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Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW

# QUARTERLY

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### 簡家驄律師行 . 城規環保簡訊

*Recent publicity concerning the fate of one of the few remaining examples of Hong Kong's ancient, rural villages prompted the Quarterly to look at aspects of our key legislative scheme for the protection of our architectural heritage.*

*The Editors*

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### ARE YOU DOING ENOUGH TO SAVE OUR ARCHITECTURAL HERITAGE? NGA TSIN WAI VILLAGE, AN OPPORTUNITY LOST

Once again we have seen go begging an opportunity to preserve an historical remnant of our man-made environment. In this case it was Nga Tsin Wai Village, which dates from 1352 and is located in the middle of Kowloon surrounded by the ugly architectural monoliths which so typify Hong Kong's built environment of more recent times.

The village might not be of outstanding architectural merit – in terms of design, form and beauty – but those are criteria which should not alone determine whether or not it should have been preserved. The issue is: how far is this relatively rich territory prepared to go to conserve historical links with past generations? Frequently that question is asked in the context of Hong Kong's commitment to implementing an effective programme for conserving its natural environment. Our mediocre

performance in that field is mirrored by our poor record of conservation of historical buildings and places, as official reaction to the Nga Tsin Wai case indicates.

Apparently most of the houses in the village have been bought by a developer with a view to bulldozing them and constructing a high-rise housing estate. Village representatives – who can trace their lineage back to the original inhabitants – have requested the government to declare the village a protected monument under the *Antiquities and Monuments Ordinance* (Cap 53). The response from the *Antiquities and Monument Office* (AMO), which is part of the Department of Home Affairs, was that the village did not deserve classification as a monument worth preserving: - "It is not felt that there is any monument worth preserving" (spokesman for the AMO).

This succinct response by the AMO suggests a lack of priority for protecting entire community sites, as distinct from individual buildings. Such an approach might well arise from Hong Kong's legislative scheme for the protection of the built environment (which we discuss below).

integrity of an ancient village, as Nga Tsin Wai is

**A more enlightened approach to preservation of our history is to view significantly important areas – in terms of the history of the community – as a total unit, thereby preserving (or conserving, if some aspects of places need to be destroyed), the "working unit" as it existed in days gone by.**

In the case of Nga Tsin Wai, there appear to be very good reasons that a rare, remnant ancient village should, in a community such as ours – where virtually every structure or natural ecological system is forced to give way to the rapacious demands of developers and encroaching human activity - be preserved for future generations. Take the following short-list of factors, for example:

- The village has been continuously occupied (and, therefore, by families which must be some of the longer established inhabitants of Hong Kong) for more than 750 years.
- 100 –200 people still live in approximately 32 to 40 remaining houses comprising the remnant village (there were more than 100 houses at its peak).
- The Royal Asiatic Society (HK) classifies the village as a very significant representation of Hong Kong's rural culture and the lives of poor people dating back to the Song Dynasty.
- The village is reputed to have been found by courtiers of the last Song emperor who settled in the village in the 13<sup>th</sup> century in order to escape Mongolian invaders.
- How many other villages remain in the built-up areas of Kowloon Peninsula or Hong Kong Island?

The AMO has been criticized by local historians for making a decision based on perceived preservation merit of individual buildings, rather than assessing the historical significance of the village as a whole. These would appear to be a some legitimacy in that criticism, judging from the quoted remarks of the AMO above.

A more enlightened approach to preservation of our history is to view significantly important areas – in terms of the history of the community – as a total unit, thereby preserving (or conserving, if some aspect of places need to be destroyed), the "working unit" as it existed in days gone by. That factors should have been upper most in the mind of the AMO when asked to assess the conservation merit of a combination of individual buildings which retained the architectural, social and historical

Western countries generally incorporate in their town planning legislation power to declare entire areas of a town as it should be, but at least it does exist and there are many instances of protected historical precinct. No doubt the power is not used as widely as it should be, but at least it does exist and there are many instances of protected historical precincts in European countries, in particular. These precincts have, over the years, also demonstrated that there are significant economic benefits for local communities in attracting tourists to the precincts. However, Hong Kong seems always to prefer the idea of building ritzy, artificial attractions in the hope of generating increased tourism. It is perplexing – if not bizarre – that those who are in control of the decisions in this area fail to comprehend that preserving historical buildings, cleaning up our air and water and preventing further intrusion into natural beauty spots in Hong Kong (of which there are many – and a major one, Tai Long Wan, is under threat as we speak), rather than putting their entire faith in the attractions of artificial locations – such as Disneyland – would make Hong Kong a far more attractive destination for tourists.

The legislation controlling the declaration of ancient monuments or buildings accentuates a single-site approach. Leaving aside relics, which are movable objects, a proposed monument is defined in section 2 of the Ordinance as:

*A place, building site or structure which is declared to be a proposed monument, proposed historical building, or proposed archaeological or paleontological site or structure under section 2A.*

Section 2A (1) refers to a proposed object of an order under the Ordinance

as "any place, building, site or structure", Section 2A(2) allows the AMO(although, in reality, it is the Secretary for Home Affairs who is the administering agent) to declare any land "adjoining the places, building, etc." to be included in the preservation order. However, the land in question is restricted to such areas as is required for "fencing, covering or protecting the proposed monument for providing or facilitating access thereto".

