, giving excuses for the government not to adopt measures whole-heartedly for meeting the targets.

The 19 first-phase measures include increasing use of natural gas, early retirement of old diesel vehicles and setting up of low emission areas in Central and Mongkok. The consultant estimated that the measures would cut hospital admissions caused by air pollution by 4000 times per year and increase the average Hongkonger’s lifespan by around 1 to 2 months.

Under the early vehicle retirement scheme, approximately 3000 bus will be retired from our roads. Government officials did not reveal whether the government would subsidise the scheme.

Nor did the government state in its proposal how much

of the increase costs of approximately HK\$28.5 billion will be borne by the government and how much by the public. The pace of implementation of new standards, and determining the community’s willingness to pay for clean air measures will be left to the public to decide in public consultations to be held later this year.

The government laid no timetable for the implementation of the 19 new measures, saying that it was not possible to estimate the pace and effectiveness of launching the measures at the present moment.

[Hong Kong Economic Times, 14/03/2009]

### Call for traffic-free streets in Wan Chai

Local politicians in Wan Chai want more pedestrian flyovers, traffic-free streets and further greening of the area after a study they commissioned found particulate matter in the district’s air at levels nearly five times higher than recommended under the most stringent world standards.

The joint Wan Chai District Council/Neighbourhood Advice-Action Council study measured fine particle concentrations – known as PM 2.5 – at 15 locations in the district between December and January and found none of the readings met World Health Organisation air quality guidelines.

Conducted by Polytechnic University experts, the study also discovered that up to 72 per cent of particles found in the tested air were very fine ones capable of infiltrating directly into lungs and blood systems, causing even greater health threats than more coarse “fine” particles.

The highest reading recorded was 140 micrograms of fine particles per cubic metre in Causeway Road, compared to the WHO standard of 25 micrograms per cubic metre. Even in the city’s largest open space, Victoria Park, the reading was 30 micrograms per cubic metre. Study readings were largely in line with official air quality monitoring in Yee Wo Street, which measures only coarser “fine” particles, the study said.

The high pollution readings were mainly attributable to emissions from vehicles and the poor pollutant dispersion capabilities of the built environment. The wall effect created by the concrete jungle has blocked the dispersion of pollutants once made possible by natural inflow of sea breeze, and increased pollution in the district, Professor Chan (in charge of the study) said.

To ease the pollution, Professor Chan recommended more pedestrian flyovers and subways to separate traffic from commuters, and more planting of vegetation throughout the district.

Wan Chai District Council chairman, Suen Kai-cheong, said the study’s findings would be useful in discussions by councillors and community members relating to ways to reduce air pollution.

The study will be submitted to the government for reference.

[SCMP, 26/03/2009]

### Our enlightened universities?

At the beginning of the Year of the Ox, I asked our universities to lead by example and publicly support alternatives to serving real shark’s fin soup (“Universities should set example to curb demand for shark fin”, January 29). As centres for research and education, these organisations are important hubs for positive, needed change in the community.

The University of Hong Kong responded well, noting that “in accordance with our commitment to protect and conserve biological diversity, no shark’s fin dishes should

be served” at any university-funded function. HKU is partners with WWF to serve alternatives to shark fin at their functions, so why have the other universities not done the same?

The University of Science and Technology and Polytechnic University said departments are encouraged to abstain from serving shark fin but there is no policy. In other words, “no promises and please leave us alone”.

By doing nothing of consequence, Chinese University, City University, Baptist University, Lingnan University, the Open University of Hong Kong and, arguably, Polytechnic University and HKUST are implying that it is OK to let ignorance or inertia drive public policy.

If the universities refuse to unite and champion behaviour that benefits everyone in our society, then they remain part of the problem. This is hardly inspiring and certainly shameful.

[SCMP, (letter to the editor from Ran Elfassy) 26/03/2009]

[We could not agree more: editors.]

## ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

### North East New Territories New Development Areas

#### Planning and Engineering Study

#### Stage One Public Engagement (ACE Paper 2/2009)

##### Purpose

This paper is to seek members’ views on planning for the New Development Areas (NDAs) at Kwu Tung North, Fanling North and Ping Che/Ta Kwu Ling (the Three-in-One Scheme) in the context of the Stage One Public Engagement which was launched on 14 November 2008.

##### Background

Following the planning for NDAs as one of the ten major infrastructure projects for economic growth as stated in the 2007-2008 Policy Address, government departments commissioned the North East New Territories (NENT) NDAs Study in June 2008. The overall objective of the Study is to establish a planning and development framework for the NDAs to meet long-term social needs and to formulate an implementation programme. The first population intake is scheduled for 2019.

