

# FRED KAN & CO.

Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW

# QUARTERLY

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To mark the 10<sup>th</sup> anniversary of the publication of Fred Kan & Co.'s *Urban Planning and Environmental Law Quarterly*, the founding editor<sup>1</sup> joins us in taking stock of ten years of reporting on urban growth in Hong Kong and the government's impact on urban and environmental change. We review the past while pointing to how Hong Kong citizens can help shape the future. A complete set of current and back issues of the *Quarterly* can be obtained on our website at [www.fredkan.com](http://www.fredkan.com)

#### The Editors

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### TENTH ANNIVERSARY OF THE QUARTERLY: A REVIEW OF HONG KONG'S PLANNING AND ENVIRONMENTAL LAW MILESTONES

Ten years of economic growth in Hong Kong have seen our population soar from 5.67 million to 6.71 million. With this growth residential housing has not only increased, but its distribution has altered with more people now choosing to live in outlying towns and villages in the New Territories. In 1991 Hong Kong Island represented 22.0%, and Kowloon and the New Territories had respectively 35.8% and 41.9% of the population. Last year the respective proportions were 19.9%, 30.2%, and 49.8%. This is mainly due to new town development. By any standards this is an impressive rate of growth and renewal. It is testimony to Hong Kong's ability to stay at the leading edge of a small group of truly international centres in Asia. At the same time, however, new towns have claimed handsome tracts of countryside and reclamation has shrunk Victoria Harbour. The occasional visitor to Hong Kong could be forgiven for

expecting to walk next time from Central to Tsim Sha Tsui.

Not surprisingly, urban planning and environmental issues have become a matter of concern for Hong Kong residents. There is increased participation by NGOs and citizen groups in urban planning and environmental issues. The presence of NGOs is not new, but their input has reached a new level. They represent a necessary link between the people and policy.

In the *Quarterly* of December 2001 we reviewed the record of the Hong Kong government in following its own environmental objectives. The article reviewed three specific categories: Air Quality, Water Quality, and Waste Disposal. The conclusion drawn from this analysis was that there have been general improvements in environmental standards but they are still way short of what a sophisticated, environmentally conscious society should demand. That brings us to the question "Why"?

This has been a recurring theme of the *Quarterly* during the last ten years. In November 1992 we looked at the poor conviction rates and inadequate

penalties for environmental offences. In March 1993 we discussed increased fines and suggested imprisonment for the worst environmental offenders. In December 1994 we asked whether strict liability should be introduced for environmental offences. In March 1995 we suggested the introduction of heavier penalties for endangered species offences.

Frequently we have reviewed the government's enforcement of environmental laws and suggested how it might be strengthened, such as: expanding the role of Ombudsman to cover environmental issues; linking the notion of fundamental human rights to the environment; and assessing penalties for environmental crimes based on the *polluters pay principle*, which requires offenders to pay a realistic amount for the damage caused by their actions. In our last issue we discussed aspects and defects of China's environmental protection laws. Poor enforcement in southern China directly affects Hong Kong's air and water quality.

Whilst enforcement is the weak link in environmental protection, the resulting reduced environmental protection also occurs where policy or legislation fall short in their goal. They are all symptoms of a lack of political resolution in tackling our environmental problems, and suggest that the government does not always listen sufficiently to representations made by concerned people on a wide variety of individual environmental issues.

Urban planning has also had its low points in the course of the last ten years. The January 1993 issue of the *Quarterly* featured the *1991 Annual Report of Hong Kong's Town Planning Board*. The article followed the deaths of 21 people on New Years Eve in a nightclub in the Lan Kwai Fong district. The random sprawl of Hong Kong's development brings into question not only safety, but how the government should respond to needs of our urban communities, as discussed in the May 1994 issue. In the Summer 1997 *Quarterly* we considered *Hong Kong's Territory Development Strategy Review 1996*. Though the strategy plan has many positive proposals, it has followed the same path as environmental protection. It looks good on paper but often takes on a different form in practice.

In that article we also pointed to the lack of consideration given to the environment during the urban planning policy stage. This fundamental lapse almost guarantees needless destruction of the environment and adverse effects on its inhabitants. This was further emphasized in the Autumn 1997 issue of the *Quarterly* which addressed the extraordinary fact that the general public does not have the right to attend meetings to consider development applications. The April 1999 issue discusses a topic of great controversy, reclamation of Victoria Harbour. In this discussion of the government's new policies and legislation aimed at conserving what is left of Victoria Harbour, we

pointed out the apparent lack of force with which these were written. The policy was more a resemblance of a set of guidelines than mandatory standards to ensure full protection of the Harbour. At that time the Hong Kong government claimed it would reduce the Central Reclamation project by 40%. As we have previously reported, however, this good intention has since been abandoned.

The fact that today we face the same environmental and planning issues as ten years ago demonstrates a need to find new ways to persuade the Hong Kong government to address serious natural and urban environmental concerns, particularly with respect to our degraded air and water quality.

In July 1992 we talked about Hong Kong's absence of official representation at the United Nations Conference on the Environment. That in itself was one of the most telling signs of the importance the Hong Kong government attaches to issues. The government's absence created an opportunity for NGOs to make their presence felt at the Conference, as the local press reported widely.