A site, structure or building declared "historical" is protected from further damage by human activity by virtue of Section 6(1), which briefly lists the kind of activities which may not be undertaken in or on the declared site; these include: excavating, building or other works, planting or felling trees, demolishing, removing, obstructing, defacing etc. However, a permit system applies, and so the owner or occupier of a declared building/site might still carry on damaging activities if the government grants a permit to do so.

Section 7 provides that the Authority (i.e. the Secretary), with the prior approval of the Chief Executive, may grant funds to a person for preservation, maintenance or restoration work on a declared site/monument/building.

Although the emphasis from the definition of a site or proposed site is on solitary buildings and small, restricted sites, two entire walled villages (i.e. the remnants thereof) have in fact been declared ancient monuments under the Ordinance, as recorded in the *Antiquities and Monuments (Declaration of Monument and Historical Buildings) (Consolidation) Notice* (Cap. 33 sub. Leg. B & C), namely:

- Sheung Yiu, on the eastern shore of Pak Tam Chung estuary, Sai Kung, and
- Sam Tung Uk, located north of Castle Peak Road, Tsuen Wan District.

Several village ruins are also declared monuments, e.g.:

- The walls (including all the corner towers), of Kun Lung Wai (Sin Wai) in Lung Yeuk Tau, Fanling, and
- The entrance tower and the enclosing walls of Loy Wai, Lung Yeuk Tau, Fanling.

The majority of declared monuments consist of individual buildings. A number of rock carvings and ancient individual sites, such as tombs and gun batteries are also declared monuments. The monuments are a mix of British (e.g. the Western Market, Wanchai Post Office, the former Kowloon British School and the of facia of the Supreme Court, to name just several) and Chinese origins.

The regulations divide sites or structures which are preserved under the Ordinance into declared monuments and declared historical buildings. Sites, - such as rock carvings, villages and villages ruins - are declared as monuments if they are assessed as worth preserving. Individual buildings are declared historical buildings. Currently there are 28 declared monuments and 49 declared historical buildings listed under the Ordinance. The combined total appears to be very modest, given Hong Kong's rich and long history of human settlement.

There is one other aspect of this scheme of legislation for protecting our man-made history which is worth mentioning. The legislation is administered by the Authority, which is the Secretary for Home Affairs. An *Antiquities Advisory Board* (AAB) provides advice to the government on all aspects of administration of the legislation, particularly the merits of any proposal to have a site or building declared a monument or historical building under the Ordinance (Sections 79 and 80). Members of the Board are appointed by the Chief Executive, who also has the ultimate power to make declarations of ancient monuments/buildings under the Ordinance (Section 3). Further, any appeals (e.g. in respect of applications for permits to allow interference with declared monuments etc.) are made to the Chief Executive, whose decision is final: Section 16.

Although the District Court has power to hear appeals on compensation paid to owners of private property which is declared a monument or historical building under the Ordinance (Section 9), the scheme of the legislation gives the Chief Executive sole power to make decisions on declarations and to hear appeals with respect to the use of declared monuments and historical

buildings. The "experts", the AAB, have only an advisory role. Further – and more importantly - there is no provision for public participation.

By comparison, a common element of heritage – protection legislation in other jurisdiction is to give a specialised, independent tribunal original and appellate decision jurisdiction, with perhaps the final appeal being to the highest level of civil courts (except for countries such as France, which has a system of separate administrative law courts, including a final court of appeal). Specialist tribunals have the considerable advantage of removing delicate decisions - which often require a good deal of political goodwill towards our past and the recognition of the need to conserve early settlement history - from the jurisdiction of executive government bureaucrats. In most Western jurisdictions, the public has a right to be heard on heritage-listing decisions.

Separating government departments from decisions to be made in this fundamentally important field of preservation of our social and human history is necessary to ensure the efficacy of the legislative scheme as a whole. This is perhaps particularly the case in a place such as Hong Kong, where land developers exercise considerable influence on the government while at the same time being a sector generally hostile towards the notion of conserving historical buildings or places. Regrettably, the recent fate of Nag Tsin Wai is a telling case in point.

## LEGISLATION DIGEST

### **Quarantine and Prevention of Disease Ordinance (Amendment of first Schedule) Order 2003.**

#### **(Made under section 72 of the Quarantine and Prevention of Disease Ordinance (Cap. 141))**

(L.N. 79 of 2003 to Gazette No. 11 of 2003)

##### 1) Infectious diseases

The First Schedule to the *Quarantine and Prevention of Disease Ordinance* (Cap. 141) is amended by adding—

“19A. Severe Acute Respiratory Syndrome” (SARS).

#### **Note:-**

This Order adds SARS to the list of infectious diseases specified in the First Schedule to the Ordinance. Provisions relating to infectious diseases in that Ordinance and in the Prevention of the Spread of Infectious Diseases Regulations (Cap. 141 sub. leg. B) therefore apply to this disease.

### **Prevention of the Spread of Infectious Diseases Regulations**

#### **(Amendment of Form) Order 2003**

#### **(made under section 8(4) of the Quarantine and Prevention of Disease Ordinance (Cap. 141))**

(L.N. 80 of 2003 to Gazette No. 11 of 2003)

##### 1. Forms

The Schedule to the *Prevention of the Spread of Infectious Diseases Regulations* (Cap. 141 sub. leg. B) is amended, in Form 2, by adding after “Scarlet Fever”— “Severe Acute Respiratory Syndrome” (SARS).