##### Public Consultation Arrangement

It will take about 30 months to complete the NENT NDAs Study. The Study includes a three stage public consultation process. The Stage One Public Consultation is to engage the public at an early stage to generate discussions of key issues relating to the development of the NDAs while Stages Two and Three will engage the public on the Preliminary Outline Development Plans (ODPs) and Recommended ODPs respectively. Stage One commenced in mid-November 2008.

#### Stage One Public Engagement Arrangement

To facilitate more focused discussion in Stage One, key issues have been consolidated into four major topics as follows:-

- (a) *Strategic Roles of NDAs* – In the Hong Kong 2030 Planning Vision and Strategy (HK2030 Study), the strategic location of the NDAs, close to boundary districts, was considered as having potential for meeting strategic land use requirements; e.g. for special industries and tertiary educational uses.

- (b) *People-oriented Communities* – As the public has expressed a strong desire for people-oriented communities, we wish to keep abreast of public aspirations on such aspects as development of a socially integrated and well-supported community with good physical design.
- (c) *Sustainable Living Environment* – We would encourage public discussion of measures to reduce undue pressures on the natural environment, as well as the importance of incorporating environmentally friendly design and the provision of installations to achieve a sustainable living and working environment. We wish to obtain views on the building of green cities through a combination of resource-saving and energy-efficient measures.
- (d) *Implementation Mechanisms* – To facilitate implementation, early engagement with the public and stakeholders on a suitable implementation mechanism is required.

Stage One Public Consultation is aimed at generating early public discussion on key issues relating to the NDAs. At this stage, no recommendation on the use and intensity of development is set out as the NDA proposals are yet to be formulated. We will consult the public on the Preliminary ODPs, with detailed development parameters and three-dimensional illustrations of the design concepts to be provided in the Stage Two Public Consultation.

### Stage One Public Consultation Activities

We have consulted the Town Planning Board, the Development Panel of the Legislative Council and the Planning Sub-committee of Land and Building Advisory Committee and other relevant Boards/Committees.

There is general support from the public for a sustainable living environment, environmentally friendly design and for striking a balance between nature/landscape conservation and land use demands. Some locals have expressed concerns that development restrictions may infringe landowners' property rights and that there could be an increased risk of bird flu from ecological conservation areas.

### Proposed Legislation for the Implementation of the Biosafety Protocol (ACE Paper 3/2009)

#### Purpose

This paper informs members that the Nature Conservation Subcommittee (NCS) of the ACE will be consulted on the legislative proposal for the implementation of the Cartagena Protocol on Biosafety (the Protocol) in Hong Kong.

#### Background

The Cartagena Protocol on Biosafety (the Protocol) was adopted under the Convention on Biological Diversity (the Convention). The main objective of the Protocol is to protect biological diversity in countries across the world from possible impacts arising from trans-boundary movement of living modified organisms.

At a recent round of consultations with relevant stakeholders on the proposed extension of the Protocol to Hong Kong, relevant government officials met with representatives of affected trades and environmental NGOs. In general, most of the views collected are supportive of the extension of the Protocol to Hong Kong because the requirements stipulated in the proposed legislation are international requirements which have been equally applied to over 150 parties to the Protocol. Green groups welcome the proposed legislation because it will minimise the risk of living modified organisms (LMOs) on the biodiversity in Hong Kong. It also aligns Hong Kong's requirements with that of international requirements.

### Proposed Legislation for the Implementation of the Biosafety Protocol (Consultation Paper) (NCSC Paper 2/2009)

#### Purpose

This paper outlines the detailed proposal for new legislation for the implementation of the Cartagena Protocol on Biosafety in Hong Kong for better protection of biological diversity by controlling the release of living modified organisms (LMOs), and seeks public views on the proposal.

#### Background

##### The Convention and the Protocol

The Convention on Biological Diversity (the Convention) was adopted at the 1992 Earth Summit on Sustainable Development and came into operation in 1993. It provides a comprehensive approach to the conservation of biological diversity, the sustainable use of biological diversity, and the sharing of the benefits arising from the use of genetic resources in a fair and equitable way. There are currently over 190 Parties to the Convention, including China, but the Convention has yet to be extended to Hong Kong Special Administrative Region.

The Protocol requires Parties to take necessary and appropriate legal, administrative and other measures to ensure that the development, handling, transport, use, transfer, and release of any LMOs - especially focusing on transboundary movement - are undertaken in a manner that prevents or reduces adverse impacts of LMOs on the conservation and sustainable use of biological diversity, taking also into account risks to human health. However, LMOs which are pharmaceuticals are excluded from the scope of the Protocol. The Protocol came into effect in September 2003. There are currently over 140 Parties to the Protocol, including China.

A Biosafety Clearing House is established by the Protocol Secretariat which contains information on existing laws for implementation of the Protocol in different Parties, summaries of risk assessment of LMOs, decisions regarding import or release of LMOs, etc. The purpose is to facilitate exchange of information on LMOs and assist Parties to implement the Protocol.

