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ENVIRONMENTAL IMPACT ASSESSMENT BILL

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A BILL

To

Provide for assessing the impact on the environment of certain projects and proposals, for protecting the environment and for incidental matters.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Environmental Impact Assessment Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette.

2. Interpretation

In this Ordinance the expressions defined in Schedule 1 have the meanings set out there.

3. Application

(1) This Ordinance binds the Government.

(2) Sections 27 and 28 do not have effect to permit proceedings to be taken against, or to impose criminal liability on,

the Government or on a person doing anything in the course of carrying out his duties as a public officer in the service of the Government.

(3) If the Director considers that a public officer, in carrying out his duties in the service of the Government, has done, or has omitted to do, something in contravention of this Ordinance, the Director shall, if the act or omission is not immediately terminated to his satisfaction, report the matter to the Chief Secretary.

(4) On receiving a report, the Chief Secretary shall enquire into the matter and, if his enquiry shows that a public officer is continuing to contravene this Ordinance or is likely to contravene the Ordinance again, the Chief Secretary shall ensure that the best practicable steps are taken to stop the contravention or avoid the recurrence.

PART II

ENVIRONMENTAL IMPACT ASSESSMENT

4. Certain projects are designated projects

(1) The projects listed in Schedules 2 and 3 are designated projects.

(2) The Secretary may by order published in the Gazette amend the list of designated projects in Schedules 2 and 3 by adding projects to or removing projects from the lists.

(3) The addition of a designated project to a schedule does not affect an existing project if the existing project -

- (a) has been approved, permitted or authorized, or consented to, by the Government or a statutory

authority under an Ordinance specified by the
Secretary in the order amending the schedule; and

- (b) is commenced within 6 months of the addition of the project to the schedule.

5. Application for brief or permission to apply directly for environmental permit

(1) A person who is planning a designated project may apply to the Director -

- (a) for an environmental impact study brief to proceed with an environmental impact assessment study for the project; or
- (b) if the requirements of subsection (5), (6) or (7) are relevant, for approval to apply directly for an environmental permit.

(2) The applicant shall -

- (a) submit the application in the form approved by the Director;
- (b) submit a project profile that complies with the technical memorandum; and
- (c) pay the prescribed application fee.

(3) The Director may within 14 days of receiving the application request the applicant to give further information concerning the project profile or notify the applicant of any defects in the application.

(4) The Director shall within 45 days of receiving the application or further information under subsection (3) -

- (a) issue to the applicant an environmental impact study brief; and

- (b) notify the Advisory Council on the Environment if he issues the environmental impact study brief;

or

- (c) approve by notice in writing that the applicant may apply directly for an environmental permit.

(5) The Director may permit an applicant to apply directly for an environmental permit if he satisfies the Director, having regard to the project profile, that -

- (a) the environmental impact of the project is adequately assessed in an environmental impact assessment report in the register; and
- (b) the information and findings of the environmental impact assessment report in the register are still relevant.

(6) The Director may permit an applicant to apply directly for an environmental permit for an addition or other alteration to an exempted project by notice in writing if the applicant satisfies him, having regard to the project profile, that -

- (a) there is no material change to the environmental impact of the project; and
- (b) the measures described in the project profile meet the requirements of the technical memorandum.

(7) The Director may, with the consent of the Secretary, permit an applicant to apply directly for an environmental permit if he satisfies the Director, having regard to the project profile, that the environmental impact of the designated project is unlikely to be adverse and the measures described in the project profile meet the requirements of the technical memorandum.

(8) The Director may impose conditions on an approval to apply directly for an environmental permit that include, without limiting the power to impose any reasonable condition, requirements to be complied with for the issue and holding of an environmental permit for the designated project.

6. Environmental impact assessment report

(1) An applicant to whom an environmental impact assessment study brief has issued shall prepare an environmental impact assessment report in accordance with -

- (a) the requirements of the environmental impact assessment study brief; and
- (b) the technical memorandum applicable to the assessment.

(2) The applicant shall deliver an environmental impact assessment report to the Director for approval and pay the prescribed application fee.

(3) The Director shall, within 60 days of the receiving the environmental impact assessment report decide if the assessment -

- (a) meets the requirements of the environmental impact assessment study brief and technical memorandum; or
- (b) does not meet the requirements of the environmental impact assessment study brief and technical memorandum.

(4) If the Director decides that the environmental impact assessment report does meet the requirements of the brief and the technical memorandum, he shall advise the applicant when the report of the assessment must be exhibited for public inspection, if the advertisement is to contain any specific material and whether a

submission to the Advisory Council on the Environment or its sub-committee is required.

(5) If the Director decides that the environmental impact assessment report does not meet the requirements of the brief and the technical memorandum, he shall advise the applicant of the reasons why the report is unacceptable.

(6) The applicant shall present its report to the Council at the times and places advised by the Director if the applicant is required to submit the report to the Advisory Council on the Environment.

7. Public inspection of reports

(1) The applicant shall as soon as reasonably practicable after he has been notified under section 6(2)(a) that an environmental impact assessment report meets the requirements of the environmental impact assessment study brief -

- (a) make the report available in such numbers as the Director may reasonably require at locations approved by the Director for public inspection free of charge for a period of 30 days;
- (b) advertise the availability of the report once every 10 days of the period in a Chinese language newspaper and an English language newspaper, each of which circulate generally in Hong Kong; and
- (c) provide free of charge sufficient quantities as the Director may require of the report to comply with paragraph (a).

(2) The applicant shall set out in the advertisement -

- (a) the nature of the designated project and the site where the project is proposed to be carried out;
- (b) the period for which, the places at which and the hours during which the report is available for public inspection;
- (c) that a member of the public may give the Director written comments on the report before the period of public inspection expires;
- (d) the address to which the comments are to be sent; and
- (e) any other information that the Director may reasonably require relating to the project.

(3) The Director shall require an applicant to re-advertise or extend the period of public inspection for up to another 30 days if the applicant fails to comply with any requirement under this Part or a direction that he gives to an applicant under this section unless the Director is satisfied that the failure is not significant.

(4) The Director shall notify the Advisory Council on the Environment if an environmental impact assessment report is suitable for public inspection.

(5) The Advisory Council on the Environment shall give any comments it has on the report to the Director within 60 days of its receiving a copy of the report.

8. Approval of environmental impact assessment report

(1) The Director may, within 14 days of the expiry of the public inspection period or the receipt of comments from the Advisory Council on the Environment, whichever is later, ask an

applicant in writing to give him the information he requires to decide whether to approve an environmental impact assessment report.

(2) The Director shall not make a request for further information where comments have not been submitted to him on the report as a result of the public consultation or from the Advisory Council on the Environment.

(3) The Director shall, within 30 days of -

(a) the expiry of the public inspection;

(b) the receipt of comments from the Advisory Council on the Environment; or

(c) the receipt of information under subsection (1), whichever is the later, approve or reject an environmental impact assessment report for the designated project as meeting the requirements of the environmental impact assessment study brief.

(4) The Director shall place an approved environmental impact assessment report on the register.

(5) If the Director rejects an environmental impact assessment report, he shall give the applicant the reasons for the rejection.

PART III

ENVIRONMENTAL PERMITS

9. Prohibition against carrying out designated project unless environmental permit has been issued, etc.

(1) A person shall not construct or operate a designated project set out in Part I of Schedule 2 or decommission a designated project set out in Part II of Schedule 2 -

(a) without an environmental permit for the project; or

- (b) contrary to the conditions, if any, set out in the permit.