***Whilst enforcement is the weak link in environmental protection, the same problem of reduced environmental protection results where policy or legislation fall short in their goal.***

NGOs have made major strides this past decade. In 1998 the Hong Kong Sustainable Development Forum was formed to join the chorus of concerned NGO voices on environmental matters. Its purpose, "to be instrumental in bringing about the implementation of sustainable development in Hong Kong through the process of consensus building", was addressed in our June 2001 edition. NGOs serve many functions, from distributing information to the public to organizing broad coalitions of diverse residents for a common

purpose. Grassroots campaigns in various parts of the world (and, to some extent, Hong Kong) have been instrumental in effecting change in policies of governments that generally allow less public representation and have demonstrated little interest in the public's voice. The same is true for more representative governments, where grassroots movements have a greater influence on political life. No matter what type of system, a motivated group with clear goals can bring to light issues that some in government might prefer to ignore.

The signs for our environment and urban planning system are certainly not all negative, judged on Hong Kong's experience since 1992. In a broad sense there is a much higher appreciation of the importance of a clean environment and sustainable development and exploitation policies, both at government level and in the wider community. This is reflected by the growth of the Environment Protection Department, much stricter waste and pollutants discharge rules, and in individual pieces of legislation, such as the *Environmental Impact Assessment Ordinance* (Cap 499) (as flawed as that ordinance may be).

In 2002 we saw perhaps the first large-scale example of a government agency giving to environmental concerns a higher priority than development, when the KCR was denied an environmental permit under the *Ordinance* for construction of the Sheung Shui - Lok Ma Chau spur line. The permit was refused (and refusal was upheld on appeal) principally on the ground that the wetlands and fish-ponds surrounding part of the proposed route would be impacted adversely to a significant extent. So, this multi-billion dollar project was, for a time at least<sup>ii</sup>, held up for the sake of environmental conservation, which gives some hope for more realistic conservation policies from the government during the next ten years. It is in the next ten years that the community and NGOs must step forward to help align government policy with our community interests for safe, efficient urban planning and effective environmental protection.

I congratulate Fred Kan & Co. for their important commentary on environmental and urban planning law issues in the last ten years, and look forward again to reviewing the progress that will have been made in the ten years to come.

<sup>i</sup> Edward Epstein, Altheimer & Gray, Shanghai  
<sup>ii</sup> On 11 March 2002 the Director of Environmental Protection approved a revised EIA Report submitted by KCR following a substantial changes to the proposed spur line construction, although the route still lies close to the sensitive Mai Po Marshes. The line will now run underground through the most environmentally sensitive parts of the route. A conditional Environmental Permit will follow.

## LEGISLATION DIGEST

### MARINE FISH CULTURE (AMENDMENT) ORDINANCE (Cap. 353) 2002

This Ordinance, which extensively amends the Marine Fish Culture Ordinance (Cap. 353), came into operation on 7<sup>th</sup> June 2002. Examples of amendments effected by the Ordinance are as follows:

#### Sec. 5. Sections substituted

Sections 16, 17, 18 and 19 are repealed and new sections substituted; e.g.

#### “16. Right of Appeal

- (1) Any person aggrieved by a decision made in respect of him by the Director to:
  - (a) refuse to grant or renew a licence under section 8(6);
  - (b) refuse to approve the transfer of a licence under section 8A(3)(b);
  - (c) cancel a licence under section 9(1);
  - (d) refuse to grant a permit under section 14(1); or
  - (e) cancel or refuse to renew a permit under section 14(2),

may appeal to the Administrative Appeals Board against that decision.

- (2) Where an appeal is made under subsection (1) against a decision of the Director to—
  - (a) cancel a licence or permit, the decision shall not become effective pending;
  - (b) refuse to renew a licence or permit, the licence or permit (if expired) shall be deemed to continue in force according to its terms and conditions until; or
  - (c) refuse to approve the transfer of a licence (including a licence to which section 8A(6) applies), the licence shall continue in force pending,
 the determination of the appeal by the Administrative Appeals Board.
- (3) Where—
  - (a) an appeal has been made under this section; and
  - (b) the period of validity of the licence or permit to which the appeal relates would have expired but for subsection (2)(b) or (c), then the licensee or permittee, as the case may be, shall be liable for the fee prescribed—
  - (c) for the period from the day the licence or permit would have expired to the day of the determination of the Administrative Appeals Board or withdrawal of the appeal, whichever first occurs; and
  - (d) on a pro rata basis, irrespective of the outcome of the appeal.

#### 17. Power of search, seizure, etc.

- (1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that any vessel, raft or impoundment within the waters of Hong Kong is

being or has been used in connection with any offence under this Ordinance, he may issue a warrant authorizing the Director or any authorized officer to

- (a) board and search any such vessel or raft, or enter any such impoundment; and
- (b) seize and detain any such raft or any thing which the Director or an authorized officer reasonably suspects to be, or to contain, evidence of the commission of such an offence.

- (2) The Director or an authorized officer may exercise any of the powers referred to in subsection (1)(a) or (b) without a warrant issued under this section if—
  - (a) he has reasonable grounds for suspecting that any vessel, raft or impoundment is being or has been used in connection with any offence under this Ordinance; and
  - (b) it would not be reasonably practicable to obtain such a warrant in respect of the vessel, raft or impoundment before exercising those powers.
- (3) Subsections (1) and (2) shall not apply to—
  - (a) any ship required to be provided with a certificate referred to in section 3(1) of the Merchant Shipping Ordinance (Cap. 281); and
  - (b) any vessel for the time being used for any purpose by the Central People’s Government, the Government or any state.
- (4) If any raft or impoundment is found sunken, stranded, abandoned or adrift within or outside a fish culture zone, the Director or an authorized officer may seize and detain such raft or any thing found on or in such raft or within or forming part of such impoundment.
- (5) The Director or an authorized officer may exercise any of the powers under this section with the assistance of any other persons as he thinks fit.
- (6) Within 14 days of the seizure and detention under this section of any raft or any other thing, the Director or an authorized officer shall
  - (a) subject to paragraph (b), serve a

notice on the person whom he believes to be the owner thereof or

(b) if the identity and address of the owner thereof is not known to him, publish a notice in the Gazette, in which he shall specify

(c) his intention to apply for forfeiture of the raft or thing, or the proceeds thereof if the same has been sold under section 18(2); and

(d) the owner may, within 30 days from the date of service or publication, as the case may be, of the notice, submit a claim in writing to the Director for the return of the raft or thing, or the proceeds thereof, as the case may be.

