

Convictions under environmental legislation: January - March 2004

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

January 2004

Thirty-nine convictions were recorded in January 2004 for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

There were 15 convictions under the Air Pollution Control Ordinance, 10 under the Waste Disposal Ordinance, nine under the Water Pollution Control Ordinance and five under the Noise Control Ordinance.

The heaviest fine in January was \$25,000, assessed against a company that contravened the provisions of a licence.

February 2004

More than 30 convictions were recorded last month (February) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Eleven of the convictions were under the Noise Control Ordinance, 10 under the Air Pollution Control Ordinance, seven under the Waste Disposal Ordinance, five under the Water Pollution Control Ordinance and one under the Dumping At Sea Ordinance.

One company was fined \$50,000 — the heaviest fine for the month — for using powered mechanical equipment not in accordance with the conditions of a construction noise permit.

March 2004

More than 60 convictions were recorded last month (March) for breaches of anti-pollution legislation enforced by the Environmental Protection Department.

Twenty-two of the convictions were under the Air Pollution Control Ordinance, 15 under the Water Pollution Control Ordinance, 13 under the Noise Control Ordinance and 12 under the Waste Disposal Ordinance.

The heaviest fine in March was \$50,000, assessed against a company that discharged waste/polluting matter into the Tolo Harbour and Channel Water Control Zone.

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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

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Whilst Hong Kong has enacted reasonably strong (when enforced) pollution - control laws, there has been significantly less progress in implementing effective environmental conservation laws. The government's current review of its Nature Conservation Policy suggests this situation might now improve

The Editors

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Review of Hong Kong's Policy and Measures for Nature Conservation

In August 2003 the government released for public consultation its nature conservation report, Nature Outlook. This is a detailed review of the evolution of natural environment - or, nature - conservation policies, measures and laws in Hong Kong to date, and their effectiveness.

The review encompasses several key factors, each important and worthy of discussion. For example, the review states that its authors considered introducing some conservation mechanisms other than the more traditional prescription and set - aside measures, including compulsory land resumption, land exchanges between government and private owners, and compulsory off - site mitigation requirements. Regrettably, these potential options (which are employed in various countries) are dismissed without substantive discussion as being impractical due to their perceived complexity and "huge financial and land resources implications". However, we do not have the space to deal with this and other short-comings of the review's proposed changes to conservation policies/

measures, the most obvious being the exclusion of the marine environment from the scope of the reviews.

Perhaps the most important innovation raised by *Nature Outlook* is a proposed scoring system for assessing the ecological values of different habitats, with habitat given an overall 60% comparative weighting as a conservation element. The stated aim of the scoring system is to provide "a more objective and systematic mechanism for assessing the comparative ecological importance of different habitat sites, and to facilitate the identification of sites that deserve better protection and their relative priorities for action" (i.e. government funding). As such, the objective of the proposed habitat scoring system is most welcome and necessary.

We set out below a summary of the system, as tabled in the review, and then later comment on some of the comparative weightings, against the background of the experience of other countries where similar comparative, ecological value scores have been used for years. [Our suggested weighting figures are bracketed. The comments shown in the table are as they appear in Nature Outlook.]

| Naturalness | Weighting | Description | Score | Description |
|------------------------------|------------------|---|------------------|--|
| Naturalness | 15% (5%) | Habitats that are natural or with least modification by human activities in the past history will have higher conservation value. Truly natural habitats (i.e. not modified by man) are usually highly valued. However, most areas of the territory have been modified. Generally, those habitats less modified will tend to be rated higher. | 0 1 2 3 | Built-up or highly degraded areas with little conservation value. Man-made or intensively modified by human, e.g. agricultural land Semi-natural or moderately modified, e.g. disturbed woodland Truly natural or relatively free from human modification. e.g. natural woodland |
| Habitat diversity | 15% (20%) | Generally, the greater the number of major habitats, the greater the overall importance of the site as a whole. Major habitat types include woodland, inter-tidal mudflat, mangrove stand, natural stream course, freshwater marsh, etc | 0 1 2 3 | Containing no major natural habitats or habitats which are highly degraded. Containing only one major habitat type. Containing two to three major habitat types. Containing four or more major habitat types |
| Size | 10% (5%) | Larger sites shall be more valuable than smaller ones, all else being equal. | 0 1 2 3 | Minute-sized: < 1ha Small-sized: 1ha < size < 10ha Medium-sized: 10ha < size < 100ha Large-sized:> 100ha |
| Non-recreatability | 10% (15%) | Habitats which are difficult to be recreated are valued higher. This evaluates the complexity of the habitat types, the time and effort needed to recreate the ecosystem and the degree of uncertainty in recreating the habitats. | 0 1 2 3 | Easy to recreate, but recreated habitats would have little conservation value e.g. landscaped areas Easy to recreate e.g. fish-ponds, abandoned agricultural land. Possible to recreate but it take much time and effort e.g. secondary forests Very difficult or impossible to recreate regardless of time and effort, e.g. inter-tidal mudflats, natural woodlands, streams |
| Degree of disturbance | 10% (5%) | Disturbance from human activities, development and pollution will lower the conservation value. | 0 1 2 3 | Extreme level of disturbance e.g. urbanised area or highly polluted steam courses High level of disturbance Medium level of disturbance Low or free from disturbance |
| Species diversity & richness | 20% (20%) | the more diverse the species assemblages and communities of a site, the higher is its conservation value. | 0 1 2 3 | Insignificant diversity (as a reference, < 5% of total number of recorded species in HK of a particular taxa group) for all taxa groups. Low diversity (5% < diversity < 20%) of at least one taxa group. Moderate diversity (20% < diversity < 50%) of at least one taxa group. High diversity (> 50%) of a particular taxa group or moderate diversity of at least three taxa groups. |
| Species rarity/endemism | 20% (30%) | The more rare/endemic species the site supports, the higher is its conservation value | 0 1 2 3 | Not known to support any population of rare or endemic species. Support populations of rare species of at least one taxa group. Support a population of endemic species, or populations of rare species of two to three taxa groups. Support a population of extremely rare species or rare endemic species or populations of rare or endemic species of more than three taxa groups. |

