

## **Convictions under environmental legislation: October - December 2004**

The EPD's summary of conviction recorded and fines imposed during the period October to December 2004 is as follows:

### *October 2004*

Twenty-four convictions were recorded last month (October) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Eight of the convictions were under the Air Pollution Control Ordinance, eight under the Water Pollution Control Ordinance, four under the Noise Control Ordinance, three under the Waste Disposal Ordinance and one under the Ozone Layer Protection Ordinance.

The heaviest fine in October was \$50,000, assessed against a company that contravened the provisions of a licence.

### *November 2004*

Twenty-eight convictions were recorded last month (November) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Eight of the convictions were under the Waste Disposal Ordinance, seven under the Water Pollution Control Ordinance, seven under the Noise Control Ordinance and six under the Air Pollution Control Ordinance.

The heaviest fine in November was \$40,000, assessed against a company that used powered mechanical equipment without valid construction noise permit.

### *December 2004*

Forty convictions were recorded last month (December 2004) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Seventeen of the convictions were under the Waste Disposal Ordinance, 14 under the Air Pollution Control Ordinance, seven under the Noise Control Ordinance and two under the Water Pollution Control Ordinance.

The heaviest fine in December was \$50,000.

Three companies were fined \$50,000 each for failing to take measures to control air pollutant emission, using powered mechanical equipment not in accordance with permit conditions and importing controlled waste without a permit respectively.

Printed Matter

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Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

(Published since May 1992)

*In this edition of the Quarterly, we review a new environmental awareness newsletter which has commenced publication in Hong Kong. We also provide more background explanation of important amendments to the Town Planning Ordinance.*

*The editors wish you all a peaceful and prosperous 2005 and lunar new year.*

*The Editors*

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### INTRODUCING POSITIVE NEWS (HK EDITION): A WELCOME EDITION TO OUR COLLECTIVE ENVIRONMENTAL CONSCIOUSNESS

Compared to countries with similar standards of living, Hong Kong has remarkably few publications focusing on environmental issues. The *Quarterly* is one of the longest running publications dealing with planning and environmental topics, although usually from a legal perspective. A few conservation NGOs now publish newsletters, but they are few and far between.

This situation improved to some extent with the introduction in the summer of 2004 of a local edition of *Positive News*, which is a well known United Kingdom publication. *Positive News* promotes environmental awareness and environmentally responsible business and living practices. In broad terms, the newsletter reports on and promotes innovative products and systems designed to improve our very poor record of living in harmony with the natural environment. Global and local environmental issues are also featured.

Publications such as *Positive News (HK)* play a vital role in the constant struggle to conserve our natural environment. Historically, governments have been heavily influenced by economic factors. Big business has the ear of decision-makers in most countries. This, as we know, is particularly so in Hong Kong.

For too long the loudest voices influencing Hong Kong's government and economy have belonged to those who believe that environmentally responsible practices are inherently in conflict with economic progress. This is a nonsense, of course, and it is encouraging that the more enlightened of our business leaders now recognize and publicly proclaim that environmentally responsible practices actually increase economic performance.

Publications and non-government organizations (NGOs) which encourage protection of the environment are entitled to a good deal of the credit for world communities' changing perception of the importance of environmental conservation. This is also very much the case in Hong Kong, where a small number of NGOs - such as *Friends of the Earth*, *World Wildlife Fund*, *Footprint* and the *Marine Conservation Society* - have kept up pressure on the government and business to give higher priority to conservation issues (although old

habits are changed very slowly, unfortunately).

Examples of Hong Kong topics covered in the first edition of *Positive News (HK)* are :

### Solar power

The Hong Kong University Department of Architecture recently built 835 solar panels on a school in Park Island. On 15 May 2004, the Kei Wai Primary School and its gleaming new photovoltaic (PV) arrays were officially opened by the Permanent Secretary for Education, Fanny Law. The project was co-sponsored by the government's Innovation and Technology Fund and the China Light and Power Research Institute.

Blue skies and brilliant sun enabled the school children to show off the potential of the photovoltaic technology to over 1,000 parents and guests present that day. With assistance from Sam Lam and Huey Pang of the Hong Kong University's (HKU) PV Research team, students described the benefits of the technology that generates power from sunlight using specially developed software which logs the electricity produced from the school's extensive roof arrays. It has become a key project, demonstrating the value of photovoltaics to the community, both as a source of renewable energy and as an educational tool.

HKU PV Research's forecast suggests that about 9 per cent of the school's annual electricity needs will be met by the 40KW solar panels. Generated without harmful emissions, this "green" electricity represents a saving of approximately 179 tonnes of carbon dioxide pollution.

### The Regeneration Society

A non-profit organization and charity. The Regeneration Society is an avenue for the public to assist people suffering from chronic illnesses such as Systemic Lupus Erythematosus (SLE), Cancer, Rheumatoid Arthritis, Psoriasis, and Scleroderma. Its focus is to help the chronically ill become self-reliant and re-integrate into society. To this end, it offers them and family members a variety of psychosocial services. Free talks, workshops on wellbeing, group and individual counseling, Chinese medicine consultations and alternative therapies such as massage, Tai Chi and Qigong, are among the wide repertoire of activities and services available to members.

