

**ETWB's comments on issues raised
at LegCo Members' meeting
with Wan Chai District Council members on 23 May 2002**

**Comments on issues raised by Wan Chai District Council (WCDC)
Members**

- (a) The concerned trees at Blue Pool Road were felled in December 2001 by the private lot owner. The slope on which the trees were located was the subject of a Dangerous Hillslope Order issued by the Buildings Department. There had in fact been several incidents of tree collapse on this slope in the past two years, posing a potential hazard to the public. Under the lease conditions of this lot issued in 1940, the owner did not need to obtain a consent from the Government before the trees could be felled. Government was unfortunately bound by these conditions and could not stop or reject the tree felling which was found to interfere with the slope stabilisation work. Nevertheless, D of Lands has advised the lot owner to consider replanting the trees after the slope stabilisation work. Also, if there is further redevelopment of the lot requiring lease modification, D of Lands will consider including appropriate conditions for tree planting in the lot.

The tree felling incident at Blue Pool Road is a rare case involving a pre-war land lease. Since around 1972, it has been our normal practice to incorporate a standard tree preservation or tree-felling clause in the lease conditions for private lots. Tree felling in these lots will need prior consent from D of Lands and may also be subject to a satisfactory compensatory landscaping/replanting scheme. This should provide adequate protection against unauthorized tree felling in those private lots granted since 1972. As regards new legislation proposed for the preservation of trees, we do not consider that it can be applied retrospectively to the old lots without Government breaching the original lease conditions.

- (b) AFCD did not give any permission for tree felling in the Blue Pool Road incident. As mentioned above, no consent from the

Government was required under the lease conditions for tree felling within the concerned lot.

As regards the proposal to consult District Councils on tree felling schemes in private lots, our legal advice is that Government should not disclose such information without the consent of the developer or owner. In a situation where a developer or owner informs the Government of his intention to fell trees even though there is no contractual requirement to do so (because there is no tree preservation clause), it is possible that such information is given to the Government on a confidential basis. On the other hand, where a developer or owner informs the Government of his intention to fell trees for the purpose of obtaining consent to tree-felling in accordance with a tree preservation clause, it might be argued that there is an implied term in the government lease that information provided for this purpose should not be used for another purpose (i.e. consultation with a third party).

Comments on issues raised by LegCo Members

- (a) There are adequate legislative provisions and administrative guidelines for the protection of trees on Government land. Whilst there is no single ordinance on “tree preservation”, a number of related Ordinances do exist to govern tree felling at different environs. These Ordinances include “Forests and Countryside Ordinance”; “Country Parks Ordinance and its Regulations”; “Public Health and Municipal Services Ordinance and its subsidiary legislation”; “Crimes Ordinances”; “Theft Ordinance”; “Town Planning Ordinance” and “Environmental Impact Assessment Ordinance”. We also issued a Works Bureau Technical Circular No. 14/2002 “Management and Maintenance of Natural Vegetation and Landscape Works, and Tree Preservation” in May 2002. This Circular demarcates, inter alia, the various authorities for tree preservation and felling. In fact, it is a mandate for all government projects that no trees should be unnecessarily lopped or felled. Under existing procedures, the

works departments are required to submit tree felling application to District Lands Office for approval after Director of Agriculture, Fisheries and Conservation or Director of Leisure and Cultural Services has expressed no objection to felling of any tree affected by the proposed construction works. For sensitive cases, the application will need to be referred to District Lands Conference for consideration.

For private projects, tree preservation would be implemented through relevant planning approval procedures and land lease conditions. For developments which require planning permission from the Town Planning Board, the Board can impose conditions on tree preservation and landscaping requirements. In new grant or lease modifications, appropriate tree preservation conditions will be included to provide that any tree growing on the lot or adjacent to it will not be interfered with without the prior consent of the D of Lands. D of Lands may also impose conditions on transplanting, compensatory landscaping or replanting.

- (b) The Antiquities and Monuments Office has advised that conservation of trees is outside the jurisdiction of the Antiquities and Monuments Ordinance (Cap. 53) and considered it a subject more appropriate for other Ordinances directly related to tree preservation. We will review relevant legislative provisions on tree preservation and consider whether and how best these can be improved to help conservation of trees on private land.

As regards the suggestion that the Administration should require contractors for slope maintenance works on private land to preserve trees, this is not feasible as they are not employed by the Government. Any controls for preservation of trees on private land can only be exercised through the lot owners in accordance with the lease conditions.

- (c) The Administration takes note of LegCo Members' concern and will review whether and how the existing legislation can be improved to protect trees on private land. We will make reference

to international practices and related legislation of overseas countries in conducting this exercise. We do not yet have a firm position regarding the proposal to legislate tree preservation. As has been rightly pointed out by the LegCo Members, the issue is complicated and involves lot owners' right of property. We need to ensure that the relevant legal rights are not unfairly affected by any proposed new legislation.