(7) In this section — “thing” includes —

(a) any fish, equipment or other thing found on board the vessel or on or in the raft or within the impoundment, as the case may be; and

(b) any net or structure forming part of the impoundment, upon which the Director or an authorized officer has exercised his power under subsection (1) or (2).

### **NOISE CONTROL (MOTOR VEHICLES)(AMENDMENT) REGULATION**

This regulation amends the Noise Control (Motor Vehicles) Regulation (Cap 400 sub. leg.). The effect of this Regulation, which came into operation on 1 June 2002, is to impose more stringent maximum noise emission levels for motor vehicles. The new levels adopt European Union standards which have been altered from time to time, most recently in 2000. Section 4 sets out the new levels.

## **HONG KONG Briefing**

### ***Bolder plans called for clearing our air***

Plans by Hong Kong and Guangdong to reduce cross-border smog have been criticised by environmentalists, who argue that they are not bold nor radical enough to reduce air pollution significantly.

In a recent joint study the governments for both regions blamed the region's

pollution on emissions from the ever-rising numbers of cars, power stations and factories. In Hong Kong visibility is sometimes as low as two kilometres and authorities regularly issue advisories for those with health problems to stay indoors. In view of the problem, both governments have agreed to cut emissions of sulphur dioxide by 40% from current levels by 2010, nitrogen oxides by 20%, respirable suspended particulates by 55% and volatile organic compounds by 55%.

Nonetheless, setting broad and often vague limits is simply insufficient to improve air quality, critics have argued. Green groups recommend that Hong Kong and Guangdong should switch to less-polluting energy sources for power generation. Friends of the Earth also urged both governments to compel factories to adhere to strict emission limits, and to practise better monitoring and control techniques. Another green group, Clear The Air, also claimed that the governments on both sides need to pass tougher laws to punish polluters.

[Reuters, 1 May 2002]

### ***Rubbish recycling park***

The government has proposed building an industrial park in Tuen Mun to accommodate recycling depots and treatment centres. The park, planned for 20 hectares of reclaimed land near the Tuen Mun River Trade Terminal, will be equipped with recycling machinery together with basic infrastructure facilities, such as loading and unloading areas, on-site waste treatment facility, etc. Through setting up a one-stop waste recovery and recycling plant, it is hoped that the development of local technology in handling waste, and also the local market for recycled products, will be enhanced.

According to an Environmental Protection Department (EPD) paper, construction of the park can begin next year and will be carried out in two phases, to be completed in 2004 and 2006 respectively. On completion of both phases it is anticipated that the park will be able to process 648,000 tonnes of waste a year.

[SCMP, 20 May 2002]

### ***Petrochemical plant raises pollution fears***

A joint venture of two oil giants, Shell Nanhai and the China National Offshore Oil Corporation, is ready to build a \$30 billion petrochemical plant at Daya Bay. The plant, which will be the biggest in southern China, is scheduled to be operating by August 2005.

In line with international practice, a workshop will be held with interested parties (e.g. green groups) to discuss the EPD's paper and for EPD to receive comments and criticisms. A draft assessment of the plant's environmental impact is also posted on the Internet for reference. However, the report does not address the issue of the possible impact on regional air quality resulting from the plant's operation. It says only that the key pollutants will be sulphur dioxide, nitrogen oxides and carbon dioxide. In view of this, green groups point out that estimated emission data should be provided to assess the Daya Bay plant's impact.

Professor Alexis Lau of the Centre for Coastal and Atmospheric Research at the HKUST has observed that as Hong Kong is located downstream from the airflow from Daya Bay there is a higher chance that pollutants will be blown to Hong Kong in winter when the north easterly wind prevails. Another scientist also has warned that the plant's emissions might aggravate air pollution in the Pearl River Delta, particularly in Hong Kong. It is agreed by experts that something concrete must be done to prevent the air quality from further deteriorating with the establishment of the plant.

[SCMP, 27 May 2002]

### ***Eco-tourism in Hong Kong***

People in Hong Kong are becoming aware of Hong Kong's potential for developing eco-tourism. According to recent research, whilst many people know that eco-tourism is based on protecting the environment, few realise that it also includes respect for the cultural environment and a sharing of economic benefits with the entire

community. Hong Kong must present itself as an environmentally concerned community which takes pro-active measures to look after its tourism attractions in an environmentally and culturally sensitive manner.

To promote this new form of tourism, an Eco-tourism Business Opportunities 2002 Conference was held on 5<sup>th</sup> and 6<sup>th</sup> June 2002 at the Hong Kong Convention and Exhibition Centre. The event, jointly organized by the Business Environment Council (BEC) and Hong Kong Polytechnic University's Sustainable Travel and Tourism Unit, brought together representatives from government, private business interests and the community to map out a fresh vision for tourism in Hong Kong.