### No air-con day

As chief executive of green group Footprint, Roy Tam Hoi-pong initiated Hong Kong's first No Air-Con Day on 1 June. Over 150,000 students in 160 primary and secondary schools attended class without air conditioning, and saved an estimated 250 tonnes of carbon dioxide in the process. Roy's motivation for the project is to help reduce global warming, as carbon dioxide is one of the main greenhouse gases. "I find air conditioners to be very selfish," he says. "In order to

"We can build an economy that does not destroy its natural support systems..."

produce cool air inside it created hot air outside. In the summer, air conditioners account for 60 per cent of all electricity consumption in Hong Kong." Footprint hopes to repeat the event every year and are aiming to expand the idea into Shanghai and Beijing next time.

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### A plan for the future

"We can build an economy that does not destroy its natural support systems; a global community where the basic needs of all the earth's people are satisfied and a world that will allow us to think of ourselves as civilized," said Lester Brown, author of *Plan B: Rescuing a Planet under Stress and a Civilization in Trouble*. The Plan includes a massive mobilization, a worldwide effort at wartime speed to stabilize population and climate, and to raise water productivity.

"Restructuring the world economy to achieve these goals is an enormous undertaking," he says, "but the cost of not doing so is unacceptably high. The challenge is not just to alleviate poverty, essential though this is, but to build an economy that is compatible with the earth's natural system - an eco-economy that can sustain progress" he said.

Since the publication of *Plan B*, hundreds of enthusiastic readers have purchased additional copies for distribution to friends, colleagues and opinion leaders,

Reah Janise Kauffman, Vice President of the Earth Policy Institute says, "We have designated those who bought five or more copies members of our Plan B Team. Like me, these readers sense that our modern civilization is in trouble and they want to do something about it.

Leading the Plan B Team is Ted Turner, the founder of CNN, who has bought and distributed more than 3,500 copies. Altogether over 400 individuals have purchased five copies or more distributing them to friends, colleagues and political representatives.

We wish *Positive News (HK)* a long and fruitful time in Hong Kong.

[*Positive News* is published by a not-for-profit company, and is a free publication. Its 5,000 circulation is funded by donations. Subscriptions/donations, contact: Positive News HK Publishing Ltd 5(a) 1 Ka Nam Village, North Lamma Island : Phone/Fax: 2982 2808]

## LEGISLATION DIGEST

### Town Planning (Amendment) Ordinance 2004

[Further comments on amendments; see also UPELQ, August 2004]

The Amendment Ordinance will come into operation on a date to be appointed by the Secretary for Housing, Planning and Lands.

A total of eight Town Planning Board ("the Board") Guidelines on the new procedures and requirements for the implementation of the Amendment Ordinance were drafted for consultation between the Planning Department and stakeholders.

The main objectives of the Amendment Ordinance are :-

- to enhance the transparency of the planning system;
- to streamline the town planning process; and
- to strengthen enforcement of controls of unauthorized developments in the rural New Territories.

### *Plan-making process*

*Section 6 is repealed and replaced by new sections 6 and 6A to 6H:-*

- all new plans, amendments to approved plans or amendments to draft plans will be exhibited for two months for public inspection;
- any person may make representations (either supportive or adverse) to the Board within the two-month period;
- the Board shall publish the representations for three weeks for public comments and make available all representations for public inspection;
- any person may make comments (either supportive or adverse) on the representations within the three-week period;
- the Board will hold a meeting to consider the representations and comments. Persons who have submitted representations or comments may attend the meeting and be heard by the Board;
- after the hearing, the Board will decide whether to propose amendments to the draft plan to address the representations. If the Board decides to propose amendments, they will be published again for three weeks for further representations;
- any person, other than the original 'representer' or 'commenter' may submit further representations (either supportive or adverse) to the Board within the three-week period;
- if adverse further representations are received, the Board will hold another meeting to consider all the further representations, at which the original 'representer' or 'commenter' and the 'further representer' may attend and be heard by the Board;

- after the further hearing, the Board will decide whether to make amendments to the draft plan; and
- on completion of the representations consideration process, the Board is required to submit the draft plan incorporating the amendments together with the representations, comments and further representations to the Chief Executive in Council for approval within nine months of the expiry of the plan exhibition period (or within a further maximum six-month period if so directed by the Chief Executive).

### *Planning Application System*

*A new section 12A is added :-*

- any person may make an application to the Board for amendment of an approved plan or a draft plan (except for a new draft plan or matters relating to an amendment shown on the amendment plan);
- an application for amendment of a plan shall be considered at a meeting by the Board within three months, and the applicant may attend the meeting and be heard by the Board;
- if the Board accepts the amendment or part of the amendment proposed by the applicant, the Board will initiate the plan-making process to incorporate the amendment into a draft plan; and
- the draft plan incorporating the amendment made by the Board will then be exhibited for public inspection in accordance with the above provisions.

New sections 12A, 16 and 17 are added:

- an applicant for planning permission or amendment of plan is first required to obtain the consent of or to notify the 'current land owner' of the application site or to take reasonable steps in order to obtain consent or to give notification within

a reasonable period before the application is made. This will enable the owner of the site to be fully aware of the applicant's intention to submit an application relating to his land or premises;

- on receipt of a section 12A or 16 planning application or a section 17 review, the Board will publish the application, either by posting a notice at a prominent position on or near the land, or by advertising in two local Chinese and one local English newspapers. The public will have the opportunity to submit their comments on the application to the Board within the three-week publication period; and
- all documents submitted by the applicant to the Board in respect of an application under section 12A or 16 or a review under section 17 will be available for public inspection.

As with the existing practice, all applications for amendment of plans and for planning permission shall be considered by the Board within three months and two months respectively, while section 17 reviews shall continue to be conducted by the Board within three months.