#### The Legislative Proposal

The main aspects of the legislative proposal have been summarised as follows:-

##### Objective

To provide a regulatory framework to restrict and control the release of LMOs into the local environment, which would enable Hong Kong to fulfil the requirements of the Protocol and other relevant decisions of the Meeting of the Parties to the Protocol, and to contribute to ensuring an adequate level of protection against the potential adverse effects of the LMOs on the conservation and sustainable use of biological diversity.

##### Key elements in the proposed legislation

- a. Define a number of terms used.
- b. Regulate the release and import of LMOs.
- c. Establish a mechanism for applying to the Director of Agriculture, Fisheries and Conservation for approval of an LMO for release into the environment.
- d. Require exporters to send a notification to the Authority of the place of import and obtain its prior consent.
- e. Provide penalties for violation of import, export or related enforcement provisions. The proposed maximum penalty is a fine at level 6 (i.e. \$100,000) and imprisonment for one year for releasing an unapproved LMO into the environment.
- f. Establish a public register containing information on applications received, decisions made, exemptions granted and any other relevant information.

- g. Provide authorised officers with appropriate power for effective enforcement of the legislation.
- h. Provide the Director with powers to dispose of things seized or forfeited under the ordinance, and to give directions for disposal of forfeited things or any LMO.
- i. Empower the Secretary for the Environment to make regulations with respect to the details of the control regime, such as documentation requirements.
- j. Empower the Secretary to exempt any LMO from the approval requirement for its release into the environment following a decision of the Meeting of the Parties to the Protocol which identified the LMO as being not likely to have any adverse effect on biological diversity.
- k. Provide transitional arrangements within a certain period of commencement of the legislation.

There are no labelling requirements for any LMOs under the proposed legislation, except in respect to documentation during import/export shipments.

#### Operation

The AFCD will deploy staff for:-

- a. Processing applications for approval of LMOs for release into the environment.
- b. Conducting or reviewing risk assessments in relation to proposed release of LMOs into the environment.
- c. Liaising with the Protocol Secretariat and other relevant overseas authorities on matters related to the implementation of the Protocol in Hong Kong.
- d. Keeping a register containing information on applications received, and any other relevant information.
- e. Maintaining an internet-based database on the new legislation, the register and the Protocol;
- f. Promoting compliance and curbing irregularities through law enforcement.
- g. Compiling information and making available such information to the Secretariat as required.
- h. Conducting publicity and public education programmes.

*Major issues* - related to the operation of the proposed legislation are summarised as follows:-

#### Release into the Environment

The main purpose of the proposed legislation is to implement the Protocol by addressing the adverse effects that LMOs may have on biological diversity when released into the environment through regulating such releases. An LMO is defined as "released into the environment" if it is not in "contained use". "Contained use" means any operation, undertaken within a facility, installation or other physical barrier, which involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and impact on, the external environment.

#### Decision Making Process

Applications for the release of LMOs will be considered in a transparent manner, and will take into account advice of relevant experts on the findings of the risk assessment.

#### Risk Assessment

Risk assessment forms an important part in regulating the risks associated with the release of LMOs. The intention is to identify and evaluate potential adverse impacts, on a case-by-case basis, of an LMO on the conservation and sustainable use of biological diversity. A risk assessment should contain the following steps:-

- identification of any novel genotypic and phenotypic characteristic associated with the LMO that may have adverse effects on the environment
- evaluation of the likelihood of these adverse effects
- evaluation of the consequences should these adverse

## REGIONAL & INTERNATIONAL

### CHINA

#### China birth defects 'up sharply'

A senior official of China's National Population and Family Planning Commission said environmental pollution was a cause of the rise in the number of babies with birth defects. The core coal-mining zones of Shanxi province had the biggest problem.

The official said a child was born with physical defects every 30 seconds because of the degraded environment. The Commission has introduced a prevention plan in the eight worst affected provinces to cope with the problem.

[BBC News, Asia Pacific, 01/02/2009]

#### 'Green GDP' drive grinds to a halt

China says it has stopped calculating the pollution cost of its economic growth. Despite widespread appeals to reinstate the "green GDP" project, analysts said environmentalism had been sidelined amid the economic downturn.

The project, which aims at providing a true picture of the mainland's degradation by putting a price tag on economic success, has been put on hold since early 2007. The Environmental vice-minister said on the sidelines of the opening session of the Chinese People's Political Consultative Conference that the project has been cancelled and will not be resumed any time soon.

The Beijing government had pledged to slash energy consumption by 20 percent and reduce pollution emission by 10 percent by the end of 2010, which was widely supported by the public but not by local authorities.