#### **Note:-**

This Order adds SARS to Form 2 of the Schedule to the Regulations in consequence of this disease being added as an infectious disease to the First Schedule to the *Quarantine and Prevention of Disease Ordinance* (Cap.141).

Medical practitioners are required to report suspected cases of this disease to the Director of Health in accordance with that Form under regulation 4 of the Regulations.

## **HONG KONG BRIEFING**

## **Sustainable Development Council**

As promised in Chief Executive Tung Chi-hwa's 1999 policy address, the Sustainable Development Council was eventually established on 27 February 2003 to promote sustainable development.

The Council is headed by the Chief Secretary and has 18 members from different sectors of the community appointed by the government. The Council will mainly advise the government on a range of issues on sustainable development - which is a broad concept requiring the balancing development of the economy with environmental protection. Barry Cook of the Council said his definition of sustainable development was "simply that we should not take actions that compromise the livelihoods and requirements of our children". The Council will take into account environmental matters as well as the longer-term implications of sustainability in terms of social and economic issues.

Currently there are no representatives of conservation groups on the Council. However, some Council members said they would try their best to link the Council with green groups and the Legislature. The vice-chairman and managing director of Sun Hung Kai Properties, Mr. Thomas Kwok Ping-kwong, suggested that the business sector in Hong Kong could play a vital role in sustainable development by integrating environmental and social responsibility into business practices.

*[SCMP, 28 Feb 2003]*

### **Recycled tyres**

A 12-month recycling programme for mobile phone batteries begun in April last year will be continued for at least six months. As well, tyres from public and government vehicles will now be collected for recycling or re-use. The project is part of a wider government trial of a "polluter pays" system for the collection and environmentally responsible disposal of certain products.

A spokesperson for the Environmental Protection Department (EPD) said the

scheme is in its infancy and they still had to be guided by other countries' experience to see which programme is most suitable for Hong Kong. Among schemes being studied is one which requires consumers to pay a surcharge on the purchase price of polluting products, which would only be refunded if they recycled the goods.

The Conservancy Association's chief executive has given assurances that any polluter-pays-scheme would promote recycling. For the long term, whether the scheme is a charge, tax or deposit of some kind, there will be money for collecting goods and recycling them. According to Dr. Ng, up to 75 per cent of recycling costs in Taiwan was met by a polluter-pays-scheme, with only 25 per cent raised through the sale of recycled material.

Greenpeace also says that the polluter-pays-principle has been successfully implemented in many countries. Today, even computers, television sets and fridges have a 'take-back' (i.e. recycle) value.

*[SCMP, 22 Feb 2003]*

### **GM labelling proposal**

In a proposal presented to the Legislative Council panel on 20 February 2003, the Health Welfare and Food Bureau effectively ruled out the possibility of a mandatory system of labelling genetically modified (GM) ingredients because of the "significant" cost to the food trade. The Bureau put forward a "pre-market safety assessment" system instead. This proposal requires all food products containing GM material to be subjected to safety reviews before being released to the market. Retailers would thereafter have the option of labelling

the GM contents of their products. A government-commissioned study estimated the implementation of a mandatory scheme would cost the food trade between \$16 million and \$91 million.

Legislator, Andrew Cheng Kar-foo, said the government was conspiring with the food trade industry and putting the interests of food trade

businesses ahead of public safety. This is in face of the result of a government consultation carried out in 2001 which found that more than 90 per cent of respondents supported a mandatory system of GM labelling. Panel chairman, Fred Li Wah-ming, also challenged the significance of the estimate of the cost of a labelling system, and the level of protection the proposed review system would afford consumers.

At the same meeting, the Panel also passed a motion demanding a mandatory labelling system based on the European model. This model requires that any food product containing more than 1 per cent of GM material be labelled accordingly. However, the deputy secretary of the Health, Welfare and Food Bureau's food and environmental hygiene division noted that whilst the Council's views would be taken into account, the recommendation was not binding the government.

*[SCMP, 18 Mar 2003]*

## **Residents make lifestyle changes to cope with pollution**

The effects of pollution are forcing people in Hong Kong to change their lifestyles. For example, expectant mother Reena Khubchandai, who lives in Mid-Levels, said pollution was so bad she was scared to spend time outside for fear the poor air quality would harm her unborn child. Another woman in Repulse Bay said she withdrew her two-year old son from a kindergarten due to the pollution from buses carrying passengers to a popular temple nearby. She said "The drivers drop tourists there to visit a popular temple farther up. They pretty much leave the engines running all the time." The principal of Highgate House Kindergarten, Julie Lam said "We hope that in future, the buses with idling engines will be monitored and asked to switch them off. All residents in the area were affected, including families taking their children to the beach and playgrounds."

Annelise Connell, vice-chair-woman of Clear the Air, urged concerned members of the public to join a neighbourhood monitoring programme launched by the group six months ago. "Our goal is to have citizens work

together with businesses and the government. We want people to identify idling vehicles in their neighbourhood and report them to the Environmental Protection Department. We want to prove that the problem is big enough to warrant legislation.” she said.