A new section 16A is added :-

- exemption of certain amendments to planning permission granted by the Board from further application; and
- exemption of certain amendments to planning permission granted by the Board from further publication for public comments.

These amendments will be classified as Class A and Class B amendments, a list of which will be published in the Gazette.

### *Enforcement against unauthorized development in the rural New Territories*

*New provisions include :-*

- power to enter any land or premises (except domestic premises) or to have access through any land or

premises (except domestic premises) to investigate suspected unauthorized development (UD);

- a notice may be served under section 22 to request information relating to a suspected UD;
- failure to comply with the notice served under section 22 is an offence and the offender will be liable to a fine of up to HK\$100,000;
- a notice may be served under section 23 to require discontinuation of an UD if the Planning Authority is of the opinion that there is an UD;
- in forming an opinion on whether there is an UD, the Planning Authority shall have regard to aerial photographs taken by the Lands Department, the relevant statutory plans and other relevant information;
- on the service of a notice under section 23(1), the notice recipient shall be required to discontinue the UD within a specified period. The submission of a planning application for regularizing the UD will not be taken as a reasonable step to comply with the notice
- as is allowed under the previous ordinance; and
- technical amendments to section 23 (9) and addition of section 23(9A) are made to clarify the burden of proof on the defendant as well as the prosecution.

#### *Other new provisions*

- All meetings of the Board and its committees, except for some special circumstances, will be open up to the public.
- The powers and functions of the Board are further delegated to its committees appointed under section 2(5) in respect of applications made under section 12A and 16A and matters under section 8.

- In respect of submission of further information by an applicant for planning permission or amendment of plans, the Board shall have a discretion to determine whether to accept such further information as part of the application and if accepted, to determine whether such further information needs to be published for further comments by the public. As such submissions are very common in practice, the delegation of such power to the Secretary of the Board is provided for in order to avoid delay in the processing of the application.
- In line with the Government's 'user-pays' principle, the Amendment Ordinance provides for charging of fees for planning applications made under sections 12A, 16 and 16A. It also provides that the Secretary for Financial Services and the Treasury may waive or reduce the prescribed fee in special circumstances. There will be no fee charges for applications for review under section 17.

[<http://www.info.gov.hk/planning>]

## HONG KONG BRIEFING

### Hunghom Peninsula

#### *Chronology*

- |          |  |
|----------|--|
| Sep 1999 | Site is leased for HK\$583 million to developer to build seven housing blocks for Home Ownership Scheme. |
| Nov 2002 | Government freezes subsidized flats scheme amid property market slump.                                   |
| Jul 2003 | Developer sues government for losses. Negotiations to modify lease follow.                               |
| Feb 2004 | Government sells site for HK\$2.77 billion and is accused of disposing of it too cheaply.                |
| Mar 2004 | Developer plans to knock down the never-occupied   |

flats for redevelopment.

Nov 29, 2004 Developer's demolition plans and environmental measures fail to ease public outrage.

Dec 6, 2004 Government warns it can reject rebuilding that is not in line with the original plan. Developer later says it is open to a government buy-back.

Dec 10, 2004 Developer backs away from demolition.

[SCMP, 11 December 2004]

### *Government should tell public whole truth*

On 6 December 2004, Secretary for Housing, Planning and Lands, Michael Suen told legislators that the government did not approve of the demolition of Hunghom Peninsula. He also said that if the developers intended to redevelop it, they would have to obtain the government's approval and pay a new premium. It is right for the government to adhere to the position that the developers must pay a new premium commensurate with the increase in valuation if they redevelop Hunghom Peninsula. However, the government should tell the public what actually happened when it had premium negotiations with the developers last year. Some items of information may be sensitive, but it should consider disclosing them to legislators in secrecy so as to dispel suspicions of business-government collusion and advantage-transfer.

The Legislative Council ("Legco") housing panel adopted a motion for setting up a select committee to look into the Hunghom Peninsula affair. No matter whether the proposal goes through Legco, the government should offer to provide information on the sale of Hunghom Peninsula, including letters between the Lands Department and the developers and minutes of government meetings. It should not passively provide information bit by bit, still less withhold the whole truth until such time as Legco exercises its powers of investigation.

Full and frank disclosure might adversely affect the government's policy on recording proceedings at civil service meetings.

Pressing for disclosure might also be contrary to the bureaucratic culture of “saying few words and doing little to avoid making mistakes”. These points have come to some legislators’ notice. To overcome the difficulty, the government might delete certain names from the documents to be submitted to Legco, or allow legislators to peruse those records in secrecy.

Letters between the government and the developers must be submitted to Legco, for they are crucial for ascertaining the intentions of the government and the developers when they reached a premium and lease-change agreement early this year. It is important to know whether the agreement allows the developers to redevelop Hunghom Peninsula or only allows them to have the flats in the development refurbished and put into the market. As the developers, had openly said that they had no intention of redeveloping Hunghom Peninsula, it is certain that the government had no idea of their redevelopment plan. The developers should have no objection to the government handing over those negotiation papers to the legislature, with a view to establishing the parties’ “innocence”.

Mr Suen stressed that the developers must adhere to the lease conditions, the master layout plan and the approved landscaping proposals in redeveloping Hunghom Peninsula, or they must otherwise obtain the approval of the Director of Lands. Judging by the master layout plan provided by the Lands Department, it will be difficult for the developers to adhere to the existing conditions in order to avoid applying for approval or paying another premium, for there are detailed specifications with respect to the construction of Hunghom Peninsula.