[SCMP, 04/03/2009]

#### First domestic exchange for pollution quotas

The government of Hubei province has launched the country's first wholly domestic exchange to allow mainland companies to trade in pollution quotas, as part of broader efforts to reduce levels of toxic waste in its water and air.

Some mainland environmental experts welcomed the move as a hopeful sign that even less developed regions on the mainland had begun to accept the need to develop in an environmentally friendlier way.

But unlike similar exchanges set up in August in Beijing and Shanghai, which promoted international trading in carbon, the Hubei platform has steered clear of transactions in green-house-gas emissions. Only quotas for chemical oxygen demand (COD) and sulfur dioxide (SO<sub>2</sub>), two pollutants that are considered most harmful to the province's environment, will be traded.

The Hubei exchange came into being after the provincial government had announced this year that industrial projects receiving approval after last October would have to buy emission quotas for COD and SO<sub>2</sub>.

The price for a tonne of SO<sub>2</sub> – a pollutant that can interact with water vapour to form sulfuric acid, which destroys land and causes lung and heart diseases – is about 1,600 yuan (HK\$1,800). But the final price was determined by auction, the government said. The first auction was held in the exchange on March 18, and the highest bid reached more than 2,000 yuan per tonne.

The Chinese Academy of Sciences' International Centre for Climate and Environmental Sciences said it was only natural that the central government discouraged carbon trading within the country because it could not afford to slow the economy in the interests of a cooler planet. The

spokesman added: "COD and SO<sub>2</sub> are far more worrying for Chinese citizens than carbon dioxide."

[SCMP, 26/03/2009]

### MALAYSIA

#### Eco-friendly territories in the making

The citizens of Kuala Lumpur, Putrajaya and Labuan can expect a greener and cleaner environment in the future. The federal government has allocated RM3.42 billions under the Ninth Malaysia Plan to implement a better transport system, a more efficient waste disposal system and improved flood management.

Federal Territories Minister said the three cities will implement the Modern City Management concept, which will ensure better living conditions, and improve service delivery in the territories, and hence, position them as cleaner and more attractive destinations for tourists.

[Streets, 02/02/2009]

### ISRAEL

#### Israel looks to renewable energy

A recent Renewable Energy (RE) conference was held in Eliot, Israel, where it is sunny for more than 300 days a year. The conference started with a ceremony to launch the \$20 million U.S. – Israel Energy Cooperation Act, passed two years ago by the U.S. Congress.

"Israel is clearly investing a lot of time and effort to move with the rest of the global community to turn to a greener and more carbon free energy", CEO of Greener by Design, New Jersey, said. Israel is the only country in the world which relies almost entirely on fossil fuel for electricity generation.

Photovoltaic solar panels that transform solar energy into power are land consuming and may affect biodiversity, even in the desert. A new technology, Building Integrated Photovoltaic, could provide a solution.

Statistics show that each inhabitant in the West, uses an average of 400 KW a year, and each inhabitant will need five square metres of photovoltaic panels, if we move to solar energy. The total world population will need 35 billion square meters of space to install the photovoltaic panels. However, this space is not available in urban areas. One of the solutions is to install the panels on roofs. This would also be more ecologically efficient, as the panels would produce power in the same place where it is to be consumed.

In Kibbutz Samar in southern Israel, a company, AORA, has installed a hybrid-thermal pilot plan in which mirrors are used to concentrate the sun's light onto a 30-metre high tower containing water which is thereby heated to generate electricity.

[The Epoch Times, 02/03/2009]

### AUSTRALIA

#### Dirty water threatens key Moomba events

Moomba Masters water skiing and the Birdman Rally will almost certainly continue after EPA pollution test results for the Yarra River were lower than expected. The e-coli count in the river has fallen to about 2,000, from 9,300. Organisers feared contamination levels up to 1,200 times the safe limit could force the cancellation of the Moomba events.

Despite an EPA reading of 240,000 e-coli count per 100mL of water earlier in the week, which breached the safe contact limits, competitors from Australia, the US, Denmark and New Zealand continued with their events in the river, although they risk a range of infections

effects be realised

- estimation of the overall risk
- recommendation as to whether or not the risks are acceptable or manageable
- where there is uncertainty regarding the level of risk, it may be addressed by requesting further information or by implementing risk management strategies and/or monitoring the LMO in the receiving environment

#### Expert Group to advise the Director

It is proposed that an expert group, comprising experts from the academic field, industry and NGOs in different relevant fields, be established to advise the Director on matters related to the operation of the proposed legislation.

#### The Register

The Register, for providing a centralised source of information and serving as a biosafety clearing house for Hong Kong, is proposed to be established and maintained in digital form and will be accessible to the public through the internet. It will contain application information, status of the applications, exemptions granted by the Secretary and any other relevant information.