(2) A project listed in Part I of Schedule 2 that has -

- (a) had planning permission granted by the Town Planning Board under section 16 of the Town Planning Ordinance (Cap. 131);
- (b) had consent granted to commence building works by the Building Authority under the Buildings Ordinance (Cap. 123);
- (c) had reclamation authorized under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127);
- (d) had road works authorized under the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (e) been approved as a new development under the Country Parks Ordinance (Cap. 208);
- (f) been authorized under the Water Pollution Control (Sewerage) Regulation,

before this Ordinance comes into operation is exempt from the provisions of this Ordinance so far as the construction and operation of the project is concerned.

(3) A project listed in Part II of Schedule 2 and the demolition plan of which has been approved by the Building Authority under the Buildings Ordinance (Cap. 123) before this Ordinance comes into operation, is exempt from the provisions of this Ordinance so far as the decommissioning of the project is concerned.

(4) A project exempted by operation of this section ceases to be exempted if there is a material change to the project.

(5) The inclusion of a class of projects in Schedule 3 does not exempt the construction, operation or decommissioning of the

whole or any part of the project from the need to have an environmental permit.

10. Application for environmental permit

(1) A person who wishes to construct or operate a designated project listed under Part I of Schedule 2 or to decommission a designated project listed under Part II of Schedule 2 shall -

- (a) apply to the Director for an environmental permit in the form approved by the Director; and
- (b) refer to an environmental impact assessment report on the register in the application for an environmental permit; or
- (c) submit an environmental impact assessment report prepared under section 7 with the application; or
- (d) refer to the conditions in an approval under section 5(8) to apply directly for an environmental permit; and
- (e) pay the prescribed application fee.

(2) In granting or refusing an environmental permit, the Director shall have regard to -

- (a) the approved environmental impact assessment report on the register;
- (b) the attainment and maintenance of an acceptable environmental quality both now and in the future;
- (c) whether the environmental impact caused or experienced by the designated project is or is likely to be prejudicial to the health or well being of people, flora, fauna or ecosystems;
- (d) any relevant technical memorandum;

(e) any environmental impact assessment report approved under this Ordinance; and

(f) the comments, if any, submitted to him on the report.

(3) The Director shall advise the applicant and the Advisory Council on the Environment, where it has been consulted under section 7(3), of the grant or refusal of the environmental permit within 30 days of the later of -

(a) the receipt of the application;

(b) the expiry of the public inspection of the environmental impact assessment report under section 8;

(b) the receipt of comments from the Advisory Council on the Environment on the environmental impact assessment report; or

(c) the receipt of information under section 8(1).

(4) The Director may issue an environmental permit subject to the conditions, if any, as the Director thinks fit and specifies in the permit.

(5) Without limiting the general nature of conditions which the Director may include in an environmental permit, he may include conditions relating to the matters set out in Schedule 4.

(6) A condition specified in an environmental permit may be subject to a qualification, restriction or requirement concerning the location, time or period of the condition's application.

(7) The Director shall not specify in an environmental permit conditions that might be included in approval of any nature under another pollution control Ordinance unless -

- (a) the conditions are necessary to meet the requirements of the technical memorandum or the environmental impact study brief; and
- (b) the environmental impact assessment report approved for the project or the conditions on which the applicant was allowed to apply directly for an environmental permit under section 5 specified expressly that the environmental permit may include the condition.

(8) If the environmental permit is refused, the Director shall advise the applicant and give the reasons why the permit is refused.

11. Surrender of permit

A person who is issued with an environmental permit shall surrender the permit as soon as is reasonably practicable after ceasing to be responsible for implementing the whole or a part of the project.

12. Issue of further environmental permit for a project

(1) Where responsibility for a designated project for which an environmental permit has issued changes while the environmental permit is still in force, the person who assumes responsibility of the designated project shall before he assumes the responsibility apply for and obtain an environmental permit.

(2) A person applying for a further environmental permit under this section is not required to submit an environmental impact assessment report where he satisfies the Director that there has

been no material change to the designated project since the previous environmental permit was issued.

(3) The Director shall issue an environmental permit to an applicant under this section within 30 days of receipt of the application if he is satisfied that -

(a) there has been no material change to the designated project since the previous environmental permit was issued; and

(b) the information and findings of the environmental impact assessment report are still relevant and adequate.

(4) An applicant under this section shall apply in the form approved by the Director and shall pay the prescribed application fee.

(5) The Director may exempt a designated project from the requirement to be further subject to an environmental permit if -

(a) an environmental permit has been issued for the designated project and the terms of the environmental permit have been complied with; and

(b) the designated project is not subject to any conditions under the environmental permit that are of an on-going nature and require monitoring or other compliance.

(6) A designated project exempted under this section ceases to be exempted if there is a material change to the designated project.

(7) An exemption granted under this section does not extend to a material addition or other material alteration to an exempted designated project.

13. Application for variation of an environmental permit

(1) The person holding an environmental permit or a person who assumes responsibility for a designated project the subject of an environmental permit may apply for a variation of the conditions of the environmental permit.

(2) The Director shall notify the applicant for a variation of an environmental permit within 30 days of the receipt of an application whether he requires the applicant to submit an environmental impact assessment report for the changes sought.

(3) If the Director requires an applicant to submit an environmental impact assessment report, sections 5, 6, 7 and 8 apply to the report and assessment.

(4) The Director may amend the environmental permit without calling for an environmental impact assessment report if the applicant satisfies him that -

(a) there is no material change to the environmental impact of the project; and

(b) the project complies with the requirements described in the technical memorandum.

(5) An applicant under this section shall apply in the form approved by the Director and shall pay the prescribed application fee.

14. Cancellation or variation of environmental permit by the Director

(1) The Director may suspend, vary or cancel an environmental permit if he is satisfied that -

- (a) any person has contravened a condition of the environmental permit;
- (b) on the application for the environmental permit the applicant gave -
 - (i) misleading information;
 - (ii) wrong information;
 - (iii) incomplete information; or
 - (iv) false information;
- (c) the applicant is no longer able to comply with the conditions of the environmental permit.

(2) The Director shall give written notice of his decision to suspend, vary or cancel an environmental permit under this section together with the reasons for the suspension, variation or cancellation.

(3) The Governor in Council may suspend, vary or cancel an environmental permit if he is satisfied that the continuation of the designated project is, or is likely to be more prejudicial to the health and well being of people, fauna, flora or ecosystems than expected at the time of issuing the environmental permit.

(4) In this section, "vary" () includes to delete, modify or add to the conditions of an environmental permit.

PART IV

THE REGISTER

15. The register

(1) The Director shall keep a register in the form he determines containing details of -

- (a) project profiles he receives;

- (b) environmental impact assessment study briefs he issues;
- (c) applications for permission to apply directly for an environmental permit under section 5(5), (6) or (7);
- (d) his decisions on the applications for exemptions from carrying out environmental impact studies;
- (e) environmental impact assessment reports he receives;
- (f) his decisions on the environmental impact assessment reports;
- (g) environmental impact assessment reports he held prior to the commencement of this Ordinance;
- (h) applications for environmental permits;
- (i) his decisions on the applications for environmental permits;
- (j) matters required by regulations.

(2) The register is open for inspection by the public (free of charge) during normal office hours at the places the Director determines.