If seven new buildings are put up there, they must be identical to the existing ones in location, orientation, height and shape. Therefore, the developers could do little other than improving the interior decoration of the buildings and using better materials in building the outer walls. This being the case, the developers are better off to have the flats refurbished and sold. Otherwise, they should apply for redeveloping the site, following the usual procedures; and they should have open and aboveboard negotiations with the government. If the developers try to adhere to the original layout plan in redeveloping the estate, the government might be compelled to take the matter to court, and the developers’ project will long be shrouded in uncertainty. Then, they might

get no wool, and come home shorn.

*[Ming Pao Editorial, 7 December 2004]*

### *Surge of people power*

On 10 December 2004, Sun Hung Kai and NWS Holdings announced their decision to drop their plan to demolish Hunghom Peninsula. The storm the plan has raised will conceivably subside. Under huge pressure of public opinion, the developers have changed their minds. One could say this is evidence of the growth of people power in Hong Kong. However, it also shows the freedom of doing business is increasingly restricted in Hong Kong.

The two developers wholly own Hunghom Peninsula. They are perfectly entitled at law to apply for its redevelopment. If they followed the normal procedures and agreed to pay a premium commensurate with market prices, the government could not but give the green light to their plan. Private property owners ought to be so protected in a place where the law rules. If citizens consider that tearing down new buildings is detrimental to the environment and think that banning such demolitions is desirable, they may ask the legislature to impose a ban and lay down clear rules governing such demolitions. However, legislation should not be retroactive. Until legislation goes through the legislature, developers have the right under existing laws to maximize their shareholders’ returns by redevelopment or by other lawful means. That is a basic rule in a commercial society.

However, the developers have dropped their redevelopment plan which might have returned an extra profit of several billion dollars. They have decided to have the flats in Hunghom Peninsula refurbished. Clearly, when they did so, they had regard to two political and commercial factors.

Firstly, many citizens vigorously opposed demolishing Hunghom Peninsula. The developers would remain under fire during the next couple of years if they had adhered to their original plan. That might not only harm their goodwill with the government but also make it harder for them to bid for the West Kowloon project.

Secondly, the public applied such pressure to bear on the government that it could not but be tough on the developers. The government might not only cost the developers a heavy premium, but also could thwart their redevelopment plan by all sorts of administrative means. The redevelopment, therefore, might prove to

be much less efficiently conducted than it would otherwise be.

Having weighed the pros and cons, the developers backed down. They have adopted a course which will lose them several billion dollars in potential short-term profit. However, as their operations are based mainly in Hong Kong, one might say their decision is far-sighted.

The Hunghom Peninsula controversy is another milestone marking the growth of people- power in Hong Kong after the July 1 march in 2003. Green groups and educators’ bodies quickly organised gigantic campaigns against the demolition of Hunghom Peninsula. They raised moral demands. With the support of pro-democracy political forces and public opinion, they succeeded in bringing the government and the developers to heel. Such things are far from uncommon in the West. They are what a society will certainly see as it moves towards democracy and pluralism.

As people power surges, the political system, the system of government and even commercial operations must be altered accordingly, or conflicting interests cannot be effectively harmonised. Take the Hunghom Peninsula affair, which underscores the conflict between commerce and environmental protection. If the SAR government enjoyed much popular support, were staunchly backed by a majority in the legislature, and believed it has its finger on the pulse of mainstream opinion and society’s core values, it would have promptly:

- (i) let the public have information on its negotiations with the developers;
- (ii) rebutted allegations of government-business collusion and advantage-transfer with facts;
- (iii) listed possible solutions to the problem;
- (iv) laid down conditions for and restrictions on redevelopment;
- (v) urged the developers and the green groups to come together to face society’s demands; and, eventually,
- (vi) brought about a compromise acceptable to the majority of citizens.

However, that is not the case. The Hunghom Peninsula affair fully exposes the SAR government's passivity and weakness. It is no harmoniser. The developers and the green groups could not avoid clashing directly. As a result, the greens' victory may be viewed as a dent in the freedom of doing business. Investors' confidence cannot but be affected. The line between commerce and environmental protection remains blurred.

[Ming Pao Editorial, 11 December 2004]

## HONG KONG DISNEYLAND UPDATE

### Hong Kong Disneyland Announces Opening Date

Hong Kong Disneyland will open on 12 September 2005. The theme park was originally expected to open in late 2005 or early 2006. Disneyland's managing director, Don Robinson, said the date was chosen by *fung shui* masters as "the perfect day to open Disneyland".

Admission prices will be cheaper than the other four established Disney parks in the United States, France and Japan. Unlike the other theme parks, which have fixed-price day tickets, Hong Kong Disneyland will have two-tier pricing. Admission will cost more on "special days", which are: weekends, public holidays, all days in July and August and the mainland's "golden week" holidays in May and October.

The price for adults will be \$295 on ordinary weekdays and \$350 on special days. The price for children aged three to 11 will be \$210 on weekdays and \$250 on special days, and the price for seniors aged 65 or above will be \$170 on weekdays and \$200 on special days. Children under the age of three will enjoy free admission.

The ticket price for special days is still lower than the admission fees at the other four Disney parks. The price for Tokyo Disneyland is the equivalent of \$393. Disneyland in Orlando, Florida, is the most expensive at \$427.