Thomas Chow Tat-ming, of the Environment, Transport and Works Bureau, said enforcement of an anti-idling law would prove difficult. In the Canadian city of Toronto, where they have introduced such a law, he said not a single ticket had been issued. “If a police officer approached a driver to give him a ticket for leaving his engine running while waiting, the driver would just say “I’ve only just got here.” We have therefore taken an advisory approach,” he said.

[SCMP, 20 January 2003]

## HONG KONG DISNEYLAND UPDATE

### *Proposal links on-line visas with Disneyland tickets*

The Hong Kong Immigration Department is studying a proposal to allow mainland tourists to apply on-line for Disneyland tickets and travel permits at the same time. Under the proposed arrangement, mainland travellers would be allowed to submit travel permit applications to their province’s public security bureau through the Internet. Chinese officials would then pass on the application to the Immigration Department, also via the Internet, to reduce processing time when the visitors arrived. Mainland tourists would also be able to buy their Disneyland tickets on the Internet at the same time.

The Department borrowed the idea from the I-Permit scheme, now available to Taiwanese tourists, who can apply for their Hong Kong visa through their airlines. The carriers then forward their applications to Hong Kong immigration officials via the Internet.

However, legislators fear that the proposal could impair free competition with other theme parks, which could therefore suffer. Lawmaker James To Kun-sun urged the Department to be careful to avoid jeopardising the

principle of fair competition between tourism operations. Mr. To suggested that if the on-line service was to be linked with commercial activities, it should be open to all and not just to Disneyland. He also raised as an example that the on-line service should be available for other tourism attractions, such as Ocean Park, the racecourse or a buffet dinner at a hotel.

While Legislator Lau Kong-wah welcomed the idea of making arrangements easier for mainlanders visiting Hong Kong, he cautioned the Department to steer clear of linking its services with commercial activities. The executive director of Travel Industry Council, Joseph Tung Yao-chung, echoed Mr Lau’s view and questioned the need for the government to take responsibility for promoting a theme park in such a way.

Legislator Cyd Ho Sau-lan said that the scheme might create a conflict of interests because linking immigration services with commercial activities would give an impression of unfair collusion between the private sector and the government, which is a major shareholder in Hong Kong Disneyland.

A Department spokesman said it was too early to say if and how the idea would be implemented, as they were still studying its feasibility.

[SCMP, 25 February 2003]

### *Disney puts pressure on region’s theme parks*

The Shenzhen theme-park, which is owned by China Travel International Investment (CTII), could be undermined by the anticipated aggressive pricing of Disneyland Hong Kong, according to analysts of Daiwa Institute of Research (Hong Kong).

CTII also operates Splendid China, China Folk Culture Villages and Window of the World, each charging admission fees of 120 yuan.

Walt Disney’s Michael Eisner has said that, although prices had yet to be set, rumours of an entrance fee of between HK\$200 and HK\$250 were at the “high end”. However, Disney is preparing to offer a lower than expected entrance fee, with a view to attracting mainland customers and speeding up Disneyland break-even period.

CTII said operating profit from its tourist attractions, generated mainly by the three theme parks fell 6 per cent to HK\$82.15 million in the six months to June 30, due to fierce competition. In 2001, their parks attracted 4.48 million visitors, down 2 per cent on the previous year.

BNP Paribas Peregrine Securities analyst Wang Jinglin believed CTII was still in the best position to profit from the mainland’s tourism boom. She said the travel company should benefit from the 24-hour open border between Shenzhen and Hong Kong, although the positive impact might not be significant for a while.

An Ocean Park official said it would continue to strengthen its position as a renowned marine and animal theme park, offering a balanced mix of “education” and conservation education. She also said that Ocean Park and Hong Kong Disneyland would complement each other in attracting more tourists from throughout the world to Hong Kong.

[14<sup>th</sup> January 2003, SCMP]

### *Disney effect: Two more hotels get planning approval*

Two more hotel projects received Town Planning Board approval yesterday, as developers reacted to the expected Disneyland effect.

The projects approved included a 960-room, 41-storey project in Kowloon Bay by the Glorious Sun Group. The other is a 300-room project in Chong Yip Street, Kwun Tong, Chinachem Group. Chinachem earlier said that it intended to develop a budget hotel to meet the demand from mainland travellers on completion of the Disneyland’s project.

The approvals came after two other hotels were allowed to develop on former industrial or commercial sites, with the expected Disney-led boom encouraging developers to build on these second-grade locations. A Planning Board spokesman said the Board did not deliberately encourage hotel development or redevelopment in such areas. Applications for development need to be in line with the land-use zoning principles. Applicants are also required to comply with environmental impact assessments to prove their projects

were suitable for their respective sites.

In late January this year Chinachem secured approval for a 300-room, 29-storey hotel in Wong Chuk Hang Road, Aberdeen. Windsor Properties was also allowed to turn its former factory site in How Ming Street, Kwun Tong, into a mixed commercial project, including 440 hotel rooms. Jardines Group is also preparing to develop a boutique 100-room Central hotel by converting 14 floors of office space in Edinburgh Tower.

[22<sup>nd</sup> February 2003, SCMP]

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

### *Disposal of construction and demolition materials*

[ACE Paper 2/2003]

The problem of environmentally responsible disposal of construction and demolition (C&D) materials has been a serious pollution problem in Hong Kong for a long time. C&D materials are abandoned materials from construction, excavation, renovation, demolition, and roadworks. Those activities produce 14 million tonnes of C&D materials a year. Most of the inert elements are reused at reclamation projects.