PART V

TECHNICAL MEMORANDUM

16. Technical memorandum

- (1) The Secretary may issue technical memorandums setting out principles, procedures, guidelines, requirements and criteria for -
- (a) the technical content of a project profile;
 - (b) the technical content of an environmental impact assessment study brief or environmental impact assessment report;

- (c) deciding whether a designated project is environmentally acceptable;
- (d) deciding whether an environmental impact assessment report meets the requirements of the study brief;
- (e) deciding whether the Director will permit an applicant to apply directly for an environmental permit under section 5(5), (6) or (7);
- (f) resolving conflicts on the content of the environmental impact assessment study brief and the environmental impact assessment report;
- (g) taking advice from other authorities;
- (h) deciding what is a material change, addition or alteration to an environmental impact or to a designated project;
- (i) the issue of environmental permits;
- (j) the imposition of environmental monitoring and audit requirements for designated projects as conditions in environmental permits.

(2) A technical memorandum may require or authorize the Director to follow the advice of the Secretary.

(3) A technical memorandum is published in the Gazette and laid on the table of the Legislative Council at the next sitting after its publication.

(4) The Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days of the sitting at which a technical memorandum was laid on the table of the Legislative Council, repeal the technical memorandum.

(5) If the period for debate would but for this subsection expire -

(a) after the end of a session of the Legislative Council or a dissolution; but

(b) on or before the day of the second sitting of the Legislative Council in the next session, the period extends to and expire on the day after that second sitting.

(6) Before the expiry of the period for debate, the Legislative Council may by resolution for a specified technical memorandum extend the period to the next sitting.

(7) A resolution passed by the Legislative Council in accordance with this section is published in the Gazette within 14 days of its passing or within the further period the Governor may allow in a particular case.

(8) A technical memorandum issued under this section is to come into operation on the expiry of the period for debate of the technical memorandum in the Legislative Council.

(9) In this section, "sitting" (), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.

PART VI

APPEALS

17. Appeals

(1) An applicant for approval of an environmental impact assessment report, an applicant for an environmental permit or an

environmental permit holder may appeal to the Appeal Board if he is aggrieved by a decision of the Director -

- (a) not to issue an environmental permit;
- (b) not to approve an applicant to apply directly for an environmental permit under section 5(5), (6) or (7);
- (c) as to the conditions imposed under section 5(8) on an applicant's applying directly for an environmental permit;
- (d) to impose conditions on the issue or variation of an environmental permit;
- (e) to vary or to cancel an environmental permit;
- (f) to claim costs incidental to remedying a defect arising out of the breach of an environmental permit.

18. Appeal Board panel

(1) The Appeal Board constituted under section 20 shall determine an appeal under this Ordinance

(2) The Governor shall appoint as Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

(3) The Governor may appoint as Deputy Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

(4) The Chairman, a Deputy Chairman and a person appointed to the panel of Appeal Board members are appointed for a term of 3 years but may be reappointed.

(5) The Governor shall appoint a panel of persons whom he considers suitable for appointment as members of the Appeal Board to hear any appeal under this Ordinance.

(6) An appointment under subsection (2), (3) or (5) is to be notified in the Gazette.

(7) The Chairman, a Deputy Chairman and a person appointed to the panel of Appeal Board members may at any time resign by notice in writing to the Governor.

19. Constitution of Appeal Board

(1) The Chairman and the number of persons from the panel the Chairman appoints to be members to hear an appeal constitutes an Appeal Board.

(2) The Appeal Board may give directions to the Director as to the exercise of the Director's functions relevant to the appeal. The Director shall comply with the directions.

(3) The opinion of the majority of the members hearing the appeal determines a question before the Appeal Board except a question of law which the Chairman determines. The Chairman has a casting vote where there is an equality of votes.

(4) The Appeal Board is not to consist of a majority of persons who are public officers.

(5) The contents of any technical memorandum must not be called into question in an appeal.

(6) In an appeal the Appeal Board may -

- (a) administer an oath and receive evidence on oath;
- (b) admit or take into account a statement, document, information or matter whether or not it would be admissible in a court of law;
- (c) by notice in writing summon a person to appear before it to produce a document or to give evidence;

- (d) confirm, reverse or vary the decision or requirement appealed against; and
- (e) make an award of the costs of the appeal as is just and equitable in all the circumstances of the case.

(7) In the exercise of its powers under subsection (6) the Appeal Board has the powers which the High Court may exercise.

(8) If a person -

- (a) on being summoned as a witness before the Appeal Board fails to attend; or
- (b) being in attendance as a witness refuses to take an oath required by the Appeal Board to be taken, or to produce a document under his power or control required by the Appeal Board to be produced by him, or to answer a question to which the Appeal Board may require an answer; or
- (c) does any other thing which would, if the Appeal Board had been a court of law having power to commit for contempt, have been contempt of that court,

the Chairman may certify in writing the contempt of the person to the High Court.

(9) The High Court may inquire into the alleged contempt and after hearing -

- (a) the witnesses who may be produced against or for the person charged with the contempt; and
 - (b) any statement that may be offered in defence,
- punish or take steps for the punishment of that person in the same way if he had been guilty of contempt of the court.

(10) A witness before the Appeal Board has the same immunities and privileges as if he were a witness in civil proceedings before the High Court.

(11) Costs awarded by the Appeal Board are enforceable as a civil debt and costs payable by the Director under an award are charged on the general revenue.

(12) The Chairman may determine a form or matter of practice or procedure of the Appeal Board for which a provision is not made in this Ordinance.

(13) In this section "public officer" () does not include a judge who is appointed as the Chairman or a Deputy Chairman.

20. Supplementary provisions

(1) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Governor may appoint a person qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336) to act as Chairman and as such to exercise and perform all the functions of the Chairman during the period of his appointment.

(2) If a person appointed by the Chairman to hear an appeal under this Part is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint another person from the panel to act in his place.

21. Case may be stated for Court of Appeal

(1) The Appeal Board may, before an appeal under this Part is determined, refer a question of law arising in the appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment having regard to the opinion of the Court of Appeal.

PART VII
ENFORCEMENT

22. Authorized officers

(1) The Director may in writing authorize a public officer to exercise the powers conferred on an authorized officer under this Part as the Director may specify in the authorization.

(2) A public officer exercising a power under this Part -

- (a) may obtain the assistance of persons he reasonably requires for the purposes of the discharge of his functions;
- (b) shall, if required, produce his identity card issued under the Registration of Persons Ordinance (Cap. 177), together with his written authorization under this section.

23. Powers of entry and inspection, etc.

(1) An authorized officer may without warrant and on production, if required, of his written authorization under this Part -

- (a) enter and search a place if he reasonably believes that -
 - (i) an offence against this Ordinance has been or is being committed in the place;

(ii) there is in the place anything that is or is likely to constitute evidence that an offence against this Ordinance has been or is being committed;

- (b) enter a place to serve a notice under this Ordinance;
- (c) enter a place to measure, inspect, take samples and test as he reasonably believes is necessary to determine if an offence against this Ordinance has been or is being committed.

(2) An authorized officer shall not, except with the consent of the occupier or person in charge of the premises, enter domestic premises without a warrant issued by a magistrate under subsection (3) or (4).

(3) If a magistrate informed on oath is satisfied that there is reason to believe that -

- (a) an offence against this Ordinance has been or is being committed on domestic premises; or
- (b) there is on domestic premises anything that is or is likely to constitute evidence that an offence against this Ordinance has been or is being committed,

the magistrate may issue a warrant authorizing an authorized officer to enter and search the premises.