Travel Industry Council executive director, Joseph Tung Yao-chung, and tourism sector legislator, Howard Young, believe the admission prices are reasonable. But they urged Hong Kong Disneyland to provide a cheaper group rate so travel agents could sell travel packages at a lower price to

attract tourists.

The Disney company predicts the theme park will attract 5.6 million visitors in its first year - a third of them local, a third from the mainland and a third from Southeast Asia. Mr Young also said Hong Kong Disneyland could compete successfully with the one in Japan, which was aimed more at the domestic market. He hoped the theme park would target tourists instead of locals, and not just mainland tourists but a "wider spectrum" of visitors.

Financial Secretary, Henry Tang Ying-yen, said the Disneyland project had already created 11,400 jobs during construction and 18,000 jobs would be created by its opening. He said the whole economy would continue to benefit from the project and the theme park would be a driving force for tourism growth. It is estimated the project will generate \$148 billion for Hong Kong during the park's first 40 years.

Hong Kong Disneyland will consist of Mainstreet USA and three themed areas - Fantasyland, Tomorrowland and Adventureland. Among the featured attractions will be the Jungle River Cruise and the Festivals of The Lion King. A 30 minutes Broadway-style production of The Lion King will be presented at the park daily, with a more lavish debut show staged on the park's opening day. There will also be two on-site hotels.

[SCMP, 23 November 2004; The Standard, 24 November 2004]

## ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

### Report on the 89th Environmental Impact Assessment Subcommittee Meeting

(ACE Paper 34/2004) (by EIA  
Subcommittee Secretariat, October  
2004)

At its 89<sup>th</sup> meeting, the Environmental Impact Assessment Subcommittee ("EIA Subcommittee") considered the environmental assessment report on the Backfilling of Marine Borrow Pits at north of the Brothers (Brothers is an island to the north of Lantau Island).

### Need for the project

Under the New Sediment Classification Framework, materials to be dredged are classified into 3 categories: Category L, Category M or Category H. The categorization depends on the concentrations of the contaminants and the results of any biological testing. Category L material contains the least contaminants and is deemed to be suitable for disposal at Type 1-open sea disposal sites; Category M material which passes biological tests is deemed to be suitable for disposal at Type 1 (dedicated) open sea sites where some monitoring of possible impacts will take place. Category M material which fails the biological tests and Category H material with no contaminant exceeding 10 times the Lower Chemical Exceedance Level must be placed in a Type 2 confined marine disposal site. Category H material with one or more contaminants exceeding 10 times the Lower Chemical Exceedance Level would require to be assigned to a Type 3 special treatment or disposal arrangement.

Currently, Type 1 and Type 2 sites are available. However, there are no Type 1 (dedicated) open sea disposal sites for the disposal of Category M material that passes biological tests. Such material will need to be disposed of at the site east of Sha Chau (Sha Chau lies at the western side of Hong Kong), and will take up some of the limited capacity for sediments that require confined marine disposal.

### Description of the project

In order to avoid impacts on tidal flows, wave changes and the marine environment, the government has implemented a policy of backfilling exhausted marine borrow pits and reinstating the seabed. It is proposed to backfill the marine borrow pits with Category M material which has passed biological testing for the current -35 meter Principle Datum (mPD) to -29m PD. The layer of material will subsequently be topped by a 3 - metre layer of Category L material between the depths of -29mPD and -26mPD.

### Maximum observed dissolved concentration

The project proponent team stressed that in the past the level of chromium and copper contamination at East Sha Chau has exceeded the Water Quality Standard. The purpose of showing the Water Quality Standard and the Maximum Observed Dissolved Concentration levels in the

environmental assessment report on the Backfilling of Marine Borrow Pits was to demonstrate that the level assessed for the backfilling of the Marine Borrow Pits at North of the Brother would be better than the Water Quality Standard and the maximum level observed at East Sha Chau. The project proponent stressed that the mean level of dissolved concentration observed at East Sha Chau was much lower after the backfilling of the Marine Borrow Pits.

*Simulation exercise for wet and dry seasons*

A Member challenged the accuracy of simulation results for the dry season, on the basis that the figures were dated July and August of 1996, despite the report showing a series of dry and wet seasons simulation results. The project proponent team of the calibration rather than the dates of the tests. The simulation was calibrated with actual dry and wet season data, including the data for a worst case that had actually happened.

*Background level of suspended solids*

Although the project proponent admitted that the range of background suspended solids concentrations at East Sha Chau varied greatly, the average level instead of the minimum level would be used for environmental assessment purpose. The project proponent further stressed that mitigation measures, including verification of the monitoring result and temporary cessation of disposal operations where appropriate, will be adopted if the Water Quality Objectives are exceeded.

*Disposal of Category M material that passes biological tests*

As Category M material which has passed biological test would not be toxic and the chance of any bioaccumulation would be remote, disposal at Type 1 (dedicated) open sea disposal sites is appropriate. The project proponent stated that even after more than 10 years of monitoring of backfilling at the Contamination Mud Pits at East Sha Chau, no significant impact on the environment had been found.

*Monitoring of the disposal operations*

Members considered that the arrangement of monitoring and actual disposal is unsatisfactory because the monitoring and disposal might not necessarily coincide with each other. The project proponent said that there were difficulties in coordinating

them to operate at the same time, but acknowledged the concerns raised by Members and indicated it would include appropriate terms in the work contract if possible.