However, reclamation projects which are in progress are unable to absorb the estimated 69 million tonnes of inert materials estimated to be dumped by the end of 2005. Unless a solution is found, these materials will have to be disposed of in landfills, which will reduce the life of the three landfills by 10 years. The ACE has estimated that some 73.1 million tonnes of inert C&D materials will be generated by the end of 2005, which would fill the Happy Valley Racecourse to a height of 96 stories.

ACE has suggested 6 ways to tackle the problem:

#### *1. Avoiding and minimizing C&D materials*

The government should tighten up specifications for contractors under existing Waste Management Plans. ACE suggested that contractors' waste management performance should be included in

the *Pay for Safety Scheme* to provide a financial incentive for contractors to ensure satisfactory implementation of Waste Management Plans. These requirements are intended to be implemented in early 2003.

#### *1. Sorting of mixed C&D waste*

ACE stated that source-separation at construction sites should occur as this would prevent cross-contamination of different kinds of materials and would minimize disposal costs. Presently, on-site sorting is a mandatory requirement only for government demolition projects.

#### *2. Re-using inert C&D materials in reclamation projects*

Reclamation projects remain the most important outlet for inert C&D materials. Nevertheless, because of the delay or cancellation of some planned projects, reclamation sites will be capable of absorbing only approximately 34.6 million tonnes of C&D materials. This is much less than the 43.9 million tonnes of C&D materials estimated in June 2001 to be absorbed in these existing or planned reclamation projects.

#### *3. Processing/ recycling hard materials*

Recycling provides an alternative disposal outlet for hard materials which would otherwise increase fill-materials in reclamation projects or take up precious landfill space. ACE has begun planning with Lam Tei, Shek O and Anderson Road quarries to process 14 million tonnes of rocks from government projects before 2006. ACE will continue to advise on arrangements to ensure that As for the lower quality hard

good quality rocks are reused in a proper way.

materials, such as broken concrete and low-grade rocks, most can be recycled for use as road sub-base and drainage bedding layers.

The supply of suitable hard materials for recycling is uncertain because materials generated by construction activities vary in quality. In view

of the shortage in the supply of hard materials, the government has put on hold its original plan to set up a second recycling plant in Kai Tak.

ACE promotes the use of recycled aggregates in government projects in order to set an example for other construction companies to follow. ACE has identified about 100 public projects which could absorb appropriately an estimated 250,000 tonnes of recycled aggregates per year.

#### *5. Establishing temporary fill-banks*

The first fill-bank at Tseung Kwan O was scheduled for establishment in October 2002, and another one in Tuen Mun will be available in the first half of 2003. These temporary fill-banks could stockpile about 18 million tonnes of materials, and will likely be filled by the end of 2004.

#### *6. Introducing landfill charging*

Landfill charging is an important part of handling C&D materials as it provides an economic incentive for developers and construction contractors to reduce C&D waste and to accomplish sorting so as to facilitate re-use and recycling. ACE consulted with the Legislative Council on its proposal to levy a landfill charge on C&D waste in the first phase.

#### *7. Other measures*

ACE has strongly recommended that the government explores all possibilities for the re-use of inert C&D materials.

[<http://www.info.gov.hk/etwb-e/board/>]

## **Beach water quality of Hong Kong in 2002**

[ACE Paper 6/2003]

Several years ago the Environmental Protection Department (EPD) established a monitoring system to assess the water quality of 41 gazetted beaches in Hong Kong. Water quality is evaluated and published as a new well recognized ranking system, which compares the water quality of a beach with swimming-associated health risks measured by the *E. coli* level.

The water quality of 33 out of 41 (i.e. 80.5%) gazetted beaches met the Water Quality Objective (WQO) for bathing water in 2002. Among the 41 gazetted beaches: 23 are ranked "Good", such as Repulse Bay, South Bay, and Stanley Main Beach; 10 are rated "Fair", for instance, Castle Peak and Silverstrand; 2 are assessed "Poor", namely Hoi Mei Wan and Lido; and 6 are rated "Very Poor", such as Ting Kau and Anglers. The number of "Good" water quality beaches has increased by 2 to 23, which is more than half (56.1%) of the gazetted beaches in Hong Kong. Most beaches had similar water quality in 2002 as in 2001. All six beaches of "Very Poor" water quality are situated in Tsuen Wan District. Three of them have been closed to the public for many years.

The two beaches where water quality improved from "Fair" to "Good" are Shek O and Big Wave Bay. Both are on the eastern side of Hong Kong Island and have benefited from improvement in water quality in the Tathong Channel and Eastern Harbour, achieved after the full commissioning of the Harbour Area Treatment Scheme (HATS) Stage I at the end of 2001. Screened sewage from Chai Wan and Tseung Kwan O Preliminary Treatment Works, which was previously discharged into the Tathong Channel has been diverted to the tunnel network of HATS and released to the Stonecutters Island Sewage Treatment Works (SCISTW) for chemical treatment and disposal in the general area of the Victoria Harbour western waterfront.