(4) If a magistrate informed on oath is satisfied that there is reason to believe that it is necessary for an authorized officer to enter domestic premises to serve a notice or to measure, inspect, take samples or test as he reasonably believes is necessary to determine if an offence against this Ordinance has been or is being committed, the magistrate may issue a warrant authorizing the authorized officer to enter the domestic premises.

(5) An authorized officer who enters a place under subsection (1), (3) or (4) may require any person present at that place -

- (a) to give details of his identity, name and address and produce his identity card issued under the Registration of Persons Ordinance (Cap. 177) for inspection by the authorized officer; or
- (b) who appears at the time to be responsible for or in charge of that place, to give such information or render such assistance as may be necessary to enable the authorized officer to carry out his functions under this Part.

(6) An authorized officer who enters any place under this section shall, if entry is by warrant, produce that warrant.

(7) A warrant issued under subsection (3) or (4) shall continue in force until the purpose for which the entry is necessary has been satisfied.

24. Cessation order

(1) The Director may, with the consent of the Secretary, issue an order requiring persons working on a designated project to cease working on the project until the order is withdrawn, if -

- (a) an environmental permit has not been issued for the project being undertaken;
- (b) an environmental permit has been withdrawn from the project being undertaken; or
- (c) there has been a breach of the conditions of an environmental permit issued for the project being undertaken.

(2) The Director may issue an order requiring persons working on a designated project to carry out work on the project to remedy problems identified by the Director as environmental problems.

(3) The Director may, after issuing an order to cease working on a designated project, take direct action to remedy problems identified by him as environmental problems and may recover the costs of the remedial work.

25. Recovery of costs

(1) The Director may certify the costs due and names of the persons liable for the costs, apportioning the costs if appropriate, if he is authorized to recover the costs of works carried out under this Ordinance.

(2) Without limiting the general meaning of "costs", the costs may include supervision charges and the costs of materials supplied by the Director for the purpose of carrying out the works.

(3) The Director shall serve a copy of his certificate on each person who is liable to pay costs.

(4) Annual interest at the rate of 10% commencing 1 month after the date of service of the certificate is recoverable as part of the costs.

(5) Payment of costs by any person is without prejudice to his right to recover the payment from any other person who is liable to pay for the costs.

(6) Costs certified by the Director are recoverable as a civil debt due to the Government.

(7) A writ of summons initialing an action to recover costs as a civil debt due to the Government is presumed to have been served if the court is satisfied that the writ was left at the defendant's

residence or place of business or, if those are not known, that it was left at the building or land for which the claim is made.

(8) A certificate purporting to be signed by the Director under subsection (1) is on its production admissible in any proceedings without further proof. The certificate is presumed, in the absence of evidence to the contrary, to be proof of the signature of the Director and of the facts certified in relation to the costs due from the person sued.

(9) At any time before the costs have been wholly recovered, a copy of the certificate referred to in subsection (1) may be registered under the Land Registration Ordinance (Cap. 128) against the land or premises for which the costs arose, and the copy so registered constitutes a legal charge as defined in the Conveyancing and Property Ordinance (Cap. 219).

(10) On the recovery of all of the costs certified under this section the Director shall, if there has been a registration against land or premises under subsection (9), register under the Land Registration Ordinance (Cap. 128) a certificate of satisfaction against the land or premises.

PART VIII

OFFENCES

26. Breach of environmental permit

(1) A person who contravenes section 9 commits an offence and is liable -

- (a) on a first conviction on indictment to a fine of \$2,000,000 and to imprisonment for 6 months;

- (b) on a second or subsequent conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years;
- (c) on a first summary conviction to a fine at level 6 and to imprisonment for 6 months;
- (d) on a second summary conviction to a fine of \$1,000,000 and to imprisonment for 1 year,

and in any case where the offence is of a continuing nature, the court or magistrate may impose a fine of \$10,000 for each day on which he is satisfied the offence continued.

(2) A person does not commit an offence under subsection (1) if he carries out an action in response to an emergency and in the interests of public safety or public health.

(3) A person does not commit an offence under subsection (1) arising out of a breach of conditions of an environmental permit as set out in section 9(1)(b) if he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity.

(4) A person for whom a project is constructed, operated? or decommissioned and who permits the carrying out of the project contrary to section 9 commits an offence and is liable -

- (a) on a first conviction on indictment to a fine of \$2,000,000 and to imprisonment for 6 months;
- (b) on a second or subsequent conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years;
- (c) on a first summary conviction to a fine at level 6 and to imprisonment for 6 months;

(d) on a second summary conviction to a fine of \$1,000,000 and to imprisonment for 1 year, and in any case where the offence is of a continuing nature, the court or magistrate may impose a fine of \$10,000 for each day on which he is satisfied the offence continued.

(5) A person does not commit an offence under subsection (3) if he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity.

(6) In proceedings for an offence under this section, the prosecution does not have to prove that the acts or omissions in question were accompanied by any intention, knowledge or negligence on the part of the defendant as any element of the offence.

27. Offences in relation to enforcement

A person who -

- (a) wilfully resists, obstructs or delays any public officer in the exercise of a power conferred by section 23 which he is authorized to exercise;
- (b) fails without reasonable excuse to comply with a requirement duly made by a public officer in the exercise of a power under section 23 which he is authorized to exercise;
- (c) in compliance or purported compliance with a requirement of a public officer under Part VII produces a drawing, record or document which he knows to be incorrect or inaccurate in a material respect or does not believe to be correct or accurate; or

(d) wilfully or recklessly gives information which is incorrect in a material respect or withholds information as to any of the matters for which information is required to be given under Part VII, commits an offence and is liable on conviction to a fine at level 5.

28. Offence to disclose confidential information obtained officially

(1) A person who discloses or gives to another person any information that concerns a trade, business or profession, is confidential and has come to his knowledge or into his possession in the course of the discharge of his functions under this Ordinance commits an offence.

(2) A person does not commit an offence if he discloses or gives the information to another person -

- (a) to discharge his functions under this Ordinance or in connected proceedings;
- (b) under an order of a court under subsection (3); or
- (c) with the consent in writing of all persons who appear to him, after reasonable enquiry, to be interested in the confidentiality of the information.

(3) Where in proceedings a court considers that the justice of the case requires, the court may order the disclosure of information referred to in subsection (1).

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

29. Directors of body corporate liable in certain circumstances

(1) Where a person convicted of an offence under this Ordinance is a body corporate and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect or omission on the part of, a director, manager, secretary or other person concerned in the management of the body corporate, the director, manager, secretary or other person also commits the offence.

(2) Where a person convicted of an offence under this Ordinance is a partner in a partnership and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect or omission on the part of, any other partner or any person concerned in the management of the partnership, the partner or the person concerned in the management also commits the offence.

PART IX
MISCELLANEOUS

30. Exemptions

(1) The Governor in Council may, in the public interest, exempt a project from the provisions of this Ordinance by an order published in the Gazette.

(2) The Governor in Council may make the order -

- (a) subject to conditions and limitations;
- (b) to have effect for a period of time; and
- (c) be partial in operation with respect to the project or to specified provisions of this Ordinance.

(3) A person who breaches a condition or requirement imposed under an exemption order is deemed to have breached an environmental permit and is subject to the provisions of this Ordinance that apply to the breach of an environmental permit.