*Conclusion*

Members agreed to recommend the report to the Council for endorsement after considering the findings and recommendations of the environmental assessment report. Further, Members hope that the project proponent would consider and implement the recommendations of the Subcommittee despite the fact that the project was exempted from the EIA Ordinance

***Report on the 88<sup>th</sup> Environmental Impact Assessment Subcommittee Meeting***

***(ACE Paper 31/2004) (by EIA Subcommittee Secretariat, September 2004)***

At its 88<sup>th</sup> meeting, the Environmental Impact Assessment Subcommittee (“EIA Subcommittee”) considered the environmental assessment report on the “Renewable energy by a wind turbine system on Lamma Island”.

*Need for the project*

The Hongkong Electric Co. Ltd (HEC) proposed to install the first utility scale and grid-connected wind turbine for the purposes of: (i) demonstrating the use of wind as a renewable energy for power generation in Hong Kong; (ii) providing local experience in wind turbine operation; and (iii) promoting public awareness of renewable energy.

*Description of the project*

The turbine, which is proposed to be erected at Tai Ling on Lamma Island, is expected to eliminate the use of up to 240 tonnes of coal, and reduce associated gaseous emissions each year.

*Consideration of alternative sites*

HEC stated that the wind power density at the proposed site would meet the criteria for wind energy utilization. Having regard to population density, bird flight paths, existing access roads and the flat land surface of Lamma Island, the project proponent stated that this is the most favourable site for the project.

Members mainly focused on the following issues in the meeting:

*1. Romer’s Tree Frogs*

The project proponent team said that an expert would be engaged to conduct a survey of the rare Romer’s Tree Frogs and advise on a translocation exercise. The members did not rule out the translocation exercise, but proposed that the project proponent should cooperate with the Agriculture and Fisheries Department (AFCD) and work out a suitable and practical plan.

*2. Land issue and public access to the site*

The project proponent explained that the proposed project site would be granted to HEC under a tenancy for an initial term of five years. During this time, the public may visit the site, which would perform an educational role in promoting renewable energy. The renewal of the tenancy will be subject to further negotiation.

*3. Footprint and visual impact*

The project proponent originally pointed out that a concrete raft foundation for the turbine is necessary for various construction reasons and for ease of maintenance. After discussion with Members, the project proponent was willing to reduce the area of the foundation and to adopt other greening measures to reduce the visual impact of the structure.

*4. Access roads and means of transportation*

The project proponent explained that they will rely mainly on road and sea transport as the major modes of transportation because the proposed site is close to existing cable routes and the wind turbine components are too heavy to be transported by helicopters.

*5. Transparency enhancement and Scope of public consultation*

The project proponent agreed to upload the findings of the one-year bird monitoring and the 6- month monitoring exercises to the project website for public access. As to the comments from Members on the findings of wind monitoring, the proponent agreed to report the same to their management. On the issue of public consultation, the proponent stated that relevant organizations had been consulted and the EIA report was currently under public consultation. However, a Member expressed the view that the scope of public



consultation should be extended and the District Councils should be approached again for comment during the processing of the short-term tenancy.

### Conclusion

After considering the nature of the project, and the findings and recommendations of the EIA report, members agreed to recommend the report to the Council for endorsement without conditions.

## TOWN PLANNING

### West Kowloon cultural hub

The period for public consultation on the West Kowloon cultural district project, which aims to turn 40 hectares of reclaimed land near Kowloon Station into a regional cultural hub, has been extended from 6 to 15 weeks after criticism that it was too short.

However, the government's move has not satisfied some politicians and cultural representatives, who are seeking answers to a raft of fundamental questions, including why the original consultation period was cut from 6 months to 6 weeks and why the government wanted only one developer for the massive project.

The Democratic Party is preparing for a prolonged legal battle against the government in an attempt to bring development of the project more into the open. The Party chairman Lee Wing-tat said the Democrats were ready to launch a judicial review if their application for a rezoning of the 40-hectare waterfront site was rejected by the Town Planning Board.

Under the proposed rezoning as a comprehensive development area, the Board would have to approve any future amendments to the development plan for the project. The government would also have to canvass public views through public hearings conducted by the Board. However, the site is now classified for "other uses" by the government, which allows greater flexibility and more changes. The Board would not have a role if the developers amended the master plan, and the developers would need to negotiate only with the government, officials said. In most other projects, developers cannot amend a project's master plan without the Town Planning Board's approval.

Politicians and cultural representative also believe that the whole project should not be run by only one developer. At the moment, three bidders have been short-listed by the government for the development of the project.

Leung Man-tao, spokesman for The People's Forum on West Kowloon, said their group believe that a 15 - week consultation period was still inadequate, because the project was complicated. The group believes that matters arising from the project include: its governance, financing, planning, architecture and the arts it is going to house and general public are not ready to deal with all these. Therefore, the government should spend a few months educating the public on how to evaluate the project, and then carry out a comprehensive consultation. The group also called on the government to explain why the original 6 - month consultation period was slashed to 6 weeks.

The consultation process will include exhibitions displaying the proposals and models, discussion forums and briefing sessions for the Legislative Council and relevant statutory and advisory bodies.

[SCMP, 21 November 2004,  
23 November 2004]

### Underwater tunnel urged instead of bypass

Community group Save our Shorelines yesterday urged the Town Planning Board to consider building a 1.1km pipe-style tunnel linking Central and Western to alleviate traffic problems, instead of the government's proposed six-lane Central to Wan Chai bypass road.

The tunnel, which could be built using a giant submerged tube, would require less than 5 hectares of harbour reclamation, compared with 18 hectares of harbour for the bypass plan. The government plan would also involve constructing a tunnel on the same course, but under reclaimed land.