#### Shipment Documentation

Detailed requirements will be specified in subsidiary regulations made by the Secretary. These requirements may be revised to reflect, as appropriate, further changes in the international requirements under the Protocol.

#### Sampling and Testing

Identification of LMO requires complicated DNA tests and it may take a few days before the results are available. It is proposed that AFCD officers be empowered to take samples for LMO testing.

#### Adventitious threshold

In commercial production and transportation of agriculture products, mixing from different sources is inevitable. LMO varieties may contaminate adventitiously the traditional varieties which are shipped as non-LMO products. It is proposed that products with an adventitious presence of 5% or less LMO varieties would be exempted. However, documentation requirement for release or contained use would not be exempted if non-LMOs have been contaminated by LMOs.

#### Transitional arrangements

It is proposed that transitional arrangements be in place for a certain period after the commencement of the proposed legislation.

#### Implementation Plan

We are consulting stakeholders, including food trade associations, relevant importers/traders, environmental groups and academics, and concerned advisory committees on the detailed proposal. Taking into account comments received from the consultation, the proposed legislation will be finalised for introduction into the Legislative Council in mid 2009.

The agreement-in-principal of the Central People's Government (CPG) to extend the application of both the Convention and the Protocol to Hong Kong SAR has been obtained. We will formally request the CPG to complete formalities on the extension on enactment of the new legislation for implementing the Protocol and completion of the other required preparatory work. The extension is expected to take place in about 2010/2011, taking into account the time required for carrying out consultation with the relevant parties, finalising the proposed legislation and going through the legislative process.



by exposure to, or swallowing, water at such high contamination levels.

According to the Department of Human Services warning, "the sorts of conditions that are most likely to occur are gastroenteritis, and less commonly, respiratory, skin, ear and eye infections."

Participants are told to shower immediately after contact with the river and to use anti-bacterial mouthwash after events.

[Herald Sun, 07/03/2009]

**Marine park's restrictions, more than size, are what counts**

The state of South Australia has a good, though far from perfect, record of protecting its terrestrial environment, with national parks or conservation areas scattered from the south-east to the far north, from the Nullarbor to the Mallee. The marine environment, though, has been plundered since the days of the sealers and whalers of the 18th century. Little thought has been given to creating for the very wet environment the same sort of protection enjoyed by parts of the very dry.

Then came a new mood, under a new Environment Minister. The state department of Environment and Heritage began an ambitious, audacious plan to save our marine environment.

"Less than 1 per cent of the world's oceans are protected within marine parks," explains the Wilderness Society's SA campaign manager Peter Owen, "and less than one-tenth of that 1 per cent is protected from all forms of fishing. This compares with international targets to urgently and fully protect 30 per cent of marine habitats worldwide."

In November 2008, at a marine biodiversity conference half a world away in Spain, 600 marine scientists from 42 countries – including Australia – pleaded for the protection of the globe's underwater realm.

With almost 4000 km of coastline, SA's marine and coastal environments are some of the most spectacular and diverse on earth. It's a rich tapestry of rare and endangered marine mammals, plants and fish. It's the future of commercial and recreational fishing. Yet SA waters have limited, or almost no protection.

For 10 years the Wilderness Society has campaigned to improve that. In 2004 the proclamation of the Great Australian Bight marine park removed mining rights from the park's state waters. In 2007, Parliament passed the historic Marine Parks Act. Then weeks ago the current Environment Minister released the provisional outer boundaries for 19 new multiple-use marine parks.

What a move! Forty-six per cent of the state's coastal waters would be in marine parks. The park network includes habitat of more than 720 fish species, 80 per cent of the world's sea lion population, more than 70 species of seabirds, plus the world's largest breeding colony of giant cuttlefish.

And fishermen blew their foghorns in alarm. The industry hired its own marine scientists to better fight those boundaries, and a public relations company to better fight the hearts and minds of the community. They fear that the Minister may be able to exclude recreational and commercial fishers.

The State government is very keen to expand SA's fishery with innovative programmes-- like the Farmed Seafood Initiative, an export drive-- and moral, political and financial support. It wants to attract foreign capital.

So an expanding industry meets an expanding marine park. What now? In South Australia, development seldom stumbles over environmental concerns. Will the same thing happen offshore? Yes, believes Peter Owens. "It's not the outer boundaries that are the issue," he says.

"It's what happens within the boundaries."

There will be three types of reserves :

- (1) restricted zones from which the public will be excluded;
- (2) sanctuary zones where people can go diving, where fish can breed unmolested, and where they will not be caught by hook or by crook;
- (3) access zones where professional and amateur netters, anglers and cray, crab and abalone catchers can hunt and gather.