Beaches with more fluctuating water quality are found in the Tsuen Wan District. Six of the eight beaches there had "Very Poor" water quality in 2002. In addition to the three (Approach, Ting Kau and Anglers') which have been closed since the mid 1990s because of their very poor water quality, three more beaches (Casam, Lido and Gemini) in Tsuen Wan had "Very Poor" water quality and would be recommended for closure in 2003. The two "Poor" water quality beaches are Tung Wan on Ma Wan and Hoi Mei Wan. Apart from the potential pollution sources in the unsewered hinterland and the polluted Sham Tseng Nullah, the very poor water quality of the Tsuen Wan beaches is

due to the high bacterial level in the marine water off the Tsuen Wan coast.

With full sewage treatment provided by the deep tunnel network of the HATS Stage I at the end of 2001, sewage generated from Kowloon and the northeastern area of Hong Kong Island, in addition to that from Tsuen Wan, is now diverted to the SCISTW for treatment. Consequently, the amount of treated sewage discharged to the area of the Victoria Harbour western waterfront through the interim outfall approximately quadrupled between 2001 and 2002.

While SCISTW provides a good level of organic removal, but can remove only about 50% of the bacteria, although it has brought about widespread and substantial improvement in water quality in terms of total inorganic nitrogen (TIN), dissolved oxygen (DO), ammonia, and bacterial levels in most parts of the Harbour. The effect of these remaining bacterial concentrations has spread as far as the Tsuen Wan beaches. In absolute terms, the deterioration in beach water quality is not dramatic, being generally of the order of a few hundred counts of bacteria per 100 ml, but because they already suffer from poor water quality due to localised pollution, it has proved sufficient to push several beaches into the "very poor" rank. This raises the question of whether the beaches should be closed for swimming.

New sewage treatment works under construction at Sham Tseng will connect with unsewered developments and remove local pollution sources. The treatment works are scheduled to be completed at the end of 2003, but the sewerage connection along the coastline will only be completed at the earliest by approximately the end of 2005.

Therefore, the ACE concluded that major reductions in local pollution sources are unlikely to occur until the end of 2006 at the earliest. As well, the sewerage treatment works alone are unlikely to restore beach water quality without completion also of the remaining stages of HATS.

Due to the lengthy period needed to improve local water quality, the ACE recommends closure of Lido, Casam, Hoi Mei Wan, and Gemini beaches, in addition to the three beaches (i.e.

Approach, Ting Kau and Anglers') already closed. Closure of Hoi Mei Wan, which was of "Poor" water quality in 2002, is also recommended as it is exposed to similar sources of pollution as the other six beaches along the Tsuen Wan coast.

In 2002 the water quality of most beaches was similar to that in 2001. The commissioning of HATS Stage I brought about improvement in water quality of the Harbour, resulting in Shek O and Big Wave Bay beaches being re-rated from 'Fair' to 'Good'.

[ [www.info.gov.hk/etwb-e/](http://www.info.gov.hk/etwb-e/) ]

## TOWN PLANNING

The government has engaged consultants to draft tender documents for a 14-hectare integrated recreational and cultural development to be built in the Western Kowloon reclamation area. The 14-hectare development is situated at the south of the reclamation area, which is at the south-western side of Austin Road in Jordan and adjacent to the Kowloon MTR Station. It will comprise a world-class performance venue with an accommodation 35,000 to 60,000 capacity, a cinema-complex, various entertainment facilities, hotels, and residential and office units.

It is estimated that the development will exceed HK\$20 billion. Interested parties will be invited to submit design and development proposals later this year. In order to simplify the tender process, the government will consider granting both the design and development rights to the successful tenderer in so as to achieve consistency in planning and development. The criteria to be applied in screening the tenderers include their financial ability and relevant experience in similar scale developments.

Bearing in mind the huge capital input involved, it is believed that small and medium corporations are not qualified to undertake the development. Local heavyweight enterprises like Cheung Kong (Holdings) Limited and Sun Hung Kai Properties Limited have shown keen interest in the development as the returns on the residential part of the development will be lucrative.

Some in the architecture sector criticised the design/develop approach opted for by the government on the basis this could encourage the developer to design so as to maximise profits, and thus render the entire development too commercial.

The government organised the Western Kowloon Reclamation Area Planning Competition in 2001. A consortium led by the internationally renowned firm of architects, Foster & Partners, and Sun Hung Kai Properties Limited, won the competition in February 2002. The winning design is estimated to cost approximately HK\$24 billion to construct. However, the rules of the competition stated the winner of the competition does not automatically acquire the right to design and develop the proposed complex and the ultimate development right.

[21 March 2003, Hong Kong Economics Journal]

## **REGIONAL & INTERNATIONAL**

### **RUSSIA**

#### ***EU Ministers urge Russia to ratify climate protocol***

Following Russia's announcement in April 2002 of its intention to ratify the Kyoto Protocol, three top level European environment officials, EU Environment Commissioner Margot Wallstrom and environment ministers Altero Matteoli of Italy and Vasso Papatheou of Greece, arrived in Moscow on 5 March 2003 to persuade Russia to proceed with the ratification and to hold discussions on cooperation in the fight against climate change.

The Kyoto Protocol, originally signed by thirty-nine countries in December 1997, will not take effect until it is ratified by 55 % of the nations responsible for at least 55% of the total carbon dioxide emission in 1990. Countries which ratify the agreement must reduce emissions of carbon dioxide to an average of 5.2% below 1990 level during the five-year period 2008-2012.