The group has submitted a report on its proposal to the Town Planning Board. The proposed tunnel, running between Two IFC and the Hong Kong Convention and Exhibition Centre, would take the form of a submerged tube, lowered into place in a dredged trench on the seabed. Reclamation would be required only at the ends of the tunnel, the highest point of which would be at least 6 metres below sea level to allow ships to pass safely overhead.

Save our Shorelines' chairman John Bowden said both the government's plan and his group's solution delivered tunnels of the same size but differed greatly in reclamation requirements:

"It is an alternative plan which fulfils the spirit and legal interpretation of the Protection of the Harbour Ordinance, which establishes a unique legal status for the harbour in recognising a public need to protect and defend it from further encroachment, and to preserve and maintain its present state as much as possible" he said. "The government claims its road tunnel and reclamation complies with the rules laid down by the Court of Final Appeal on 9 January 2004. But our plan defines the extent of a minimum reclamation solution for the bypass using an underwater tunnel."

Mr Bowden said his group's plan could save \$1 billion in construction costs. SOS found no evidence that an underwater tunnel had been fully investigated by the government.

The High Court handed down a judgment on 9 March 2004, rejecting the Society for Protection of the Harbour's application for a judicial review of the Central reclamation.

[SCMP, 30 October 2004]

### Green light for sensitive developments

Development now will be possible on ecologically valuable private land under a new conservation policy announced by the Hong Kong SAR government in November 2004, but only on the least sensitive parts of the sites.

Developers will also have to promise to manage the remaining land to enhance its ecological value. The policy comes with the announcement of the top 12 ecologically important sites, scored from 0 to 3 based on their naturalness, biodiversity and species rarity. Most of these sites are privately owned and outside country parks, and not under formal land use zoning.

Two schemes for these sites - public-private partnership (PPP) and management agreements - will be launched in December 2004. The schemes will offer incentives to landowners, developers and green groups to start pilot projects. Development of these sensitive sites may be allowed if developers have proposals that could

enhance and maintain the ecological values of the sites while using the less sensitive and smaller part of the site for development. In exceptional cases, land exchanges could also be accepted if there is enough justification.

The idea will be similar to one of the largest land developers, Cheung Kong's proposed Fung Lok Wai development, which confines its residential blocks on a few fish ponds while conserving the remaining ponds in Yuen Long.

Under the two schemes, developers have to demonstrate that their proposal is sustainable in the long term and that resources are earmarked to achieve the conservation objectives. However, they will still have to get Town Planning Board and Lands Department approval if land use has to be changed or the lease modified. They also have to pass environmental impact assessment requirements.

Secretary for the Environment, Transport and Works, Sarah Liao Sau-tung, said the government would support projects that would satisfy the criteria and put conservation as the top priority. Dr Liao expected the government's support for the projects might clear some obstacles in getting them approved by the Town Planning Board.

Each of these proposals will be vetted by an interdepartmental taskforce, and the Advisory Council on the Environment will be consulted. All PPP proposals must be approved by the Executive Council.

The Environment and Conservation Fund has also budgeted \$5 million for voluntary conservation projects up to three years at these sites. Non-government organisations and landowners could enter into management agreements to conserve the sites and propose ways to sustain their projects, such as eco-tourism. No ceiling has been set on the amount of funding.

Dr Liao said some developers had expressed interest in PPPs and had put forward innovative proposals, but she gave no further details.

Applications for the schemes can be made from December 2004 to May 2005.

[ SCMP, 12 November 2004 ]

## REGIONAL & INTERNATIONAL

### *The Arctic*

#### *Ice-free Arctic summers by 2070, global climate change report warns*

The Arctic ice-cap is melting at an unprecedented rate, with potentially dire consequences, according to one of the most authoritative studies on global climate change.

Arctic ice is half as thick as 30 years ago, the report found. In the same period the distribution of ice shrunk by 10 per cent, according to the report, produced by 250 scientists over the past four years and commissioned by the Arctic Council.

Pal Prestrud, vice-chairman of the steering committee for the report said: "Climate change is not just about the future; it is happening now. The Arctic is warming at twice the global rate." If present rates of change continue, there may be no ice in the Arctic in the northern hemisphere summer by 2070, according to the study.

The report is the culmination of the most comprehensive study undertaken on the Arctic region. It focuses on scientific evidence of Arctic warming, with projections of the consequences of increasing sea temperature.

According to Mr. Prestrud, warming could be slowed by cutting emissions of greenhouse gases, but that would need to be done urgently. As Arctic ice melts, global warming is likely to accelerate. Ice reflects much of the sun's heat back into space, so a shrinking ice cap will mean more heat is absorbed by the earth.

Nicola Saltman, climate change program leader at World Wildlife Fund, commented: "This research provides incontrovertible proof that climate change is happening in the Arctic. It highlights the urgent need for Arctic governments to take action now by reducing their CO2 emissions."

[ *Financial Times*, 2 November 2004 ]

### **China**

#### *Bridging the green gap*

For the planned Hong Kong-Macau-Zhuhai Bridge, the governments involved should first evaluate the environmental

sustainability of accelerating development of the western Pearl River Delta. The bridge project should only go ahead when ways of reducing pollution in the Delta region have been identified and implemented, say two Hong Kong experts on planning and the environment, Bill Baron and Paul Zimmerman.