General comments

The system broadly uses the context of habitat as the primary criterion for comparing ecological values. The biodiversity of sites is also a major factor in assessing comparative ecological values. If there were any single factor which stands out as important in framing a programme of ecological protection, it would be the health of habitat, for both fauna and flora. Many other western jurisdictions have proactive laws to require habitat to be protected or restored, even on private land. It is well recognised elsewhere, by legislators and scientists, that protection of wildlife habitat is essential for protection of wildlife itself. The overall weighting for habitat in the proposed conservation system (60%) is, therefore, sensible.

Comparative richness of the biodiversity of different sites is not as important. A site might well deserve the highest priority of protection, yet have a very low biodiversity or range of ecological elements; but it could be absolutely critical habitat for certain species of fauna or flora, thus warranting conservation - if not preservation - priority.

As there are limited public resources available to be directed to conservation, the highest priority should be given to those sites which are rarest in terms of their ecology. That is to say, where the environmental cake has already been significantly devoured, that which remains deserves even more so the protection a government can give to ensure that at least the remnant which we have survives. In addressing this issue, it is important that government agencies consider a site in the context of both:

- (a) Hong Kong's territory, and
- (b) the world-wide representation of the ecological system represented by the site.

Specific comments on the proposed scoring system table

Naturalness

This criterion is important, as are all criteria in the proposed table. However, we suggest a lower weighting because even

sites which have been modified to an extent might well be restored. Secondly, the fact that human modification has occurred at a site should not be rated too highly for the very reason given in the draft table, that is, that a high percentage of our land has already been modified to a greater or lesser extent. If human modification of a site is placed too highly in the priority criteria, it could lead to only isolated oases of relatively pristine land being given government protection.

Habitat diversity

The comment in the review's draft table is appropriate. Indeed, many ecological sites can exist only if there is that diversity: e.g. mangrove forests require saline water as well as fresh water flushes.

Size

Larger sites are more valuable in terms of giving effective protection to the fauna and flora within the site. However, a small site might proportionally be even more important if it is one of the few remaining habitat sites for a species.

Non-recreatability

Non-recreatability is a corollary of rarity of the ecological system in question. If it is scientifically possible to recreate the habitat/ecological system under consideration, this does, to an extent, reduce the need to preserve the site (assuming, of course, that there is the political will and resources in fact to recreate the site). However, generally speaking, it is extremely difficult to recreate habitat which has the same ecological form and value as habitat in its natural form.

Degree of disturbance

There is the same problem with too much weighting of this factor as with the first criterion, Naturalness. In its worst form, you could have human activities carried out deliberately to reduce the conservation value of a site that is under consideration, which has in fact happened in the past in parts of the New Territories. Practically speaking, significant disruption of the site by human activity will, of course, make it

more difficult to provide effective conservation measures. However, in terms of giving priority to competing sites, this factor should carry less weight. Probably the reality will be that any site which, in accordance with the table, deserves protection, will not be conserved if the practical difficulties in doing so are simply too great, or are seen as such by the supervising agencies. We certainly would not advocate that philosophy, but no doubt it is an administrative and political reality, which is only too well illustrated by the recommendations of the authors of the review itself.

Species diversity and richness

We agree entirely with the comments made in the draft table. Hong Kong has many sites with surprisingly diverse ecological components which deserve as much protection from the inevitable intrusions by future human activity as the government of the day is prepared and able to give.

Species rarity/endemism

We have already commented on our view of the importance of this single criterion in assessing conservation priorities. Of the two - rarity and endemism - the latter is more important (if indeed the comparison between the two is needed or is relevant).

Essentially, the review considers nature conservation as important for striking "a proper balance to ensure that Hong Kong's development needs are met without doing unacceptable damage to the natural environment". This objective - frequently espoused by environmental regulatory agencies in other countries - is sound, provided our decision-makers recognise that the balance is already dramatically tilted against the environment. Today, implementing effective nature conservation measures is not in fact a matter of dividing up an existing whole and healthy environmental cake. In Hong Kong's case, the cake has already been substantially devoured in the name of economic development.