The Bush administration in March 2001 said that the United States would not ratify the protocol, and Australia has followed suit. As of 6 February

2003, 105 countries responsible for 43.9% of the carbon dioxide emission in 1990 have ratified or acceded to the Kyoto Protocol. Ratification by Russia is essential, as Russia is responsible for 17.4% of the 1990 emission. Russian ratification would therefore ensure the protocol comes into force.

The protocol allows industrialized countries to buy and sell emissions credits among themselves under an international emission trading mechanism. They will also be able to acquire "emission reduction units" by financing projects which reduce greenhouse gas emissions in other developed countries through a procedure under the protocol known as Joint Implementation.

The European environment ministers emphasised the economic advantages which Russia would gain by ratifying of the Kyoto Protocol. The flexibility of the protocol enables Russian companies to access new technologies and management systems through its access to Joint Implementation projects developed with partners from other developed countries. If climate change is reduced through strict control of emissions, economic costs in terms of damage to infrastructure, such as buildings and railways, will also be reduced.

The European environment officials said that Russia's concerns - i.e. that it be allowed to take into account the carbon absorption of its forests, and conditions for access to Kyoto flexible mechanisms - have been taken into consideration throughout the international climate change negotiations. Russian ratification will be "an important recognition of the spirit of compromise in which the negotiations took place," they said.

[March 5, 2003  
Environment News Service (ENS)  
<http://www.ens-news.com/ens/mar2003/2003-03-05-01.asp>]

### **AUSTRALIA**

#### ***Global warming aggravates Australian drought***

According to a report published on 14 January 2003 by World Wide Fund for Nature Australia and two meteorologists, global warming and pollution are believed to be key causes

of the severity of Australia's drought, which has savaged Australia's winter wheat crop and cut its sheep flock to numbers not seen since the 1920s.

The report revealed that daytime temperatures recorded last year indicate unprecedented rates of water evaporation. The higher daytime temperatures in 2002, which exceeded the long-term average by 1.6 degrees Celsius, led to record evaporation levels in the Murray-Darling Basin, where 40 percent of Australia's agricultural goods are produced. Whereas estimated evaporation rates in three previous droughts — in 1994, 1982 and 1965 — amounted to 136 mm, 120 mm and 131 mm per month in the basin town of Griffith, in 2002 the evaporation rate there reached 152 mm per month.

To some extent the El Nino weather event, produced by a periodic warming of Pacific waters, could be blamed for the heat and dryness, but natural climate variations alone failed to account for all of the temperature anomalies of 2002.

"Most of this warming is likely due to the increase in greenhouse gases in the atmosphere from human activity, such as burning fossil fuels for electricity and transport and from land clearing," said a co-author of the WWF study, former Monash University meteorology professor David Karoly. "This is the first drought in Australia where the impact of human-induced global warming can be clearly seen," he said in a statement released with the report.

The report could be embarrassing for Prime Minister John Howard, whose government has provided financial assistance to farmers to help them to survive the "Big Dry," but joined the United States in rejecting the Kyoto Protocol. The protocol is recognized as insufficient to halt climate change but is the world's first attempt to tackle emissions of greenhouse gases, such as carbon dioxide.

"Global warming is a reality that is affecting the livelihoods of rural Australians and Prime Minister Howard must act to prevent further economic and environmental devastation," said Anna Reynolds, WWF Australia's climate-change campaigner.

[15 January, 2003]



*Environmental News Network (ENN)*

[http://production.enn.com/news/wire-stories/2003/01/01152003/s\\_49349.asp](http://production.enn.com/news/wire-stories/2003/01/01152003/s_49349.asp)

**U.S.A.**

### ***Lawsuit challenges Bush factory farm rules***

On 7 March 2003 the Sierra Club, the National Resources Defense Council and the Waterkeeper Alliance filed an appeal in San Francisco's Ninth Circuit Court of Appeal to challenge the Bush administration's new rule to limit water pollution from the nation's largest livestock operations. They contend that the administration's rule violates the Clean Water Act and gives the livestock industry free reign to discharge animal waste into the nation's waters without fear of penalty or accountability.

Prior to the Bush administration's rule, these large "factory-farms", also known as concentrated animal feeding operations ("CAFOs"), were not permitted to discharge any animal waste pollution. But under the new administrative rule they are expressly permitted to discharge waste into the environment based on permits which are to be written by themselves.

CAFOs have emerged as the dominant force in the modern production of agricultural livestock. Some of the largest facilities have capacities exceeding one million animals. These large scale operations store waste on-site, some of which they dispose of by applying (spraying) the waste on to farmland. This liquid waste often runs off into surface water, killing fish, spreading disease, and contaminating drinking water supplies. Waste can leach into the soil and groundwater drinking water supplies from the massive waste storage units which are often located on the farms.

Environmentalists believe the Bush administration's rule shields factory-farms from liability for damage caused by animal waste pollution, bars the public from participating in decisions on how animal waste is disposed of, and exempts contaminated runoff from Clean Water Act standards.

The Bush administration centred the rule on the requirement that each operator have a nutrient management plan, which outlines how animal waste will be sprayed on to fields. Environmentalists contend this is a licence to pollute because the operator is allowed to write the pollution plan which is not subject to review by federal or state officials, nor to public scrutiny.