More than just a road link, the bridge is intended to open up the western Delta to industrial expansion and to entice cargo shipments via Hong Kong. Whilst the growth of Hong Kong's economic hinterland is appealing, we need to ask how this added development can be made environmentally sustainable.

The Delta's air quality is bad, and getting worse. Satellite photos of the Delta show that the western side is relatively green today, whereas the eastern area is built up, generating much of the air pollution. The bridge would roughly double the size of Hong Kong's industrial hinterland. Today, there are between 40 and 50 million people living and working in the Delta. With the opening up of the west, this could easily increase by 20 per cent. How are we to accommodate these new emissions?

The Hong Kong and Guangdong governments need to develop an up-to-date emissions inventory, including a detailed assessment of the quantity and quality of the fuel being used for backup power generation by individual factories. The inventory will help prioritise matters. A prime area for action would appear to be the inadequate power generation capacity in Guangdong. As a result, tens of thousands of factories upwind of Hong Kong use their own inefficient power generation systems. The pollution they produce is exaggerated by the use of low-quality fuel.

Indeed, an important part of the long-term solution is a more natural-gas-intensive energy economy for the Delta, supported by more and larger liquefied natural gas terminals.

We need to work with Guangdong to reduce pollutant emissions in the Delta. Sustainable solutions will not come overnight, but if we fail to make the financing and construction of the bridge conditional on implementing such solutions, it is unlikely that we will again enjoy relatively clean air in our lifetime, or even in our children's.

[ SCMP, 30 October 2004 ]

## Hong Kong

### Spoonbills fly in for winter break at Mai Po

A record number of black-faced spoonbills, a globally endangered migratory bird, have returned to spend winter in Mai Po this year.

Researchers counted 305 spoonbills recently on a pond inside the nature reserve, one of the world's most important wintering sites for the species. These birds are believed to represent more than a quarter of the bird's global population.

Mai Po's previous record of 262 spoonbills was recorded in December last year. This month, 615 spoonbills were recorded in Taiwan. It is anticipated that the total of the species will peak soon. "Not much is known about why the number is increasing. It could be due to better protection of the habitats on the mainland or breeding grounds in Korea," said Lew Young, the manager of the Mai Po Nature Reserve. He said the reserve was prepared for the bird's return and had lowered water levels in some ponds so that the birds could feed more easily on small shrimp and fish.

The spoonbills normally leave breeding grounds in the north, such as the demilitarized zone between South and North Korea, as winter approaches. Along their migratory routes, they rest in eastern China before wintering in Taiwan, Fujian, Hong Kong, Macau, Guangdong, Guangxi, Vietnam and Thailand.

Some wintering sites, such as those in Macau, are disappearing due to development. Last year, about 46 birds were recorded in Macau, but only 20 have been sighted this year.

[SCMP, 24 November 2004]

## Northern Ireland

### New EU Law on environmental assessment

Citizens in Northern Ireland will soon be able to have more influence on decisions that will affect their environment. A European Union (EU) law, the Directive on Strategic Environmental Assessment (SEA), which has now been transposed by the United Kingdom into domestic law, will ensure that environmental effects of a wide range of public plans and programs must be assessed under improved planning procedures. The distinguishing feature of this Directive is that a member of the public

may influence the decision-making process at an earlier stage than previously provided for under EU law.

The main elements of the new Directive are as follows:

- When drawing up relevant plans or programs, public authorities will have to make an environmental report to identify, describe and assess their likely effects on the environment.
- A member of the public or an environmental authority may give an opinion on the environmental report, the draft plan or program. All results are taken into account in the course of the planning procedure.
- The public is informed of the decision and the way in which it was made following adoption.
- If a decision will affect another EU Member State, that Member State shall be informed and may make comments which will be integrated into the national decision making process.
- The areas covered by the SEA Directive include: road building plan, local waste management, land use, agriculture, water management, tourism industry and energy.

The SEA Directive is important in two key respects. First, it gives greater transparency to the planning procedure. Second, and perhaps of more practical effect, it gives the public an increased voice at an early stage of the decision-making process.

The Directive has been in force since 21 July 2004.

[*Journal of the Law Society of Northern Ireland, August 2004*]

## China

### 2020 energy-use targets unveiled

A strategic energy program for the next two decades which gives top priority to energy efficiency and conservation was announced by the central government yesterday.

Commission, the country's top economic decision maker.

In 2002, the Mainland consumed 2.68 tonnes of coal-equivalent energy to produce 10,000 yuan worth of gross domestic product. If the new energy efficiency target is reached, that would be reduced to 1.54 tonnes of coal-equivalent energy by 2020 - saving the equivalent of 1.4 billion tonnes of coal a year. This is a more economical way to ease the energy crisis than exploring for new oilfields, said Shao Jiarong, a senior official with the commission.

However, if consumption continues to grow unchecked, the country would consume as much as 3.2 billion tonnes of coal-equivalent energy by 2020, almost double the current figure. With a sustainable energy program, consumption in 2020 could be held to 2.4 billion tonnes of coal equivalent, which is a more comfortable level that the country can afford.

Also, the economic structure should be optimized so that the energy-efficient service industry, whose energy consumption is 40 per cent lower than that of the heavy industrial sector, will have more room to grow.

It is the first time the central government had published its energy-saving plan. Following its publication, the government will also publish catalogues of energy-saving products to encourage manufacturers to include conservations as one of their design parameters, and will encourage hotels and other public buildings to incorporate energy saving in their design plans.

[SCMP, 26 November 2004]

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. or any of our following associate firms:

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