LEGISLATION DIGEST

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (Cap. 187)

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) (EXEMPTION) (AMENDMENT) ORDER 2004 (L.N. 5) (“the Order”)

Date of Gazette: 21 January 2004

*Considered by House Committee on
30 January 2004*

*Date of Tabling in Legislative
Council: 4 February 2004*

(Made under section 18 of the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187) (“the Ordinance”) after consultation with the Executive Council)

Summary

The Order amends the Animals and Plants (Protection of Endangered Species) (Exemption) Order (Cap. 187 sub. leg. A) to exempt four species from the licensing requirement imposed by the Ordinance on the possession or control of scheduled species.

The newly exempt species are : -

- Rhincodon typus (Whale Shark);
- Cetorhinus maximus (Basking Shark);
- Hippocampus species (Seahorses) (excluding live animals);
- Swietenia macrophylla (Bigleaf Mahogany).

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (AMENDMENT OF SCHEDULES) NOTICE 2004 (L.N. 6) (“the Notice”)

Date of Gazette: 21 January 2004

Considered by House Committee on

30 January 2004

Date of Tabling in Legislative Council: 4 February 2004

(Made under section 19(1A) of the Ordinance)

Summary

The Notice amends Schedules 1 and 3 and the Sixth Schedule to the Ordinance to give effect to the changes to the listings of endangered species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) made in November 2002. The effect of the amendments is that the import, export or possession of the species listed in the relevant Schedules will be prohibited unless a licence for their import, export or possession has been issued by the Director of Agriculture, Fisheries and Conservation. The Ordinance gives effect to CITES, which applies to Hong Kong.

Both the Order and the Notice will come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

HONG KONG BRIEFING

Government to involve TPB in planning of West Kowloon Cultural District

The government has reaffirmed its commitment to involving the Town Planning Board at various stages of the planning process for the development of the West Kowloon Cultural District (WKCD).

With the government’s reassurance, the TPB confirmed that a two-stage approach would be adopted to devise a plan for the WKCD. It also endorsed a set of revised Explanatory Statements (ES) for the draft South West Kowloon Outline Zoning Plan (OZP).

The TPB considered the objections to the amendments of the draft OZP on 12 December 2003 in relation to the WKCD and decided to uphold the ‘Other Specified uses’ zoning.

A spokesman for the TPB said, “in brief, the first stage is to reflect the planning intention of developing the site into an integrated arts and cultural district, while at the same time allowing a sufficient degree of design flexibility for the proponents to come up with the best proposals. The second stage is to incorporate into the OZP the agreed development parameters of the selected scheme for public inspection and comment.”

“After the closing of submissions of proposals, the government will brief the Board on the general progress, including the number of proposals received. This will be followed by the submission of the preferred development scheme with its preliminary master plan to the Board for consideration and agreement, before it is submitted to the Legislative Council for consultation and to the Chief Executive in Council (CE in C) for approval”, the spokesman added.

Following approval by CE in C, the government will enter into a provisional agreement with the successful proponent, and will then submit the agreed development parameters of the selected scheme—including the development mix and intensity, such as the maximum gross floor area for domestic and non-domestic development, maximum building heights and open space requirements—for incorporation into the OZP as amendments for public inspection and comments.

The revised OZP will then go through the normal plan-making process, including vetting objections and making further amendments which might be required, before the submission of the OZP to the CE in C for approval.

The project agreement will only be finalised and executed after completion of the statutory planning procedures. Any subsequent changes to the stipulated development parameters of the WKCD project will require the TPB’s approval and will be processed in accordance with the provisions of the Town Planning Ordinance.

The TPB regards the current OZP as an interim plan which provides the necessary

flexibility at the project conception stage. There is no question of by-passing the TPB, as it will be involved at various key stages of the planning process.

The public will have an opportunity to scrutinize the plan again at the 'second stage' and all statutory planning procedures will be completed in accordance with the Town Planning Ordinance before the execution of a final agreement for development of the WKCD project.

The ES of the OZP has now been revised to incorporate the TPB's intention to adopt the two-stage plan-making approach for WKCD.

2 January, 2004

[http://www.info.gov.hk/tpb/index_e.htm]

Town Planning Board welcomes clarification on Protection of Harbour Ordinance

The Town Planning Board (TPB) has welcomed the judgment handed down by the Court of Final Appeal (CFA) on 9 January 2004 clarifying the interpretation of the Protection of the Harbour Ordinance (Ordinance).

A spokesman said that in lodging the appeal in July last year, the TPB had no intention of saving the Wan Chai North Outline Zoning Plan (OZP). Rather, the TPB only wished to seek a clarification from the CFA on the interpretation of the Ordinance in view of its significant implications for future planning and development of harbour-front areas. The judgment provided clear guidance for the TPB in future planning for the harbour-front.