31. Protection of Government and public officers

(1) A public officer is not be personally liable for an act or omission of his if he did it in the honest belief that the act or omission was required or authorized to discharge his functions under this Ordinance.

(2) The protection given to a public officer by subsection (1) for an act or omission does not in any way affect any liability of the Government in tort for the act or omission.

32. Regulations

(1) The Secretary may, after consultation with the Advisory Council on the Environment, by regulation -

- (a) prescribe anything required or permitted to be prescribed under this Ordinance;
- (b) regulate appeals under Part VI and the practice and procedure of the Appeal Board;
- (c) generally, provide for the better carrying into effect of the provisions and purposes of this Ordinance.

(2) A regulation for the payment of fees may provide for different fees to be charged according to different circumstances.

(3) A regulation may provide that a contravention of the regulation is an offence and may provide penalties for the offence not exceeding a fine of \$5,000,000.

33. Power of Director to set forms

(1) The Director may set the form of a document required under this Ordinance.

(2) The Director's power under subsection (1) is subject to any express requirement under this Ordinance for a form to comply with the requirement.

(3) The Director may include in a form a statutory declaration to be made by the person completing the form confirming that the particulars contained in the form are correct to the best of the person's knowledge.

34. Service of notices

A notice to be served under this Ordinance may be served by post.

SCHEDULE 1

[S. 2]

INTERPRETATION

In this Ordinance, unless the context otherwise requires -

"abattoir" () means premises or a place habitually used for the slaughter of animals for human consumption;

"aircraft maintenance and repair plant" () means a place, building or structure where aircraft or its parts are stored, repaired, washed and greased;

"bathing beach" () means any bathing beach which is specified in the Fourth Schedule to the Public Health and Municipal Services (Cap. 132) [Bathing Beach (Regional Council) By-laws;

- "bulk chemical storage facility" () means a facility that is or may be used for storing materials of a hazardous nature for delivery to or by sea going bulk chemical carriers and includes related product blending, drum and bottle storage and dispatch facilities;
- "chemical waste" () means waste which is chemical waste within the meaning of Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354 sub. leg.);
- "coastal protection area" () means a coastal protection area shown in a draft or approved Outline Zoning Plan prepared under the section 3 of the Town Planning Ordinance (Cap. 131);
- "conservation area" () means a conservation area shown in a draft or approved Outline Zoning Plan prepared under the section 4 of the Town Planning Ordinance (Cap. 131);
- "container backup facilities" () means land used as container storage areas adjacent to a container terminal or off-port infrastructure facilities essential to the operation of a container terminal, including container storage and repair depots, container freight stations and container vehicle parks;
- "country park" () means a country park within the meaning of section 2 of the Country Parks Ordinance (Cap. 208);
- "crematorium" () means a crematorium within the meaning of the Public Health and Municipal Services Ordinance (Cap. 132);
- "decommissioning" () means ceasing production and demolishing an existing plant for the development or re-development of the site;
- "designated project" () means a project listed in Schedule 2 or Schedule 3 and includes a part of a project;

"Director" () means the Director for Environmental Protection;

"education institution" () means an institution, organisation or place which provides, or where there is provided, for 10 or more persons during any one day, whether or not at the same time, kindergarten, primary, secondary or post secondary education or any other educational course;

"environment" () -

(a) means the components of the earth; and

(b) includes -

- (i) land, water, air and all layers of the atmosphere;
- (ii) all organic and inorganic matter and living organisms; and
- (iii) the interacting natural systems that include any of the things referred to in subparagraph (i) or (ii);

"environmental impact" (), for a designated project, means -

(a) an on-site or off-site change that the project may cause in the environment;

(b) an effect of the change on -

- (i) the well-being of people, fauna, flora and ecosystems;
- (ii) physical and cultural heritage;
- (iii) a structure, site or other thing that is of historical or archaeological significance;

(c) an on-site or off-site effect on any of the things referred to in paragraph (b) from activities carried on for the project;

(d) a change to the project that the environment may cause,

whether the change or effect occurs within or outside the site of the project;

"environmental impact assessment report" () means a report submitted under section 6;

"environmental impact assessment study brief" () means a study brief issued under section 5(4)(a);

"environmental permit" () means an environmental permit issued under section 10(3);

"existing uses" () means those uses existed at the time when the application under sections 9 and 13 are made;

"expressway" () means an expressway within the meaning of section 122 of the Road Traffic Ordinance (Cap. 374);

"fish culture zone" () means a fish culture zone within the meaning of section 2 of the Marine Fish Culture Ordinance (Cap. 353);

"health care institution" () means hospitals, polyclinics and clinics;

"heavy railway" () means railway for freight transport or for a passenger transit system with a capacity exceeding 40 000 passengers per hour per direction;

"industrial estate" () means an industrial estate within the meaning of section 2 of the Hong Kong Industrial Estates Corporation Ordinance (Cap. 209);

"light railway" () means railway for a passenger transit system with a capacity not exceeding 40 000 passengers per hour per direction;

"marine park" () means a park within the meaning of the Marine Parks Ordinance (37 of 1995);

"marine reserve" () means a reserve area that falls within the meaning of the Marine Parks Ordinance (37 of 1995);

"mid-stream operations" () means to the cargo loading and unloading activities of ships while moored at a buoys or at anchorages within the harbour; Lighters are used to move the cargoes between the waterfront sites and the ships using their own single-boom cranes, or on-shore mobile cranes. Mid-stream operations serve a wide range of vessels from bulk, conventional cargo, semi-container to fully cellular container ships;

"mitigation" (), for a designated project -

(a) means the elimination, reduction or control of the adverse environmental impact of the project;

(b) includes restitution by replacement, restoration, compensation or other means for damage to the environment caused by the impact;

"new town" () means a planned community with a total population increase of more than 100,000 that includes a range of facilities, including commercial, social, industrial and recreational;

"pier" () means a structure built out over the water and supported by pillars or piles, used as a landing place for ferries, boats, ships and other vessels including structures accommodating hydrofoil and jetfoil vessels;

"planned use" () means the land use proposed in the draft or approved plans prepared under the Town Planning Ordinance or any other land use plans prepared by the Government;

"primary distributor" () means roads forming the major network of the urban area including roads having high capacity junctions, [although they may be at grade or grade separated], with segregated pedestrian facilities wherever possible and frontage access limited if not entirely restricted, and with a 24 hour stopping restriction;

"project profile" () means the description of the project that complies with the requirements of the technical memorandum;

"public cargo working area" () means an area set out in the Port Control (Cargo Working Areas) Ordinance (Cap. 81) as a public cargo working area;

"quarantine stations or segregation place for animals"

() means a place used for the quarantine of animals when they are imported into Hong Kong and detained there for such period as the veterinary officer may require;

"railway depot" () means a facility for the storage, maintenance or repair of light or heavy railway rolling stock or equipment used for track maintenance, including areas where shunting facilities are used for operational purposes;

"railway marshalling yard" () means a facility in a railway system mainly for sorting train wagons into different formations according to an order for operation purposes;

"religious institution" () means a place or building, or a place of worship where in accordance with the practice of religious principles services are held or prayers said by congregations loyal to a belief and includes Chinese temples as set out in section 2(b) of the Chinese Temples Ordinance (Cap. 153) and ancillary offices car parks and quarters that are essential to the operation of the particular organization;

"river trade limits" () means the river trade limits defined in the Shipping and Port Control Ordinance (Cap. 313);

"river trade terminals" () means a terminal for handling or storing cargo by vessels routinely operating within waters within river trade limits;

"road tunnel" () means a private or public tunnel and its portal area within the meaning of the Road Tunnel (Government) Ordinance (Cap. 368);

"Secretary" () means the Secretary for Planning, Environment and Lands;

"service reservoir" () means a place or structure where water from a water treatment works is stored for delivery to other service reservoirs for distribution to the consumers of a water supply district;

"ship-building, ship-breaking and ship-repairing yard"

() means any place, structure or building in which ships, boats and other sailing vessels are designed, constructed, repaired, renewed or broken down into parts.