In addition, the rule does not require the operators to monitor groundwater quality or prevent animal waste from leaching into groundwater and contaminating drinking water.

[10 March 2003, *Environment News Service (ENS)* 2003.

<http://ens-news.com/ens/mar2003/2003-03-10-10.asp>]

## **EUROPE**

### ***Europe back to square one on battery recycling***

The European Commission's Environment Directorate has announced a fresh consultation on plans to draft a comprehensive law on battery waste collection and recycling.

The new consultation paper is brief. It asks for stakeholders' input by the end of April 2003 on the positive and negative aspects of three key issues - collection targets, recycling targets and cadmium use. Key elements of the paper are:-

1. Three target ranges are proposed for battery collection rates - 30-40 percent, 60-70 percent or 70-80 percent.

2. Car batteries would have a separate target of anywhere from 70 percent to 100 percent.
3. Three proposed target ranges for battery recycling rates range from 45-55 percent at the lower end to 65-75 percent at the higher.
4. Car battery recycling targets are at a slightly higher rate.
5. The Directorate is seeking views on introducing producer responsibility for responsible disposal of spent batteries.
6. The paper sets out several possibilities for regulating ni-cad rechargeable batteries. The options include separate collection and recycling targets ranging between 60-90 percent and 50-80 percent respectively, and a ban on cadmium where commercially viable substitutes are available.
7. There might also be a separate cadmium recovery target if ni-cads are not banned.

Long-term exposure to high levels of cadmium can lead to permanent kidney damage. Those most at risk are people who might already have kidney problems, such as people with diabetes, and the elderly.

Rachel Barlow of the European Portable Battery Association welcomed what she called the Commission's "positive and constructive move". It "should ensure a better balance between the three pillars of sustainable development" than the Commission's earlier approach on batteries, she said.

[27 February 2003

*Environment News Service (ENS)* 2003.

<http://ens-news.com/ens/feb2003/2003-02-27-03.asp>]

## **INDIA**

### ***Environmental cases in Supreme Court***

On 21 April 2003 the Supreme Court of India, alarmed at the high degree of contamination of food items including wheat, milk, fish, tea and edible oil, issued notices to show cause to the Ministries of Agriculture, Chemicals and Fertilisers; Health and Family Welfare; Food and Consumer Affairs, and Environment and Forests.

The notices were issued as a result of a petition by an environmental NGO, Srishti, based in New Delhi. The petitioner quoted various studies conducted by independent authorities and said that there was an alarming level of pesticide contamination of food, water and soil resulting in severe health impacts. The petitioner also sought a direction to prescribe maximum residue levels (MRLS) of registered pesticides according to applicable international standards.

The reaction of the Supreme Court was natural given the fact that a recent study by the Centre for Science and Environment found high pesticide contents in many brands of bottled mineral water which drew attention to the dangerous levels of contamination of ground water.

*[Environmental Law Alliance Worldwide, 24 April 2003]*

The Supreme Court of India is currently hearing a very important

matter relating to wildlife conservation involving application of Section 29 of the Indian Wildlife (Protection) Act 1972, which provides that: "No person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit."

The defendant company has obtained a permit under Section 29 to construct a pipeline to transport crude oil through an area which has been declared a sanctuary. The permit was granted on the ground that a pipeline carrying crude oil will actually benefit the park and lead to improvement of the

environment in the sanctuary because the money to be paid as compensation by the oil company for the damage caused to the sanctuary will be used to plant more trees and add new areas to the sanctuary.

This convoluted and ridiculous argument is contrary to Section 29, the purpose of which is to only allow activities within a sanctuary which are in the direct interest of wildlife conservation, such as: the removal of exotic species of plants, construction of firelines, waterholes, water harvesting structures and controlled burning of grass.

The case is currently being argued before the Court.

*[Environmental Law Alliance Worldwide, 26 April 2003]*

**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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**Convictions under environmental legislation: January – March 2003**

The EPD's summary of conviction recorded and fines imposed during the period January to March 2003 is as follows:

**January 2003**

A total of 35 convictions were recorded in January 2003 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 11 were convictions made under the Air Pollution Control Ordinance, nine under the Waste Disposal Ordinance, eight under the Noise Control Ordinance, five under the Water Pollution Control Ordinance and two under the Dumping at Sea Ordinance.

The heaviest fine in January was \$20,000.

A company was fined \$20,000 each for using power mechanical equipment and carrying out prescribed construction works without a valid construction noise permit.

**February 2003**

A total of 42 convictions were recorded in February 2003 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 13 were convictions made under the Air Pollution Control Ordinance, 10 under the Waste Disposal Ordinance, 10 under the Noise Control Ordinance and nine under the Water Pollution Control Ordinance.

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

A company was fined \$50,000 each for contravening the terms or conditions of an specified process licence.

**March 2003**

A total of 34 convictions were recorded in March 2003 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 12 were convictions made under the Air Pollution Control Ordinance, nine under the Noise Control Ordinance, seven under the Waste Disposal Ordinance, and six under the Water Pollution Control Ordinance.

The heaviest fine in March was \$100,000, assessed against a company using powered mechanical equipment not in accordance with the conditions of a construction noise permit.

**Note: The above charged format reflects the EPD's new style of publishing environmental offences date. Details of all offences had exceeded the limits set in the licence.**

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