The CFA ruled that the presumption against reclamation in section 3 of the Ordinance could only be rebutted if a single test, that is, "the overriding public needs test", could be satisfied. Public needs encompass the economic, environmental and social needs of the community.

The CFA elaborated that a need should only be regarded as overriding if it was compelling and present and there was no reasonable alternative. However, it considered that describing a compelling

and present need as something the community could not do without - as in the High Court's judgment - would be going too far. Moreover, in considering what was a reasonable alternative, all circumstances— including the economic, environmental and social implications of each alternative, and the cost, time and delay involved with each alternative— would be relevant. The extent of reclamation should not go beyond the minimum required by the overriding need, the CFA said.

The CFA also considered that the TPB had acted in good faith and in a conscientious manner when dealing with the matter.

The TPB will study the judgment in detail and review the draft Wan Chai North OZP according to the interpretation of the Ordinance laid down by the CFA.

"The Board has already decided to drop the Harbour Park proposal. It has also asked the Government to carry out a comprehensive planning and engineering review with a view to drawing up a minimum reclamation option for Wan Chai North that would comply with the law as soon as possible. The Board will reconsider the draft OZP and the objections after the completion of the review," the spokesman added.

The High Court earlier quashed the TPB's decision in relation to the draft Wan Chai North OZP and ordered the board to reconsider the plan and the objections to the plan, based on its interpretation that the presumption against reclamation as laid down in section 3 of the Ordinance would only be rebutted where there was: (a) a compelling, overriding and present need; (b) no viable alternative; and (c) minimal impairment.

[http://www.info.gov.hk/tpb/index_e.htm]

9 January 2004

HONG KONG DISNEYLAND UPDATE

The establishment of Lantau Development Task Force

The government has established a committee called the Lantau Development Task Force under the chairmanship of the Financial Secretary. The role of the Task Force is to draw up a future development concept plan for Lantau.

The Task Force comprises 16 senior officials from different policy bureaux and departments involved in land use planning, economic and infrastructural development and environmental protection. The Task Force aims to provide high standard policy to guide the development of Lantau in order to ensure a smooth and environmentally sound implementation of various development projects, including Hong Kong Disneyland, the Tung Chung Cable Car and the Hong Kong- Zhuhai-Macao Bridge.

As well as overseeing these developments, the Task Force will draw up a development concept plan for Lantau. The plan, which is expected to be finished by the middle of this year, will be issued for public consultation. The relevant bureaux and departments will also conduct feasibility studies of existing development proposals, which will involve impact assessments in respect of the environment, transport and supporting infrastructure. These feasibility studies also will be subject to public consultation.

The Task Force has initially identified for its attention several key development proposals in Lantau. They include a Value Added Logistics Park in Tai Ho, a tourism node in Sunny Bay, and possible leisure and recreational development in Chi Ma Wan and North East Lantau. The Task Force has already agreed that the Value Added Logistics Park should be developed as soon as possible, as it would improve Hong Kong's capability to provide 'one-stop' integrated logistics services and reinforce our status as the premier international logistics hub in Asia. A working group, to be led by the Economic Development and Labour Bureau with support from relevant departments, will be

formed to fast-track the implementation of this project.

Together with other planned projects in Lantau, the Task Force foresees that Lantau Island will become a focus for environmentally sustainable and economically important developments during the next decade.

[<http://www.info.gov.hk/gia//general/200402/13/0213215.htm>]

13 February 2004

HK\$95 million put aside to attract more visitors

The government has decided to spend an extra HK\$95 million to promote the tourism industry. The funds will be used for tourism promotion and training activities.

After the SARS scare, the tourism sector recovered remarkably quickly. The number of visitors to Hong Kong reached 15.5 million in 2003, which is the second highest on record. The main reason for the remarkable recovery is the growing mainland market and the commencement of the individuals' travel permits scheme.

The government will formulate a strategy for tourism development, which will include reviewing the potential for developing projects such as spa, resort and golf facilities on Lantau Island. Hong Kong Disneyland, the Tung Chung cable car project and Phase II of Hong Kong's Wetland Park will be the main new promotion sites to boost tourism in 2005.

The Standard, 12 March 2004

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Sustainability Assessment System

(ACE Paper 2/2004) (information from the Sustainable Development Unit, January 2004)

The sustainability assessment system ("SAS") originated from a study, "Sustainable Development in Hong Kong for

the 21st Century", by the Planning Department. Under the SAS, sustainability principles have been integrated into the government's decision-making process by requiring all bureaux and departments to conduct sustainability assessment of all new and major initiatives or programmes that might have significant or prolonged implications for the economic, social and/or environmental well-being of Hong Kong.

The Sustainable Development Unit ("SDU") was established in December 2001 to implement the SAS. To facilitate implementation, SDU has arranged a series of training courses on the SAS and will provide technical assistance and support to agencies. The SDU also will examine sustainability assessment reports prepared by government agencies and provide independent interpretation of the main sustainability assessment findings to the Executive Council and Policy Committee.