[SCMP, 1 June 2002]

### ***The environment and the new ministerial system***

Recently the Chief Executive, Tung Chee-hwa, announced the government's proposal to have a single bureau for environment and transport issues (now in place). This proposal raised the concern of green groups, who worry that the environment will be sacrificed in favour of transport and construction priorities. They have called for an independent environment bureau instead.

However, according to Professor Guthrie from the University of Cambridge, it is Britain's experience that transport policy often deviates from environment policy, and the rectification of policy mistakes often comes too late if the two bureaus are separate. Therefore, in his view the two areas complement each other and combining them could yield realistic solutions to transport and environmental problems.

[SCMP, 5 June 2002 & 12 June 2002]

## **HONG KONG DISNEYLAND UPDATE**

### ***Toxic mud at Disney site: problems continue***

The US\$1.8 billion Disney theme park is due to open by early 2006 and is seen as a lifeline for Hong Kong's mature tourism industry.

But the discovery of contaminated mud is seen as a huge blow for the entertainment giant which has long prided itself on its healthy, family image. The Hong Kong government plans to dig up 30,000 cubic metres of mud tainted with dioxin at the site of the park on Lantau Island in an operation costing HK\$400 million (\$51 million). Dioxin, produced by burning plastics, can kill humans if it gets into the food chain. According to the plan, the mud would be taken to another nearby island to be incinerated.

Environmentalists say the proposal to move the mud is hazardous to workers and residents. They said the government was rushing to get rid of the deadly chemical to meet construction deadlines. Allen Chan, a campaigner with Greenpeace in Hong Kong, said the mud should not be moved but should be treated and neutralised where it is.

Mei Ng of Friends of the Earth said: "The transportation process is very hazardous...it is harmful to everyone."

An environmental consultant advising the Government said that on average about 270 out of 10,000 people would develop cancer if they had direct contact with the contaminated soil for 30 years.

But the government insisted that the bad soil would be removed. The contaminated site was home to a shipyard, Cheoy Lee Shipyard, which will be demolished to make way for roads leading to the park.

A Disney executive said the company was monitoring the issue closely and would ensure the park was safe for visitors.

[<http://www.planetark.org>, 22 April 2002]

### ***Eagle chick growing near Disney Park***

A pair of rare white-bellied sea eagles nesting near the Penny's Bay

Disneyland site has hatched an egg despite fears that their habitat could be damaged by construction work. However, the latest report from a consultant appointed by the Civil Engineering Department also recorded the prolonged absence of the chick's father.

The chick was first spotted in February after its parents were seen breeding in November last year. The report said the chick was seen in April flapping its wings to strengthen its flight muscles and was able to move around the nest. However, the father of the chick has not been spotted since April.

The eagles have been under observation since reclamation work for the Disneyland theme park began at Penny's Bay in May last year. Reports suggest the birds have been undisturbed by the work. The pair laid two eggs in February last year, but the nest was found empty the following month. Whilst the consultants said the hatching failure might have been caused by human disturbance after the bird's location was reported by the media, the report did not rule out natural causes. They said the birds appeared to be disturbed by human activity within a 10-metre radius, but they might not be affected by noise from low-flying aircraft and nearby ships.

The white-bellied sea eagle is rare in Hong Kong. Only 10 to 20 breeding pairs have been recorded from 1993 to 1999.

[SCMP, 11 June 2002]

## **ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)**

**(ACE Paper 16/2002)**  
***Public Consultation on studies on restructuring of Ngau Tau Kok, Ho Man Tin, Shek Kip Mei and Cheung Sha Wan Districts.***

### ***Purpose***

This paper sought Members' views on long term land use concepts for public

housing sites and adjoining government land in Ngau Tau Kok, Ho Man Tin, Shek Kip Mei and Cheung Sha Wan districts proposed in the restructuring studies.

### **Background**

The conventional approach to public housing redevelopment is usually confined to immediate boundaries of individual housing estates. It has little scope for rationalising the land uses and improving the living environment of the district. In view of these limitations, the Planning Department and the Housing Department in 1999 commissioned four planning consultants to carry out restructuring studies of four areas in Kowloon - Ngau Tau Kok, Ho Man Tin, Shek Kip Mei and Cheung Sha Wan.

The four studies were conducted in two stages. Stage 1 (the current studies) focuses on the formulation of land use concepts. Public consultation is now being carried out to solicit the views of the public on the findings and proposals of the studies. Stage 2 of the studies will assess the feasibility and implementation details of the individual land use concepts/packages. The views obtained in the public consultation process will be taken into consideration in finalising the land use proposals and detailed planning for the Stage 2 studies.

### **Objectives**

The objective of the restructuring studies is to examine opportunities for comprehensive planning beyond public housing sites by including adjacent government land within the districts. By doing so, it will bring about wider community benefits in terms of provision of community facilities and improvement to landscaping, infrastructure and the environment.

### **The Proposed Land Use Concepts**

The main features of proposed land use concepts in individual districts are:

#### **Ngau Tau Kok -**

Creating a new centre at Lower Ngau Tau Kok Estate; improving transport and retail facilities; providing new environmentally friendly pedestrian

links; and enhancing educational, recreational and community facilities.

#### **Ho Man Tin -**

Making better use of under-utilised sites; providing more schools; improving landscaping and pedestrian linkages; and enhancing traffic management measures and improving the living environment through layout design.

#### **Shek Kip Mei -**

Retaining and renovating selected buildings of historical significance which will become landmarks and focal points in the district; improving transport and pedestrian linkages; and increasing local open space and school provision.

#### **Cheung Sha Wan -**

Redeveloping factory estates; creating a new district centre at Tonkin Street with an urban square and a gateway waterfront development; as well as providing new boulevards, pedestrian linkages, open spaces and educational facilities.