- "site of special archaeological interest" ()
means an antiquity or monument as defined under Antiquities and
Monuments Ordinance (Cap. 53);
- "sites of special scientific interest" ()
means an area of land or water of special scientific interest
by reason of its flora, fauna or geographical features
identified by the Agriculture and Fisheries Department and
listed in the register of sites of special scientific interest
maintained by the Planning Department;
- "special wastes" () includes clinical wastes,
animal carcasses and security waste, including Government
documents, to be treated by centralised incineration facility;
- "special area" () means a special area as
defined under the Country Parks Ordinance (Cap. 208);
- "technical memorandum" () means a technical
memorandum issued under section 17(1);
- "tramway" () means the roadway over which tram
passes and the roadway of any bridge forming part of or leading
to the roadway defined under the Tramway Ordinance (Cap. 107);
- "trunk road" () means a road connecting the main
centres of population being a high capacity road with no
frontage access or development, pedestrians segregation, widely
spaced grade-separated junctions, and a 24 hour stopping
restrictions;
- "typhoon shelter" () means a typhoon shelter
within the meaning of Shipping and Port Control (Typhoon
Shelter) Regulations (Cap. 313 sub. leg.);

"wild animal protection area" () means an area designated as a restricted area under the Sixth Schedule of the Wild Animals Protection Ordinance (Cap. 170).

SCHEDULE 2

[ss. 4, 5 & 18
& Sch. 1]

DESIGNATED PROJECTS REQUIRING ENVIRONMENTAL PERMITS

PART I

A - ROADS, RAILWAYS AND DEPOTS

- A.1 A road which is an expressway, trunk road, primary distributor road or district distributor road including new roads, and major extensions and improvements to existing roads.
- A.2 A railway and its associated stations.
- A.3 A tramway and its associated stations.
- A.4 A railway siding, depot, maintenance workshop marshalling yard or goods yard.
- A.5 A tram depot located less than 100 m from the nearest boundary of an existing or planned -
 - (a) residential area;
 - (b) place of worship;
 - (c) educational institution; or
 - (d) health care institution.
- A.6 A transport depot located less than 200 m from the nearest boundary of an existing or planned -
 - (a) residential area;
 - (b) place of worship;
 - (c) educational institution; or

(d) health care institution.

- A.7 A road or railway tunnel in excess of 800 m in length.
- A.8 A road or railway bridge more than 100 m in length.
- A.9 A road fully enclosed by decking above and by structure on the sides for more than 100 m in length.

B - AIRPORTS AND PORT FACILITIES

- B.1 An airport (including its runway, extension of the runway and associated development and activities related to aircraft maintenance, aircraft repair or testing or air cargo handling.
- B.2 A helipad within 300 m of existing or planned residential development.
- B.3 A container terminal (including its container backup facility).
- B.4 A public cargo working area -
 - (a) of more than 1 000 m cargo working length; or
 - (b) with a cargo working length between 500 m and 1 000 m and within 50 m of an existing or planned -
 - (i) residential area;
 - (ii) place of worship;
 - (iii) educational institution; or
 - (iv) health care institution.
- B.5 A container storage, container handling or container packing area (including a container vehicle parking area) more than 5 ha in size and within 300 m of an existing or planned -
 - (a) residential area;
 - (b) place of worship;
 - (c) educational institution; or

(d) health care institution.

- B.6 A facility for ship building or ship repairing more than 1 ha in size or with a lifting capacity in excess of 20 000 ton.
- B.7 A river trade terminal.
- B.8 A mid stream operation facility.

C - RECLAMATION, HYDRAULIC AND MARINE FACILITIES,
DREDGING AND DUMPING

- C.1 Reclamation works (including associated dredging works) more than 5 ha in size.
- C.2 Reclamation works (included associated dredging works) in excess of 1 ha in size and a boundary of which -
 - (a) is less than 500 m from the nearest boundary of an existing or planned -
 - (i) site of special scientific interest;
 - (ii) gazetted beach;
 - (iii) marine park or marine reserve;
 - (iv) fish culture zone;
 - (v) wild animal protection area;
 - (vi) coastal protection area;
 - (vii) conservation area;
 - (viii) country park; or
 - (ix) special area;
 - (b) is less than 100 m from a seawater intake point; or
 - (c) is less than 100m from an existing residential area.
- C.3 Reclamation works -
 - (a) resulting in 5% decrease in cross sectional area calculated on the basis of medium water mark in a tidal flushing channel; or

- (b) occupying an area on plan in excess of 10% of any enclosed or semi enclosed waterbody.

C.4 A breakwater more than 1 km in length or a breakwater extending into a tidal flushing channel by more than 30% of the channel width.

C.5 A typhoon shelter designed to provide moorings for not less than 30 vessels.

C.6 A dam more than 10 m in height.

C.7 A land borrow area of more than 200 000 m³.

C.8 A land borrow area of more than 50 000 m³ of which-

- (a) a boundary of which is less than 500 m from the nearest boundary of an existing or planned -

- (i) residential area;
- (ii) place of worship;
- (iii) educational institution;
- (iv) health care institution;
- (v) country park; or
- (vi) special area; or

- (b) wholly or partly within a -

- (i) site of special scientific interest; or
- (ii) wild animal protection area.

C.9 A marine borrow area.

C.10 A marine dumping area.

C.11 A public dumping area of not less than 2 ha in size.

C.12 A dredging operation exceeding 500 000 m³ or a dredging operation which -

- (a) is less than 500 m from the nearest boundary of an existing or planned -

- (i) site or special scientific interest;

- (ii) gazetted beach;
 - (iii) marine park or marine reserve;
 - (iv) fish culture zone;
 - (v) wild animal protection area;
 - (vi) coastal protection area; or
 - (vii) conservation area; or
- (b) is less than 100 m from a seawater intake point.

D - ENERGY SUPPLY

- D.1 Public utility electricity power plant.
- D.2 Public utility gas generation plant

E - WATER EXTRACTION AND WATER SUPPLY

- E.1 A primary reservoir.
- E.2 Water treatment works.
- E.3 A submarine water supply pipeline with a diameter of 1 200 mm or more and a length of more than 1 km.

F - SEWAGE COLLECTION, TREATMENT DISPOSAL AND RE-USE

- F.1 Sewage treatment works with an installed capacity of more than 15 000 m³ per day.
- F.2 Sewage treatment works -
 - (a) with an installed capacity of more than 5 000 m³ per day; and

(b) a boundary of which is less than 200 m from the nearest boundary of an existing or planned -

- (i) residential area;
- (ii) place of worship;
- (iii) educational institution;
- (iv) health care institution;
- (v) site of special scientific interest;
- (vi) gazetted beach;
- (vii) marine park or marine reserve;
- (viii) fish culture zone; or
- (ix) seawater intake point.