A computer-aided sustainability evaluation tool ("CASET"), has also been developed to translate the abstract concept of sustainable development into more concrete guiding principles. CASET is built on 8 guiding principles and a set of 41 corresponding indicators which have been devised after extensive public consultation.

The SDU conducts regular reviews of the operation of the SAS. Government offices are required (i) to set out the main sustainability assessment findings of their major proposals in the relevant public consultation documents to facilitate better informed public discussion and building of community consensus and (ii) to incorporate sustainability assessment into their planning or feasibility studies of major proposals to ensure that sustainability assessment findings are taken into account during the planning and formulation process.

Report on the 84th Environmental Impact Assessment Subcommittee Meeting

(ACE Paper 8/2004) (by EIA Subcommittee Secretariat, March 2004)

At its 84th meeting, the Environmental Impact Assessment Subcommittee ("EIA

Subcommittee") considered the environmental impact assessment report on the replacement of the Diamond Hill Crematorium and discussed Working Paper No.30 titled "Broad-brush environmental comparison of development options".

Replacement of Diamond Hill Crematorium

The EIA Subcommittee expressed its views on the proposed replacement of the existing crematorium at Diamond Hill by a new crematorium of six cremators in-situ. The project is scheduled as follows: construction works of main facilities of the new crematorium will commence in September 2004 and will be completed in May 2006; demolition of the existing crematorium and construction of the remaining new facilities will commence in October 2006 and will be completed in February 2008.

The EIA Subcommittee focused on the following issues:-

Site search

The Planning Department advised that there are no readily available alternative sites in the urban area which are easily accessible by the public and have the necessary infrastructure, as most of the urban area has been fully developed. Relocation of the new crematorium to the New Territories should not be considered if in-situ replacement with upgraded facilities is a solution. Therefore, replacing the existing crematorium at Diamond Hill is considered as the only feasible and cost-effective option.

Health risk assessment

A contamination assessment plan has been drawn up to assess whether the project will involve any health risk during the demolition stage. A remediation action plan has also been prepared which sets out the framework to deal with various health threatening situations. Health risks to workers and the public will be within controllable levels with the implementation of those procedures and the safety measures detailed in the plans.

Monitoring of the air quality impact of the existing cremators

There is no air quality monitoring data on the existing crematorium, but the air quality was probably less than satisfactory, based on general observations. The quality of air/emissions discharged from the new crematorium will be improved because the new cremators will be subject to the requirements of the *Air Pollution Control Ordinance* and the pollutants emission standards laid down by the Environmental Protection Department.

Operation of the crematorium under atmospheric stability class E and class F

It is not considered to be feasible to stop the operation of the crematorium - in order to prevent bad odour - when atmospheric stability class E and class F is predicted by the Observatory. The effective means to prevent odour is to ensure complete combustion in the combustion chamber.

Additional loading of dioxin emission

The operation of the new cremators will be subject to the specified process under licensing controls and emission limits to prevent additional dioxin emission.

Treatment of the residual ash

The project proponent team explained that residual ash would be properly disposed of.

Environmental monitoring and auditing, and contingency plans

The waste assessment, contamination assessment and remediation action plans set out detailed provisions to handle the waste problem. They serve as a contingency plan and a proper management plan for the operation of the crematorium. In addition, the environmental management plan sets out a check-and-review process for the operator, which should minimise the occurrence of malfunctioning or mishandling.

Cumulative impact

The Environmental Protection Department has published detailed requirements in

relation to assessment of cumulative impacts on the environment by emissions from the cremators, the surrounding pollutant sources, and other concurrent projects. Remedial measures will be implemented to control the residual cumulative impacts within acceptable levels.

Expansion plan

The Food and Environmental Hygiene Department will gradually replace old cremators by new ones which will use new, improved technology. Centralisation of cremation services in one location will not be pursued in view of the need to provide a convenient service to the public.

Landscape

Members suggested that the crematorium should be designed in a proactive manner and should have enhanced landscape features in addition to adopting population mitigation measures.

Pathogenic emissions and epidemiological monitoring

The Health Department has advised that all micro-organism will be destroyed during the cremation of infected human bodies and there is no risk of transmitting infectious diseases through the aerial emissions from the cremation process. It is therefore not necessary to establish any monitoring on the level of microorganisms contained in emissions from the crematorium.

Broad-brush environmental comparison of development options

The discussions of the EIA Subcommittee on the study titled "Broad-brush environmental comparison of development options of Hong Kong 2030" are set out as follows:-

Port development

Hong Kong will benefit from port development in view of its position as a trade, transportation and logistics hub. Environmental impacts of the different development options have to be assessed. The Southwest Tsing Yi option has the

benefit of the existing infrastructure. The Northwest Lantau option requires additional infrastructure and associated facilities which call for environmental impact assessments and consideration.

Consolidation versus decentralization

The main development trend for Hong Kong is consolidation, with some degree of decentralization. Sites in the urban area will be developed first and no new development areas in the New Territories will be undertaken before 2020. Due to lack of space, new development areas in the New Territories will be relatively small in the future, each with an estimated population of approximately 100,000.