A total of 35 restructuring sites are proposed in these four study areas. The whole process of land use restructuring will take about 15-20 years to complete. If all the restructuring proposals are implemented, there will be a net increase of 34,800 flats and 79,000 persons compared with the current Outline Zoning Plans.

### **Environmental Benefits**

The proposed land use concepts should provide environmental improvement to the community compared with the traditional approach to public housing redevelopment. Major gains in the four districts comprise:-

A more pedestrian-friendly environment from five new pedestrian walkway systems, direct linkages to public transport termini/interchanges and selective pedestrianisation.

Improved living environment in terms of air quality and noise by enhancing housing layout and design and incorporating

environmental mitigation measures upon redevelopment.

A more amenable environment by providing an additional six hectares of district open space and improved landscaping of barren slopes, open spaces and streets.

Preservation of key visual corridors.

Conservation of one or more of the early housing blocks in Shek Kip Mei Estate for community, cultural or other uses.

*[Planning Department & Housing Department, May 2002]*

### **(ACE Paper 15/2002) Improving Air Quality in Pearl River Delta Region**

#### **Introduction**

In September 1999 the Hong Kong Special Administrative Region (HKSAR) government and the Guangdong Provincial government jointly commissioned a study of Pearl River Delta Regional Air Quality to identify the major sources of air pollution in the Pearl River Delta (PRD) Region, for the purpose of making trend forecasts and to recommend long-term measures to improve regional air quality. The study has now been completed.

At a meeting held in April 2002, the Hong Kong/Guangdong Joint Working Group on Sustainable Development and Environmental Protection considered the study report. The two governments reached a consensus to implement long-term measures to improve air quality in the Region.

#### **Findings of the Study**

The study shows that air quality in the PRD Region has been deteriorating, as evidenced by a decline in visibility due to smog. The smog is caused by very fine particles formed in the atmosphere by complex chemical reaction among ozone, nitrogen oxides (NO<sub>x</sub>), sulphur dioxide (SO<sub>2</sub>) and volatile organic compounds (VOC). Ozone is not emitted directly from any source; it forms under sunlight when NO<sub>x</sub> react with VOC.

Other than poor visibility, high concentrations of ozone can cause eye irritation and aggravate respiratory illnesses. Very fine respirable suspended particulates (RSP) weaken lung function, aggravate respiratory illness and increase lung cancer risk. Therefore, to reduce smog, improve visibility and protect public health, it is necessary to reduce emissions of SO<sub>2</sub>, NO<sub>x</sub>, RSP and VOC.

Taking into account the anticipated growth of the regional economy, population, electricity consumption and traffic, air quality in the Region will deteriorate unless the two governments implement improvement measures in addition to those that they have implemented or are committed to implementing. To tackle the regional air pollution problem, which is caused by both local and regional emission sources, the concerted effort of the two governments in implementing additional improvement measures would be required.

If the measures recommended in the study are implemented, the regional emissions of SO<sub>2</sub>, NO<sub>x</sub>, RSP and VOC would be reduced by 40%, 20% 55% and 55% respectively. If this overall emission reduction potential is realised, Hong Kong would meet its current air quality objectives. Cities in the PRD Economic Zone would also meet the relevant national air quality standards for SO<sub>2</sub>, NO<sub>x</sub> and RSP. The problem of ozone will remain in the PRD Economic Zone but will become much less serious than at present. The study indicates that, technically, the governments could achieve the emission reduction targets in 2010 at the earliest.

**Measures Recommended in the Study**

The study recognizes that motor vehicles and power plants are the major emission sources of RSP and NO<sub>x</sub> in Hong Kong and that the bulk of VOC emissions come from printing operations and consumer products containing VOC. It acknowledges the effectiveness of the measures already in place and to which we are already committed, and that we cannot do much more to reduce emissions from motor vehicles. To achieve the emission reduction targets, we will have to take the following actions –

- reduce VOC emissions from sources such as printing operations and consumer products including paints and aerosol sprays of various kinds; and
- use cleaner fuel for power generation in order to reduce SO<sub>2</sub>, NO<sub>x</sub>, and RSP emissions in Hong Kong.

The study identifies major emission sources in PRDEZ to be power plants, motor vehicles and industrial operations. To achieve the emission reduction targets, it recommends that the Guangdong Provincial government should take the following measures –

- reduce emissions from power plants through transmission of hydro-electricity from the west, and using natural gas instead of coal as fuel, and upgrading existing plants;
- reduce motor vehicle emissions by tightening motor fuel and vehicle emission standards; and
- reduce industrial emissions through targeting the most polluting industrial processes and requiring their upgrading or the installation of emissions-control equipment.

The study recommends that the governments should examine the implementation of the proposed measures in detail with regard to local circumstances.

**Consensus Reached**

Having considered the findings and proposed measures in the study, the HKSAR and Guangdong Provincial governments have agreed that –

- they will aim to reduce, on a best endeavour basis, regional emissions of SO<sub>2</sub>, NO<sub>x</sub>, RSP, and VOC by 40%, 20%, 55% and 55% respectively by 2010, using 1997 as the base year;
- to achieve the emission reduction targets set out in (a) above, they will, on a best endeavour basis, aim to reduce by 2010 emissions of the four air pollutants from

- their own sources by the same levels;
- they will jointly draw up a regional air quality management plan and assign responsibility for coordinating and monitoring progress of the improvement measures to the departments concerned which will in turn report to the Hong Kong/Guangdong Cooperation Joint Conference; and
- they will set up an expert group comprising representatives of the Environmental Protection Department (EPD) of the HKSAR and the Guangdong Environmental Protection Bureau to monitor jointly trends and changes in regional air quality and evaluate the effectiveness of the improvement measures. The expert group will also be responsible for training relevant personnel, exchanging technical know-how, and keeping under review the feasibility of introducing new technologies and measures.