The conservation movement wants a reassurance. It wants important biospheres protected from industry. It wants nature to be kept for nurture. Conservationists argue that the declared public consultation period is all about, and only about, the outer boundaries. We could have marine parks which are open slather, they say, "Ninety-five per cent of these marine parks could still be open to fishing. That's not protection", according to a spokesman.

On the other hand, opponents of the proposed reserves fear that they will lose enterprises they have spent many years developing.

Everyone wants much the same outcome: a sustainable, profitable fishing industry with an environment valued for itself and not just valued as an economic resource.

[The Independent Weekly, 13-19/03/2009]

**Australia defends inclusion of Hong Kong in new travel warning**

The Australian government has defended its decision to cite air pollution in Hong Kong in a new travel warning. It said a change to its travel advice for the city, highlighting the potential health impacts of air pollution, was timely as part of a "comprehensive, consistent and factual" warning. Australia's Department of Foreign Affairs included a notice about air pollution in Hong Kong as a health issue as part of an updated alert on 23 March 2009.

It warned that air pollution levels could "aggravate bronchial, sinus or asthma conditions", and that people with heart or respiratory illnesses should reduce physical exertion and outdoor activities on days when very high pollution levels were recorded.

Yesterday, a spokesman for the department said the change to the travel advice brought it in line with "similarly affected" places and used the Hong Kong government's own health advice to its citizens.

"The Australian government has an obligation to notify its citizens in circumstances that may affect their welfare when travelling," he said.

A spokesman for lobby group *Clear The Air* said the advice was not up to date as it used government data that relied on old standards and did not reflect current World Health Organisation air quality standards. The WHO's standards for measuring air pollution are stricter than those used by the Hong Kong government.

[SCMP, 26/03/2009]

**UNITED KINGDOM**

**'Environmental revolution'**

In the UK, the Conservatives have outlined plans to modernise the national grid so as to deliver power in a cheaper way. Under the Tory plan, every house would be fitted with a smart meter, allowing households to buy electricity from the network at a lower rate during the periods of low usage.

The new network would enable those houses fitted with wind turbines and solar panels to sell their excess power

to the network and use the revenue to cut their power bills. Other initiatives are also proposed, such as: a new recharging network for electric and plug-in hybrid cars; allowing producers to use methane from farm and food wastes to power domestic gas heating; and new planning laws and financial support for wind and wave power generation in a new network of 'Marine Energy Parks'. The Tories claimed the energy policy would save the average household £160 a year from the cost of electricity and gas.

The Conservative shadow climate change secretary said, no longer will we need to be overly dependent on imported fossil fuels from unstable countries. Instead, our electricity and heating will come from a wider range of more dependable and renewable sources, which will encourage innovative energy sources to be developed. This will help guarantee our energy securities, reduce carbon emission, and will assist in doing all we can to protect the future.

[Telegraph, 17/01/2009]

**UK's policy of shipping recyclable waste to China needs reviewing**

In a bid to reduce landfill dependence, the United Kingdom has increased the amount of waste being recycled to a third of all waste in recent years.

However, China receives more than half of the UK's exports of recovered paper and more than 80 percent of recycled plastics. Experts said that recycling is not necessarily the best thing for the environment.

The head of environmental studies at the Institute of Mechanical Engineers (U.K.) said shipping goods to China was not necessarily wise, due to carbon emissions produced through transportation (as well as from processing the materials), which will damage the marine environment. That whole process of recycling is potentially more damaging to the environment than producing energy from waste.

However, the Director of Marketing Development at Waste and Resources Action Programme (U.K.) insisted that the recycling industry was still cutting emission, although the global economic downturn has meant less material being recycled as demand for goods decreased.

[Telegraph, 28/01/2009]

**GM foods 'could feed growing population during climate change'**

Professor Bon Watson, the chief scientific adviser at the Department of the Environment, Food and Rural Affairs in the UK, said genetically modified (GM) crops could be grown in England as part of controversial field trials to ascertain the role of new technology in tackling climate change.

He said, people are asking how we will be able to feed the world's growing population during a time of dangerous climate change. Whilst GM is clearly not the whole answer, it may contribute through improved crop traits, such as temperature, drought, pest and salinity tolerance. Hence, additional scientific studies will allow us to assess the risks and benefits.

At this moment, there are no plans for any experiments in the UK after campaigners destroyed the last two trials. Professor Watson said new trials are needed and technology must be investigated in light of global food security fears.

However, policy director at the Soil Association said the public were already aware of the science of GM and that is why people objected to the field trials, adding that the risk of contamination of non-GM and organic crops is a reality and I do not think we have the right to destroy the rights of farmers to grow non-GM crops and consumers to eat non-GM food.