The relationship between planning and transport

Members noted that strategic planning was extremely sensitive to policy changes and strategic planning and policy-making were in many ways interactive.

Zoning of agriculture land

Zoning of agricultural land in the New Territories is a major outstanding planning issue to be dealt with. According to the Planning Department, the administration of urban and rural land is totally different. Whilst urban land will be developed, rural land requires proper management. If a more proactive management approach is to be adopted for rural land, both the institutional management and resources availability need to be reviewed.

TOWN PLANNING

Illegal land use and rezoning

Hong Kong's planning chief has announced that illegal use of land by owners, who intentionally inflict environmental damage on their farmland in future might be a ground for refusing application to rezone the property for development.

This reaction was prompted by a case of uncontrolled dumping on private farmland at She Shan Tsuen in Tai Po, where construction debris two storeys high covers

four hectares of land following unauthorised dumping from July 2003 to 2004. The landowner denies the dumping was to prepare the land for redevelopment, and says it is for agricultural purposes. However, he has applied to rezone the site for commercial use.

The Town Planning Board stated that it would refer to the dumping when considering the rezoning application and would not legalise any activities simply because they already have occurred. The government would not be forced to accept a rezoning application simply because the land owner inflicted the damage first.

Legislators have called for tougher measures to curb illegal land-filling. Democrat Wong Shing-chi proposed that landowners who break dumping laws should be barred from applying for rezoning. However, it was acknowledged that it would be difficult to monitor all 3,000 hectares of farmland in Hong Kong.

Although the government learned about the She Shan Tsuen dumping months ago, it has been powerless to rectify the situation or mount a prosecution due to weak evidence and administrative hurdles. Up to five departments have been involved in the case. They have considered using various laws - including planning, waste disposal, and building legislation - but they have so far been unable to initiate a prosecution. Enforcement agencies are now considering using a provision for the protection of water catchments, which might have been contaminated by the dumping.

In regard to water catchments protection generally, the Agriculture, Fisheries and Conservation Department has said it will propose upgrading the protective catchment zoning of up to 19 rivers during the next six months. The rivers could be rezoned as protection sites or conservation areas, taking into account experts' advice on their ecological importance. Concerns over river protection have been heightened following the illegal excavation of Tung Chung River on Lantau last year.

[SCMP, 24 March 2004]

Victoria Harbour reclamation

The government's reclamation of part of Victoria Harbour to add 18 hectares to the Central waterfront for a bypass is back on track after a court ruled that work could proceed.

The Society for the Protection of the Harbour was seeking an order that the Executive Council send the plans back to the Town Planning Board (TPB). In denying the application, Mr Justice Michael Hartmann supported the Chief Executive's use of his powers in the planning process.

The Society expressed disappointment and said it would seek legal advice before considering an appeal. Its chairwoman, Christine Loh Kung-wai, said there was concern the judgment might have curtailed the powers of the TPB and restricted the public's ability to influence the planning process. The Society's former chairman, Winston Chu Ka-sun, was concerned that the judgment has denied the public their right to access Executive Council's deliberations and papers.

The Housing, Planning and Lands Department welcomed the decision and said no new reclamation was planned beyond the current projects scheduled for Central, Wan Chai and East Kowloon.

The judicial review considered Exco's decision in December not to scrap the Central reclamation or send the plans, first passed in 1992, back to the TPB. The Court of Final Appeal ruled in January 2004 that reclamation of the harbour had to satisfy the criterion of "overriding public need". The Society argued that, in light of that ruling, reconsidering the plans under procedures laid down by the Town Planning Ordinance was the only way to restore legal validity to the Central reclamation.

Government lawyers agreed the Central plans were based on a misinterpretation of the *Protection of the Harbour Ordinance*, but argued that the Department had subsequently commissioned an engineering review which found the plans still met legal requirements, in terms of the public need. The government also argued that the Chief Executive had exercised his

discretion under the Town Planning Ordinance, and that the decision to proceed with the reclamation was therefore lawful.

Agreeing with that argument, Mr Justice Hartmann said: "I am satisfied that the ordinance obliges the Chief Executive in Council to make planning decisions, often of a detailed nature, in a variety of circumstances." The judge further said the Chief Executive had taken into account a range of administrative and policy matters in deciding whether he was bound to send the plans back to the board. "But in the present case, time has passed and it has long been recognised that in planning matters time is invariably of importance, and indeed good administration, far from surrendering to delay, should seek to avoid it," he said.

The judge commented that planning decisions often affect third parties and had a bearing on commercial decisions. "The Chief Executive in Council took into account the fact that, aside from the government, at least one other party, namely, the consortium carrying out the reclamation works, would be affected. These issues, in my view, are integral to the determination of the difficult question of whether, to meet the ends of good administration, a plan lawfully passed, and believed still to be lawful, should nevertheless be suspended."

Whilst the judge refused to be drawn into judging the planning merits of the reclamation work, he said: "It may well have been preferable to remit the plan to the board, at least regarding the extent of reclamation."