[*Environment and Food Bureau*, 29 April 2002]

**ACE endorses KCR spur line EIA report**

The Advisory Council on the Environment endorsed the Environment Impact Assessment (EIA) Report on the Sheung Shui to Lok Ma Chau Spur Line --- Tunnel/Viaduct Option at its meeting on February 26, 2002. However, ACE requested the EPD to include conditions in the Environmental Permit to address the main environmental concerns associated with the large-scale project, including management of the Lok Ma Chau fish ponds.

ACE's main concerns are:

- The project proponent should set up the Environmental Committee before the commencement of the works to advise on and monitor environmental mitigation work associated with the project. The Committee should have wide representation and be pro-active in

monitoring the effectiveness of the proposed management measures and ensure that the overall project will result in no net loss in the ecological functions of the habitats concerned.

The project proponent should consult ACE on the Environmental Monitoring and Audit Manual to be compiled, and report regularly to ACE on the progress of the monitoring work and the findings. The monitoring plan should be based on baseline data that should be relevant to the project area and updated in line with best practice.

The project proponent should be required to implement further measures to compensate for any net loss of ecological functions, resulting from any loss of the fishponds at Lok Ma Chau, if the proposed management measures fail to deliver the specified results.

There should be a high degree of transparency regarding the monitoring data and results in view of public concern about the project.

[[www.info.gov.hk/etwb-e](http://www.info.gov.hk/etwb-e), 5 March, 2002]

## TOWN PLANNING

### *Land policy responsive to market forces*

The adoption of market forces is the government's principal strategy in administering its land policy, and responsiveness to market situation lies at the heart of the government's land management regime, according to the Secretary for Planning and Lands, Mr John C Tsang.

Speaking at the Royal Institution of Chartered Surveyors' Land Management Seminar, Mr Tsang said that the way the government manages the use and disposal of land carries a significant impact on the property market, which, in turn, affects the economy as a whole. "We operate an open and transparent system of making land available to the market," he said.

Mr Tsang said that under the Land Sale and Development Programmes, land is supplied at the right time and at the right price, reflecting the prevailing market conditions. He also commented on advantages of the Application List system of making development land available:

"To better serve market needs, we have, since April 1999, installed a market-led Application List system to supplement the regular land auction and tender programme. With the Application List system, the government will not be able to over-load the market intentionally or unintentionally with excess land supply, particularly those large and expensive sites."

Mr Tsang noted that since the introduction of the system, nine residential sites of a total area of 13 hectares and four non-housing sites aggregating three hectares have been sold by application. "We have also sold 41 private housing sites totalling some 34 hectares by regular land auctions or tenders," he said.

Mr Tsang said that the Town Planning Board had, over the last two years, re-zoned a total of 165 hectares of surplus industrial land to business use, providing much more flexibility for economic activities; 47 hectares have been re-zoned to other non-industrial uses, such as residential development and community facilities.

"The total amount of re-zoned industrial land now represents about 40 per cent of the original stock, and we intend to re-zone more in future," said Mr Tsang.

He added that the government was also exploring the possibility of developing old industrial buildings into loft-type developments.

According to Mr Tsang, re-development has been assisted by the government's modification of more than 200 leases and by land exchanges involving residential developments, with some 12,300 flats completed last financial year.

"The market-led approach in our land management regime has served Hong Kong well in the past, and I have every confidence that it will continue to do so in the years ahead," Mr Tsang said.

[<http://www.plb.gov.hk/eng/press>], 6 June, 2002]

### *Village blueprint that took a wrong turning*

When the Small House Policy was introduced in 1972 everyone involved was convinced it was sensible and desirable. Few think so now. The aim was to preserve the village lifestyle and conserve the countryside with guidelines limiting house size and height to 700 square feet and three storeys.

Three decades ago, many remote villages were tumbling into deserted ruins. Some had been left empty as young people emigrated, largely to work in catering in Britain, and the elderly died. The Small House Policy was seen as a way of bringing vigour back into village life by preventing ugly high-rise development and keeping cohesion in rural settlements, some of which date back centuries.

Instead, in many cases, it has resulted in hideous examples of the familiar, euphemistically named "Spanish villas" sprouting unplanned over what were once fish ponds and paddy fields. Looking back, there are those who wish the Small House Policy had never been adopted. Instead, some planners now believe that medium-density, low-rise development might have been a better answer.

Once the Policy came into force, villagers were swiftly alive to the opportunities, and applications for so-called "ding" rights-which permits every indigenous New Territories male villager the right to claim village land and build a house when he reaches the age of 18-were lodged in increasing numbers. Many applications were by people who had lived outside a village for years, or who were permanently living abroad.

As the then District Commissioner for the New Territories, Mr Bray, points out, there was a total lack of interest by planners in the Small House Policy. Had new houses had been sited correctly and laid out as a cohesive whole with drainage and car parking, instead of being plonked down on any vacant space, the present situation would be very different.

Under the terms of the lease which Britain signed to gain the New Territories in 1898, it was agreed that Chinese traditions and customs must be



observed. But it was only after the Small House Policy was introduced in 1972 that customary land rights were formalised.