[*Telegraph*, 22/01/2009]

### Campaigners take legal fight against eco-towns to High Court

The government announced a shortlist of 13 potential sites in their consultation documents entitled "Eco-Towns: Living a Greener Future"; but, some county campaigners have condemned the government's controversial eco-towns project. Campaigners alleged the government failed to properly consult the public in respect of the policy of building "environmentally friendly" towns to meet housing shortages.

An application for judicial review was made by the Better Accessible Responsible Development Campaign (Brad), which opposed 6,000 new homes being built near Long Marston, Warwickshire. The group believes that the scheme could cause irreparable damage to middle England. Brad argued there should be fresh, fully informed consultation on whether eco-towns are the right way to meet the housing needs of England. They said pre-determining eco-town status and sites by way of developer competition, rather than through the plan-led system, is undemocratic, and there is no way properly to manage the proposed large-scale developments.

Brad also argued that the Government should have been clear as to the criteria it was applying and should have complied with European legal requirements with regard to strategic environmental issues. A leading expert, William Sheate, of Imperial College, London, recently branded the government's proposals "exceptionally poor".

Mr Justice Walker refused to overturn the eco-town policy. He also rejected the assertion that the government had proceeded with "a closed mind". The housing minister, who will make a final decision on the sites to be developed later this year, described the eco-towns as "a unique opportunity to deliver much-needed affordable housing, built in a way which, by incorporating the very latest energy-saving techniques, benefits both residents and the wider community."

[*Telegraph*, 22/01/2009 & 27/01/2009]

## WORLD

### Ocean 'fertilisation' team ordered to halt global warming experiment

An expedition sponsored by a joint Indian – German project which hoped to fertilise the ocean to combat global warming, was ordered by the German government to stop, due to concerns that the experiment may breach the United Nation's Convention on Biological Diversity.

The team planned to pump 20 tons of iron sulphate into the Antarctic to stimulate the growth of plankton. The theory is that the plankton fall to the seabed when they die, taking the carbon dioxide they have absorbed with them.

Environmentalists claimed that the experiment, which would create a 186 square miles bloom of plankton between Cape Horn and the Cape of Good Hope, was so big that it could have a devastating impact on the oceans and may even speed up global warming.

[*Telegraph*, 25/01/2009]

### Climate change 'irreversible'

Scientists have warned that projects to prevent temperature rises will have no impact for at least a thousand years and that climate change is irreversible, according to the US-based National Oceanic and Atmospheric Administration's Earth System Research Laboratory.

Ms Solomon, a leader of the International Panel on Climate Change and one of the world's best known researchers on

the subject and a lead author of an international team's paper reporting irreversible damage from climate change, said: "Climate change is slow, but it is unstoppable – all the more reason to act quickly, so the long-term situation does not get even worse."

In Britain in recent years, there have been regular instances of flash flooding. She noted temperatures around the globe have risen and changes in rainfall patterns in areas around the Mediterranean, southern Africa and south-western North-America have occurred.

Ms Solomon said that warmer climate causes expansion of the ocean, which helps keep the planet warmer.

[*Telegraph*, 27/01/2009]

### One Green agenda, different strategies

Increased usage of electronic and information communication technology products has resulted in increased energy consumption and higher emissions of greenhouse gases, which in turn contributed to global warming. Technology companies, therefore, are coming up with more environmental friendly products.

Fujitsu, through its Green Policy 2020, aims to reduce carbon emissions from use of its technology by 20 percent or more.

Philips Group says its green products offer environmental improvements in energy efficiency, packaging, hazardous substances and weight reduction, recycling and disposal benefits, and lifetime reliability. For instance, its energy-saving bulbs are said to save energy consumption by 80 percent compared to standard bulbs.

Hewlett-Packard (HP) focuses on resource efficiency and reducing the environmental impacts of its products and services from design to manufacture, use and end-of-life disposal. Products that feature environmental improvement include LaserJet printers that provide up to 50 percent energy savings over traditional laser printers. HP has also used recycled plastics in their inkjet products for about five years.

[*New Straits Times*, 15/02/2009]

### Mercury pollution treaty proposed

A landmark decision was made by environment ministers from more than 140 countries attending the Nairobi meeting of the United Nations Environment Programme when they agreed on an interim plan to help curb mercury pollution.

The plan includes: boosting worldwide capability to safely store stockpiled mercury; reducing the supply of mercury from primary mining of the heavy metal; arousing awareness of the risks together with running programmes to cut the use of mercury in artisanal mining, in which an estimated 10 million miners and their families are exposed; and reducing use of mercury in products such as thermometers and high intensity discharge lamps, and in the process of some kinds of paper-making and plastics production.

One of the most common ways mercury affects people is in the organic form methylmercury, that attacks the central nervous systems. Symptoms include numbness, unsteadiness, tiredness, ringing in the ears, and problems with vision, hearing and speech. Pregnant women and their fetuses, infants, children and people whose diet includes a lot of fish are most vulnerable to mercury poisoning.