F.3 A sewage pumping station -

- (a) with an installed capacity of more than 300 000 m³ per day; or
- (b) with an installed capacity of more than 2 000 m³ per day and a boundary of which is less than 150 m from an existing or planned -

- (i) residential area;
- (ii) place of worship;
- (iii) educational institution;
- (iv) health care institution;
- (v) site of special scientific interest;
- (vi) gazetted beach;
- (vii) marine park or marine reserve;
- (viii) fish culture zone; or
- (ix) seawater intake point.

F.4 An activity for the re-use of treated sewage effluent from a treatment plant.

- F.5 A submarine sewage pipeline with a diameter of 1 200 mm or more and a length of 1 km or more.
- F.6 A submarine sewage outfall.

G - WASTE STORAGE, TRANSFER AND DISPOSAL FACILITIES

- G.1 A landfill for special wastes or municipal wastes.
- G.2 A material change of use for a landfill after filling.
- G.3 A refuse transfer station.
- G.4 An incinerator with an installed capacity of more than 50 tonnes per day.
- G.5 A waste disposal installation (excluding any refuse collection point), or waste disposal activity, for -
 - (a) refuse; or
 - (b) chemical, industrial or special wastes.
- G.6 A facility for the treatment of construction waste -
 - (a) with a designed capacity of not less than 500 tonnes per day; and
 - (b) a boundary of which is less than 200 m from an existing or planned -
 - (i) residential area;
 - (ii) place of worship;
 - (iii) educational institution; or
 - (iv) health care institution.
- G.7 A waste disposal facility for pulverized fuel ash, furnace bottom ash or gypsum.

H - UTILITY PIPELINES, TRANSMISSION PIPELINES AND SUBSTATIONS

- H.1 A 400 kV electricity substation and transmission line.
- H.2 A submarine gas pipeline or submarine oil pipeline.

I - WATERWAYS AND DRAINAGE WORKS

- I.1 A drainage channel or river training and diversion works -
 - (a) with a channel width of more than 100 m; or
 - (b) which discharges or discharge into an area which is less than 300 m from the nearest boundary of an existing or planned -
 - (i) site of special scientific interest;
 - (ii) marine park or marine reserve;
 - (iii) fish culture zone;
 - (iv) wild animal protection area;
 - (v) coastal protection area; or
 - (vi) conservation area.
- I.2 A flood storage pond more than 10 ha in size.

J - MINERAL EXTRACTION

- J.1 An oil or gas extraction activity.
- J.2 A mining operation.
- J.3 A quarrying or quarry rehabilitation.
- J.4 A coal industry works with a handling capacity of more than 100 tonnes per day.

K - INDUSTRIAL ACTIVITIES

- K.1 An industrial estate.
- K.2 A brewery works with an annual production capacity of more than 0.4 million hecto litres.
- K.3 A crude oil refinery.
- K.4 A tannery or leather finishing factory with an annual production capacity of more than 500,000 m².
- K.5 A metallurgical works with a processing capacity of more than 200 000 tonnes per annum (expressed as metal).
- K.6 A cement works or concrete batching plant with a total silo capacity of more than 10 000 tonnes in which cement is handled and manufactured.
- K.7 A chemical or biochemical plant with a storage capacity of more than 500 tonnes and in which substances are processed or produced.
- K.8 An oil refinery.
- K.9. A petrol chemical plant with an annual production capacity of more than 70,000 tonnes.
- K.10 A tobacco or cigarette manufacturing plant in a stand-alone, purpose built building.
- K.11 A explosives depot or explosives manufacturing plant in a stand-alone, purpose built building.
- K.12 A sand depot with a site area of more than 1 ha in size.
- K.13 A bulk chemical storage facility.
- K.14 A dangerous goods godown with a storage capacity exceeding 500 tonnes.

L - STORAGE, TRANSFER AND TRANSHIPMENT OF FUELS

- L.1 A storage, transfer and transhipment of liquefied petroleum gas area with a storage capacity of not less than 200 tonnes.
- L.2 A storage, transfer and transhipment of liquefied natural gas area with a storage capacity of not less than 200 tonnes.
- L.3 A storage, transfer and transhipment of coal or ore area with a storage capacity of not less than 200 tonnes.
- L.4 A storage, transfer and transhipment of oil area with a storage capacity of not less than 200 tonnes.

M - AGRICULTURE

- M.1 A fish culture zone -
 - (a) more than 5 ha in size; or
 - (b) a boundary of which is less than 500 metres from the nearest boundary of an existing or planned -
 - (i) marine park or marine reserve;
 - (ii) gazetted beach.

N - COMMUNITY FACILITIES

- N.1 An abattoir with a daily slaughter capacity of more than 500 number of livestock.
- N.2 A crematorium, a quarantine station, or quarantine lairage, for animals.
- N.3 A wholesale market.

O - TOURIST AND RECREATIONAL DEVELOPMENTS

- O.1 An outdoor golf course and all managed turf areas.

- O.2 A marina designed to provide moorings or dry storage for not less than 30 vessels used primarily for pleasure or recreation.
- O.3 A horse racing course.
- O.4 A motor racing circuit.
- O.5 A open firing range.
- O.6 A open air concert venue with a capacity to accommodate more than 10 000 persons.
- O.7 A outdoor sporting facility with a capacity to accommodate more than 10 000 persons.

P - RESIDENTIAL AND OTHER DEVELOPMENTS

- P.1 A residential or recreational development, other than New Territories exempted houses, within Deep Bay Buffer Zone 1 or 2.
- P.2. A residential development -
 - (a) of not less than 2 000 flats; and
 - (b) not served by public sewerage networks before a flat is occupied.

Q - MISCELLANEOUS

- Q.1 All projects including new access roads, railways, sewers, sewage treatment facilities, earthworks, dredging works and other building works not expressly excluded partly or wholly in an existing or gazetted proposed country park or special area, a conservation area, an existing or gazetted proposed

marine park, a site of archaeological interest, and a site of special scientific interest, except for the following:

- (a) minor road, drainage, slope and utility maintenance works;
- (b) minor public utility works including the erection of electricity poles, telecommunication wires, joint boxes, waterpipes, header tanks, power lines and cables, and gas pipelines;
- (c) education and recreational facilities not otherwise designated projects and approved by the Country and Marine Parks Authority;
- (d) all earthworks relating to forestry, agriculture, fisheries and the management of vegetation;
- (e) any buildings covering a floor area of less than 500 m³;
- (f) footpath and facilities relating to sitting out areas;
- (g) minor facilities relating to the management and protection of marine parks, marine reserves, country parks and special areas;
- (h) all works not otherwise designated projects undertaken by the Country and Marine Parks Authority under section 4(b) of the Country Parks Ordinance (cap. 208) or section 4 of the Marine Parks Ordinance for developing country parks and marine parks and the provision of facilities for public enjoyment;
- (i) maintenance of existing waterworks installations; or

- (j) minor works such as improvements to catchwaters, hydrological stations and associated structures and village supply schemes.

Q.2 Underground rock caverns.