At present, at least 14,000 applications to build “ding” rights houses in the New Territories are on hold. Rural leaders complain bitterly that this infringes the “rights” of villagers who need homes. In some rare cases, this may be so. However, many observers of rural developments see that small houses built allegedly for indigenous villagers are immediately occupied by outsiders who either buy the newly erected properties or rent them. This is why so many communities in the New Territories now have a majority of non-indigenous residents.

At present, there are lengthy procedures laid down by the Lands Department for the purchase of a village house. There is even an official pamphlet put out to advise buyers. It begins by strongly telling would-be purchasers to get legal advice.

When it comes to applying for “ding” rights, there is a set formula which requires that the person wishing to build the house has to convince a Lands officer that he intends to use the buildings as his home. He must not sell it within five years, or hefty premium fees are imposed, but what usually happens is that the house is rented out. That is why so many are built with the three-flat configuration, providing a 700-square-foot apartment on every level.

The Small House Policy was once considered to be in the best interests of the villagers for the change of the rural areas into highly desirable dormitory suburbs. With the development of “ding” rights, although restricted by formal procedures, the Policy has been badly distorted.

[SCMP, 23 April, 2002]

## REGIONAL & INTERNATIONAL

### AUSTRALIA

#### *Howard government partly overturns protection project on Great Barrier Reef*

The Howard government’s decision to reduce the size of an area of the Great Barrier Reef to be declared a no-trawl zone has angered local communities and conservationists.

According to the government’s original proposal, which was posted on the Great Barrier Reef Marine Park Authority website on February 8, it planned to extend the no-trawl zone by more than 600sq km south of Cairns, taking in Mission Beach and Rockingham Bay, which would cover almost 900sq km of the Great Barrier Reef. However, just three weeks after it had made the announcement, federal Environment Minister David Kemp revised the new boundaries and reduced the proposed protection area by more than 400sq km.

The turnaround prompted criticism from locals and conservationists who said that the government had given way to pressure from powerful Queensland commercial fishing interests. A Mission Beach marine advisory group spokesman said the community was stunned by the decision to exclude Rockingham Bay, which was an area next to the sensitive Hinchinbrook dugong protection zone.

Fish kills have taken place regularly in the Mission Beach region since 1970s, when banana prawn trawlers started raking the seafloor and discarding tonnes of fish taken as by-catch. After trawling had produced a fish kill off Mission Beach more than 4km wide and 800m deep, a review was carried out last year on trawling activities in the World Heritage area. All trawlers are now required to carry by-catch reduction devices, but studies have found that those devices do not help much to improve the situation.

[*The Australian*, 27 February 2002]

### THAILAND

#### *Action to fight forest encroachment*

Environmentalists are worried by the encroachment on watershed forests and forest reserves by tribespeople. During a two-day meeting of a provincial conservation forum in Umphang district, environmentalists voiced their concern in respect of the illegal conversion of thousands of acres of forests into cash crop fields in Umphang district.

The meeting, attended by representatives from local environmental groups, a Border Patrol Police unit, the military and local forestry authorities, began on April 30. The areas which are being taken over include forest reserves, national parks and wildlife sanctuaries, particularly on the eastern side of Mae Sot-Umphang highway. Chief of Umphang district, Nathee Borsuwan, said that thousands of acres of Chart Pacharoen national park and Umphang wildlife sanctuary - parts of the Western Forest Complex - had been cleared. These areas are particularly important since they also serve as the watershed of many major rivers.

It is believed that Thai investors together with local Hmong tribespeople, who lived along the Mae Sot-Umphang highway, are responsible for the illegal and environmentally damaging clearance of forests. They expanded their cultivation areas by hiring Burmese immigrants and refugees to clear the forest in order to grow cash crops. Mr. Nathee pointed out that enforcement officers had once spotted a Hmong tribesman escorting workers in 30 pick-up trucks to a forest reserve which was under a land-reform scheme. When they tried to stop him from clearing the land plots in the area, he claimed that he had rented the plots from their owners. However, such renting is prohibited under the land-reform scheme.

The chairman of Tak’s provincial conservation forum said the forum could send suggestions on how to tackle the problem to a forest encroachment suppression sub-committee chaired by the provincial governor. Recommendations proposed in the forum included the setting up of a joint suppression unit comprising forestry officials, police and soldiers, and campaigns to raise awareness of forest conservation among local people.

[Bangkok Post, 5 May 2002]

***Fresh review of wastewater project***

Confronting criticism ranging from staunch opposition from local residents on environmental grounds to allegations of corruption, Prime Minister Thaksin Shinawatra announced the establishment of a new committee to review a controversial wastewater treatment project, the Klong Dan project. Mr. Thaksin said the aim of the new committee was to review all main issues of the Klong Dan project, especially those related to environment and economy. It was expected that the committee would start its work on May 7.

However, a leader of the opponents to the project was sceptical of the new proposal. He said it could be just a “delay” tactic by the government. He was of the view that if the government was serious enough to look into the issue it should suspend construction work while a review was being carried out.

Opponents have opposed the project from its beginning. They allege that corruption occurred during the land purchasing processes, and they are also concerned about the severe environmental and social impacts likely to result from the project. Despite the opposition, construction work on the project has continued and is now almost finished. Many people were now worrying whether the facility will work as designed and whether additional funds are needed for the plant to operate properly.

Another thorny issue is the construction budget. Whilst the project is 92 percent complete, it is still unclear how much more money is required to finish the rest of the work, which includes building a sewage collection point in the protesters’ community. This is also regarded as the most difficult part of the work. Latest estimates show the cost of the project at around Bt32 billion, which is three times higher than the original estimate. The government is also facing a possible law suit from the contractor which claims Bt6.8 billion in compensation because the authorities have not been able to settle problems with local opponents, resulting in work delay and damage.