[SCMP, 10 March 2004]

[Editors' note: the Society has since announced that it will not appeal.]

Ministry drafting science plan to tackle urban planning

The Chinese Ministry of Science and Technology is drafting an outline of long-term scientific plans to research various topics, including urban planning.

Urban planning will be listed as an important subject, said the ministry's secretary-general, Shi Dinghuan.

“Scientific urban planning should cover comprehensive aspects such as digital management of traffic, rational utilization of water and land resources, and residents’ rational habitation needs ... not simply the layout of buildings as before,” he said.

The state long-term scientific plan (2005-20) covers a range of subjects from industry to medical science.

[XINHUA GENERAL NEWS SERVICE

5 March 2004]

Hong Kong’s subway and surface railways might merge

The government has announced plans for the MTR Corporation to merge with the Kowloon-Canton Railway Corporation. No details of the merger proposal have yet been given.

The financial secretary, Henry Tang, said that the government would let the minority shareholders of the MTR Corporation cast the deciding vote on whether to complete the merger, and that the government had no intention of buying out these shareholders.

K.C.R.C., as the Kowloon-Canton Railway is known, has its roots in the construction a century ago of the railroad from the Kowloon peninsula along the Pearl River to Canton, now known as Guangzhou. Japanese armies battled Chinese Nationalist and Communist forces through the late 1930’s and much of World War II for control of the strategic route.

MTR has 400,000 shareholders, in a territory of 6.8 million people. The company is starting to expand on the mainland as well, having reached a deal last month to invest \$725 million in the construction and operation of a subway across the border in the city of Shenzhen. MTR and the Kowloon-Canton Railway together have \$22 billion in assets. Mr. Tang said that the government would only approve a deal that was in the best interests of the public.

A common complaint is that people who ride the city’s rail system, operated by the Kowloon-Canton Railway, and connect to the subway system, run by MTR, must pay

two separate fares.

The secretary for Environment, Transport and Works said the government did not think it was creating a monopoly that would be harmful to consumers, because the train and subway services compete with buses, minibuses and taxis operated by other companies. However, she added that the government would have to have a regulatory system to ensure that even under a natural monopoly for rail, there are still measures to make sure that the provision of rail services is of the highest standard.

There has been frequent speculation here that the government might sell more of its stake in MTR to cover part of the territory’s budget deficit, which is equal to nearly a third of government spending. Mr. Tang said that the merger was not intended as a budgetary measure, but that the final structure of a merger might be to the government’s benefit. He said that the government is not looking for any short-term monetary gain from it, although it will “probably end up with some”.

[The New York Times, 25 February, 2004]

REGIONAL & INTERNATIONAL

HK must not export its environmental woes

Work has begun on rehabilitating Tung Chung river in Hong Kong, a modest Lantau island stream which was reduced to a trickle when many boulders were removed last autumn, apparently for use in creating an artificial lake near the Disney theme park. However, even as this project is under way, there is news from Hong Kong’s Environment, Transport and Works Secretary Dr. Sarah Liao that a new source for the boulders needed for the project has been located in China.

Whilst this might be positive news for waterways here, it is a distressing sign of the government’s willingness to export our environmental problems to the mainland - without regard for the effects on the Pearl River Delta ecosystem.

Dr Liao has also revealed that an agreement has been reached with mainland authorities that construction waste will be sent across the border. This will undermine our own attempts to get contractors and developers to reduce the amount of waste they generate. Construction waste accounts for nearly half the waste disposed of in our overburdened landfills. That is the reason the government has decided to begin charging \$125 per tonne to companies which want to dispose of such waste. Yet if the Hong Kong government opens a back door for the companies to send the material to Guangdong, at an apparently lower cost, the incentive to reduce waste is undermined.

The Lantau artificial lake project requires 8,000 tonnes of boulders, about 20 times the amount taken from the Tung Chung river. Approval apparently has been granted by Chinese authorities, but what guarantees are in place to ensure that the quarrying of the boulders there does not have the same devastating effect on the mainland environment as it did on Lantau? Or, for that matter, who will regulate the transport of construction waste to the delta and guarantee that the trade is not harmful to the environment?

Some might look upon these agreements as indications that Hong Kong and the rest of the delta region are making headway in environmental co-operation. More communication and co-ordination are welcomed, but they have to be underpinned by well-founded environmental protection principles. One of those principles is that one region must not try to solve its environmental dilemmas at the expense of another. Furthermore, given the rate of regional integration, problems shifted elsewhere in the delta will inevitably become Hong Kong’s again, and vice versa.

Another policy which should be followed is “the user pays and polluter pays principle”. In the case of Hong Kong’s contract for water supply from China’s Dongjiang river, Hong Kong has for years been locked into a contract requiring it to pay for some 800 million cubic metres of water per year regardless of how much it consumes. This is only a slight improvement on an earlier agreement that

factored in an endless growth in demand for water. However, as industries have moved north, demand for water has dropped. In fact, almost one-fifth of the water delivered from Dongjiang is dumped into the sea while Guangdong (indeed, the whole of China) suffers from water shortages.