[*BBC News*, 20/02/2009]

### Toxic assets

Fear fed by global economic turmoil has brought the glitter back to gold. Gold's resurgence has strengthened the demand for its long-term associate, mercury, which is a toxic metal widely used in gold mining in Asia, Africa

and Latin America.

The United Nations Environment Programme (UNEP) estimates that about 6,000 tonnes of mercury are released into the air, land, rivers, and seas each year. Of the 6,000 tonnes, about one-third comes from burning coal; gold mining is the second biggest source of mercury releases.

When mercury is belched in to the air from power plants, it returns to earth via rain and then flows into the oceans. To tackle the mercury scourge, UNEP agreed last month to negotiate a binding global treaty to tighten controls on its use. The European Union called for a ban on the use of mercury, to start by 2011.

Use of mercury in gold mining is illegal in Indonesia. However, miners prefer the liquid metal because it is relatively cheap, efficient and leaves the gold cleaner than traditional panning methods.

[*SCMP*, 06/03/2009]

### Conserving Mother Nature a top priority

Unlike our economies, Mother Nature does not have a Dow Jones Index to indicate it is in crisis, but if you follow climate science, what has been striking is how insistently some of the world's best scientists have been warning – in just the past few months – that climate change is happening faster and will bring bigger changes more quickly than we anticipated just a few years ago. Indeed, if Mother Nature had a Dow, you would say that it, too, has been breaking into new (scientific) lows.

So, what to do? You have to change the economics to affect the Dow, and the chemistry, biology and physics to affect Mother Nature.

That's why we need a climate bailout along with our economic bailout. Hal Harvey is the chief executive of a new US\$1 billion foundation, ClimateWorks, set up to accelerate policy changes that can avoid climate catastrophe by taking climate policies from where they are working the best to the places where they are needed the most.

"There are five policies that can help us win the energy-climate battle, and each has been proven somewhere," Mr. Harvey explained.

First, building codes: California's energy-efficient building and appliance codes now save Californians US\$6 billion per year, he said.

Second, better vehicle fuel-efficiency standards: "The European Union's fuel-efficiency fleet average for new cars now stands at 5.7 litres per 100km, and is rising steadily, he added.

Third, America needs to mandate that power utilities produce 15 or 20 per cent of their energy from renewables by 2020. "Whenever utilities are required to purchase electricity from renewable sources," Mr. Harvey said, "clean energy booms." (e.g. Germany's solar business or Texas' wind power.)

The fourth is decoupling – the programme begun in California that turns the utility business on its head. Under decoupling, power utilities make money by helping homeowners save energy rather than by encouraging them to consume it.

"Finally," said Mr. Harvey, "we need a price on carbon." Polluting the atmosphere can't be free.

These are the pillars of a climate bailout. Of course, some have up-front costs. But all would pay long-term dividends, because they would foster massive innovation in new, clean technologies that would stimulate the real Dow and bring about much lower emissions that would stimulate the Climate Dow.

[*SCMP*, 31/03/2009]

This Quarterly Report does not constitute legal advice given on any particular matter. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors and omissions. Further information and enquiries in respect of this quarterly should be directed to Fred Kan & Co.

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*Convictions under environmental legislation: January to April 2009*

*[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:

*January 2009*

Twenty-five convictions were recorded in January for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Twelve of the convictions were under the Waste Disposal Ordinance, 11 under the Air Pollution Control Ordinance, 2 under the Water Pollution Control Ordinance.

The heaviest fine in January was \$24,000, assessed against a transport company that importing controlled waste without a permit.

*February 2009*

Twenty-five convictions were recorded in February for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Twelve of the convictions were under the Waste Disposal Ordinance, 10 under the Air Pollution Control Ordinance. Among other cases, two of them were under the Noise Control Ordinance and one under the Water Pollution Control Ordinance.

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

*March 2009*

Eighteen convictions were recorded in March for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Fourteen of the convictions were under the Waste Disposal Ordinance, 4 under the Air Pollution Control Ordinance.

The heaviest fine in March was \$50,000, assessed against a trading company that importing controlled waste without a permit.

*April 2009*

Twenty-seven convictions were recorded in April for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Eleven of the convictions were under the Waste Disposal Ordinance, 10 under the Air Pollution Control Ordinance. Among other cases, 4 were under the Noise Control Ordinance and 2 under the Water Pollution Control Ordinance.

The heaviest fine in April was \$25,000, assessed against a construction company that using powered mechanical equipment without valid construction noise permit.

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Fred Kan & Co.  
Solicitors Suite 3104-07 Central Plaza  
18 Harbour Road Wanchai, Hong Kong



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