The project is 25 percent funded by loans from the Asian Development Bank. If completed it would be the largest facility of its kind in Asia.

[*The Nation*, 5 May 2002]

**INDONESIA**

***Precious coral reefs in Indonesia under threat***

Environmentalists, marine police, park rangers and local people are setting up marine patrols in the northeast of Bali, Indonesia, to protect the precious coral reefs which are under attack from local fishermen.

The recent economic turmoil in Indonesia has caused a lot of villagers and fishermen to resort to the use of explosives and cyanide as a quick way of harvesting reef fish. However, these quick and easy ways of getting food and money are killing off the fragile coral in the process. Fishermen use cyanide to stun the fish and so make them slower and easier to catch. Cyanide does not kill the coral but it bleaches the coral and makes it weak and vulnerable. Explosives immediately destroy coral within the immediate vicinity.

Recently, patrols have found boats fishing in the precious coral zone – the clear waters that hug Bali’s coastline. In an effort to catch those fishermen who fish in the coral zone or use banned substances, the patrols secretly push off from secluded beaches early in the morning and out of sight of the town fishermen. Though the marine police are armed, they could be in danger because fishermen have been known to become violent when cornered. One marine police officer recalled a recent attack by a group of angry fishermen. He said the fishermen threw bombs at them when the police were trying to arrest them. Under current legislation, boats would be seized if fishermen were caught with cyanide or explosives and the culprits face between five and ten years in goal.

Whilst it is in everyone’s interest to protect coral reefs for sound ecological reasons, they are also essential for Bali’s tourism industry. There are increasing numbers of tourists who

come to dive and explore the beautiful underwater world of Bali. According to a recent report released by the World Resources Institute, Bali’s reefs have a potential economic value of \$1.6 billion a year.

[*BBC News*, 18 June 2002]

**INTERNATIONAL**

***Calls for financial commitment to fight against desertification***

Executive secretary of the United Nations Convention to Combat Desertification and Drought (UNCCD), Mr. Hama Arba Diallo, urged the international community to implement their pledges as set out in the UNCCD which was drafted ten years ago at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro.

As the World Summit for Sustainable Development (WSSD) is scheduled to be held in August-September 2002, Mr. Diallo is eager to introduce a series of national action programmes in order to put the Convention into effect. In this regard, financial commitments from the international community are essential to ensure the programmes have predictable financial resources. They can also make use of the money to support those countries affected by land degradation to implement the UNCCD.

Mr. Kofi Annan, the United Nations Secretary General, said desertification would be among the most important issues to be discussed at the WSSD. The UNCCD is the only legally binding convention which addresses desertification and drought, with a focus on sustainable development. It became truly global in September 2001 when a fifth regional annex for Central and Eastern Europe entered into force. The Convention now covers Africa, Latin America, the Caribbean, Asia, and the Northern Mediterranean.

With such an extensive coverage, the UNCCD is also regarded as an important instrument in addressing both poverty alleviation and environmental protection within the framework of sustainable development. It is estimated that desertification causes losses of 6 million hectares of

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productive land and US\$ 42 billion in income every year. There are about 110 countries under the threat of desertification. In addition, these countries are also at risk of sustaining other forms of land degradation and

resultant decline in agricultural productivity. If the situation continues, there will be over 135 million people driven from their land in the near term. Therefore, Mr. Diallo views the fight

against desertification as fundamentally a fight against poverty.

[United Nations-Press Release, 14 June 2002]

**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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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

**Convictions under environmental legislation: April – June 2002**

The EPD's summary of conviction recorded and fines imposed during the period April to June 2002 is as follows:

*April 2002*

**84 convicted pollution cases in April**

A total of 84 convictions were recorded in April for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 27 were convictions made under the Air Pollution Control Ordinance, 23 under the Noise Control Ordinance, 22 under the Waste Disposal Ordinance and 12 under the Water Pollution Control Ordinance.

The heaviest fine in April was \$65,000.

A company was fined \$65,000 for using powered mechanical equipment not in accordance with the conditions of a construction noise permit.

*May 2002*

**79 convicted pollution cases in May**

A total of 79 convictions were recorded in May for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 31 under the Waste Disposal Ordinance, 21 under the Noise Control Ordinance, 15 were convictions made under the Air Pollution Control Ordinance, and 12 under the Water Pollution Control Ordinance.

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

A company was fined \$50,000 for using powered mechanical equipment without a valid construction noise permit.

*June 2002*

**64 convicted pollution cases in June**

A total of 64 convictions were recorded in June for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 22 under the Waste Disposal Ordinance, 21 were convictions made under the Air Pollution Control Ordinance, 14 under the Noise Control Ordinance, and seven under the Water Pollution Control Ordinance.

The heaviest fine in June was \$65,000.

A company was fined \$65,000 for contravening the provisions of a licence issued under the Water Pollution Control Ordinance by discharging wastewater exceeding the permitted upper limit.

**Note: The above changed format reflects the EPD's new style of publishing environmental offences data. Details of all offences are available from EPD's Media Relations Unit.**

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Printed Matter

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<sup>i</sup> Edward Epstein, Altheimer & Gray, Shanghai

<sup>ii</sup> On 11 March 2002 the Director of Environmental Protection approved a revised EIA Report submitted by KCR following a substantial change in the proposed spur line construction. The line will now run underground through the most environmentally sensitive parts of the route. A conditional Environmental Permit will follow.