It will be a good news for the environment if Hong Kong has volunteered to reduce the amount of water it receives. It will be an even better solution if there were a new contract providing more flexibility on Hong Kong's water-use than previously, and allowing Hong Kong to pay only for the water we use.

Cross-border environmental co-operation between China and Hong Kong is crucial, but it would be infinitely more effective if environmentally responsible principles were in place and adhered to by the authorities in both places.

(SCMP, 23 February 2004)

Concreting streams was fast and cheap

An engineer who drew up plans for a developer to cover two streams with concrete explained that 'anti-flooding' measure was used in a controversial Sai Kung project because this method is cheap, fast and convenient. He said, "although there are other methods of lining a stream, they are not commonly used as cost is an important factor to consider."

Government departments have admitted they suggested concreting the two streams near Sha Kok Mei village and then approved the plans. The Buildings Department has no intention of taking any action over the controversial Sai Kung project, which has destroyed all life in the streams.

The project has raised an outcry from environmentalists. A spokesman for the Environmental Protection Department said that the project had been approved in 1999 based on the standards and practices at that time, but added that current standards were more environmentally friendly, hinting that approval for such works would now come under closer scrutiny. 'The relevant departments will explore with the

developer the possibility of improving the works to lessen their impact on the environment,' the spokesman said.

Earlier, government claims that channelling and concreting of the streams was needed to control flooding was rejected by the directors of an environmental group.

'Before the housing development began, floodwaters in the rainy season simply rose over abandoned farm fields,' said a director of the environmental group.

'It's the elevation of these fields by about six feet to provide foundations for the eight planned village houses which has caused the problem. It means the former safe floodplain has disappeared. There is nowhere for water to go except downstream.

'The entire ecology of the streams has been destroyed because the development has changed the natural contours of the waterways.'

(SCMP, 30 January 2004)

Environmentalists are continuing their long-running battle to stop the destruction of Tasmania's Valley of the Giants.

At a remote spot in Australia's state of Tasmania, a spectacular island which aggressively markets a "green and clean" image, the blinding beauty is under attack. The name for what is taking place, "clear-felling" seems brutally accurate, yet painfully inadequate. First comes the screech of chainsaws, followed by the dull rumble of bulldozers, then helicopters finish the job with a payload of gelled petroleum that blitzes the ground below, producing an acrid mushroom cloud reminiscent of a nuclear explosion. A landscape that looked much as it would have millions of years ago is reduced to smouldering ash.

This place is full of rare and undiscovered plants. In the environmentalist's view, the most valuable cool climate temperate rainforests in the world are being destroyed. On the other hand, the industry supporters say it is the best way to regenerate the forests.

Trees are not the only victims here. Carrots laced with the poison 1080 are laid to prevent kangaroos, wallabies, possums and other small animals from eating seedlings that will produce new plantations. Some of the animals might take several days to die after eating the poison, and it's a painful death. Creatures which eat the dead animals are affected, too.

The debate over logging and the use of poison in the forest has been going on for years. However, sensible debate seems buried under an avalanche of confusing, competing and misleading statistics and definitions. The only certainty appears to be the bald fact that extraordinary, primeval forests are being flattened. For decades, old growth logging has been the subject of deeply entrenched passions all over Tasmania. But today it is the Styx Valley that has become the high-profile symbol of a wider fight. The mighty regnans, the tallest hardwood trees in the world, tower above forests that are home to a bewildering array of native tree, plant and wildlife species. It is this remarkable biodiversity that campaigners claim is under threat from logging which is clearing forest in the valley at a rate of 300 to 600 hectares a year. They are campaigning for 15,000 hectares of the valley to be added to a protected World Heritage wilderness area that borders the Styx, in Tasmania.

No aspect of this anguished debate is immune to radically different interpretations. When the industry trumpets the A\$1 billion plus annual injection from forestry into the local economy, opponents argue that most of it ends up in the pockets of a powerful few. Dire warnings that an immediate end to old growth logging would have a dramatic effect on the economy are offset by estimates that no more than a few hundred jobs would disappear, jobs that would be more than replaced, say environmentalists, if the forests' eco-tourism potential were realised.

With 40% of Tasmania's forests protected under an agreement sealed seven years ago, the industry promotes "sustainable management" as vital to the island's economic future. For every "harvested" tree, three are planted in its place, and if the principle of felling ancient trees is

shocking to some, in other quarters it is viewed as progress. The impression given is that a regrown forest will be no different to its predecessor, regenerating in much the same way it has repeatedly done on its own in the past. However, a Greenpeace forests campaigner says the loss of

biodiversity is massive, whether the forest is replaced by the same range of trees or, especially, if more lucrative monoculture plantations are substituted.

The anti-logging campaign, now into its fifth year, is finally building momentum.

Two months ago, the Wilderness Society was officially joined in the extensive campaign by Greenpeace, which hopes to raise international awareness of the issue.

(SCMP, 21 February /2004)

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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