PART II

DECOMMISSIONING PROJECTS

1. Airports, including the aircraft maintenance and repair facilities.
2. A crude oil refinery.
3. A municipal, chemical or pathological waste incinerator.
4. A public utility - electricity power plant.
5. A public utility - gas generation plant.
6. A water treatment works of a treatment capacity of 100,000 m³ per day or more.
7. An installation for storage or disposal of radioactive waste.
8. A waste disposal facility for pulverised fuel ash, furnace bottom ash or gypsum.
9. A metallurgical works with melting capacity exceeding 200 000 tonnes per annum (expressed as metal).
10. A chemical incineration works.
11. A petroleum works.
12. An explosives depot or explosives manufacturing plant.
13. A bulk chemical storage facility.
14. A store for Liquefied Petroleum Gas with a storage capacity exceeding 200 tonnes.
15. A store for Liquefied Natural Gas with a storage capacity exceeding 200 tonnes.

16. A store for coal and ores with a storage capacity exceeding 200 tonnes.
17. A store for oil with a storage capacity exceeding 200 tonnes.
18. A facility for ship building or repairing more than 1 ha in size or with a lifting capacity in excess of 20 000 ton.

SCHEDULE 3

[ss. 5, 11, 16, 18 &

36 & Sch. 1]

MAJOR DESIGNATED PROJECTS REQUIRING ENVIRONMENTAL
IMPACT ASSESSMENT REPORTS

1. New town.
2. Engineering feasibility study of urban development projects with a study area covering more than 20 hectares or involving a total population of more than 100 000.
3. Engineering feasibility study of re-development projects with a study area covering more than 100 000 existing or new population.

SCHEDULE 4

[ss. 5, 11, 16, 18 &
36 & Sch. 1]

MATTERS THAT MAY BE SPECIFIED IN ENVIRONMENTAL PERMIT

1. The design, alignment, plan, layout or visual appearance of a designated project.
2. The physical scale, scope or extent of a designated project
3. The methods for carrying out a designated project or the timing, phasing or order of the stages of a designated project.

4. The amount, rate or quality of a discharge, emission or deposit of pollutants or wastes from a designated project, including the colour or temperature of, or amount or concentration of, a contaminant, impurity or other substance in, the discharge, emission or deposit.
5. Limits on the strength, severity or level of the environmental impact of a designated project.
6. The mitigation of the environmental impact of a designated project, and the timing, phasing or order of mitigation measures, including -
 - (a) pollution control or environmental protection equipment, processes, systems, practices or technologies;
 - (b) equipment, processes, systems, practices or technologies for the prevention, reduction, re-use, recovery and recycling of wastes or wastewater;
 - (c) equipment, processes, systems, practices or technologies for the management of wastes, including the storage, treatment or disposal of wastes;
 - (d) acoustic barriers and enclosures, noise insulation equipment, or equipment, processes, systems, practices or technologies for the avoidance, prevention, reduction, minimization or control of noise;
 - (e) equipment, processes, systems, practices or technologies for the avoidance, prevention, reduction, minimization or control of air pollution;or

- (f) processes, systems, practices, procedures or technologies for the conservation, preservation or protection of flora, fauna, ecological habitats, sites of special scientific interest, or of archaeological or historical importance, or resources.
- 7. Pollution control, environmental protection or other mitigation measures to be carried out outside the site of a designated project.
- 8. Compensation or restoration measures for the conservation, preservation or protection of flora, fauna, ecological habitat or other ecological resources, including replanting, relocation, re-establishment or rehabilitation measures, to mitigate an adverse environmental impact of a designated project.
- 9. Landscaping measures to mitigate the environmental impact of a designated project.
- 10. Programmes or exercises for monitoring the environmental impact of a designated project or the effectiveness of measures to mitigate its environmental impact, whether such impact may occur within or outside its [physical boundary] [site], and the review and audit of data and information derived from such programmes or exercises, including specification of -
 - (a) the parameters or impact to be monitored;
 - (b) the frequency of monitoring, or the procedures, practices, methods or equipment to be used for monitoring, including the maintenance and calibration of such equipment and quality assurance and laboratory accreditation procedures;

- (c) the standards or criteria to be used for evaluating and auditing monitoring data;
 - (d) plans and procedures for action in response to the results of such monitoring programmes or exercises, including action to intensify or increase monitoring, inspect or investigate revealed or indicated problems, or take remedial measures to address such problems;
 - (e) the nature, format or frequency of the reporting of the results and findings of monitoring or action plans and procedures.
11. Equipment, methods, processes, systems, procedures or practices for the construction, operation, use, implementation or decommissioning of a designated project.
 12. Requirements for the training, qualifications or expertise of personnel involved in the carrying out of a designated project.
 13. The preparation of management plans, procedures manuals or other materials and documents for guiding and regulating the carrying out of a designated project.
 14. Environmental studies, investigation or information to be obtained and submitted during the carrying out of a designated project.
 15. The release to the public of environmental impact assessment reports on monitoring or auditing work or other reports or information in relation to the assessment or carrying out of a designated project.
 16. The requirements for carrying out of environmental monitoring by accredited laboratories, or environmental audit by qualified personnel.

17. The requirements of the implementation and completion of mitigation measures to be checked and certified by qualified personnel, and for the submission of certified reports on the status of the implementation of mitigation measures.

Explanatory Memorandum

This Bill provides the framework for the assessment of the environmental impact of projects that are likely to have a significant effect on the environment. Part I of the Bill is preliminary. Clause 3 provides that the Ordinance will bind the Government but criminal proceedings may not be taken against the Government or Government servants carrying out their Government duties. The Chief Secretary will undertake a statutory review of their activities that are in breach of the Ordinance.

2. Part II deals with environmental impact assessment. Clause 4 provides that the projects set out in Schedule 2 and 3 are designated projects. The environmental impact assessment will be undertaken at the planning stage of a designated project (Clause 5).

3. For a project that has not previously been assessed or is otherwise exempted, an environmental impact study brief will issue based on the relevant technical memorandum (clause 16) and the project profile. (Clause 5)

4. Clause 6 provides for the environmental impact assessment report preparation. Clause 7 requires public exhibition and consultation. Subject to comments received in this process, a report will be approved under clause 8.

5. A person may not construct, use or operate a designated project in Schedule 2 without an environmental permit (Clause 9).

6. Clause 10 gives the procedure for application for an environmental permit. The permit will normally follow from the approval of the environmental assessment report and may be issued subject to conditions.
7. Clause 11 allows a person to surrender a permit. If a person responsible for a designated project ceases to be responsible for the project, the newly responsible person may apply for a new permit under clause 12. This permit will be based on the existing environmental report unless there is a substantial change in the designated project. Clause 13 provides for the holder to apply for a variation of the permit. Clause 14 provides for conditions under which the Director may cancel or vary the permit.
8. Provision is made for a register in clause 15.
9. Clause 16 provides for the preparation of a technical memorandum which is the statutory guideline that governs the Director and the Government in the exercise of discretions under the Ordinance.
10. Part VI deals with Appeals.
11. Part VII enables the Director of Environmental Protection to enforce the Ordinance giving powers to authorized officers to search property and seizing materials and taking samples.
12. Part VIII deals with offences for breaching the terms of an environmental permit, failing to obtain a permit and interference with authorized persons trying to enforce the Ordinance. Company directors and other officers may be criminally liable for offences undertaken by companies.
13. Part IX covers miscellaneous provisions. The Governor in Council may by order exempt designated projects (Clause 31). The Secretary may make regulations for prescribed matters and to

regulate appeals.

14. Schedule 1 defines terms for the Ordinance. Schedule 2 has 2 parts. The first deals with designated projects for construction and operation matters. The second part lists the designated projects for decommissioning matters. Schedule 3 lists major project that are designated projects. Schedule 4 includes matters that might be included in an environmental permit.