

二零零四年一月二十七日

討論文件

立法會規劃，地政及工務事務委員會

擬就保護古樹名木修訂《林區及郊區條例》

目的

我們建議向立法會提交《2004 年林區及郊區(修訂)條例草案》，訂定條文以保存香港的古樹名木。條文範圍涵蓋(a)樹齡超過一百年的古樹，以及(b) 屬於稀有樹種；具有歷史、文化、重要紀念意義；具有獨特生態、科學研究價值；或樹型特大特高的名木。本文件旨在尋求委員會支持上述建議。

背景和論據

現行法例對樹木的規管

2. 根據《林區及郊區條例》(香港法例第 96 章)，任何人無合法權限或辯解而在林區或植林區內，砍伐、切割、焚燒或以其他方式摧毀樹木或生長中植物，即屬違法。但條例同時授權漁農自然護理署署長可以酌情發出書面特別許可，批准有關人士在某些條款及條件規限之下，進行上述被禁止的事項。而根據條例，「林區」指「覆蓋著自然生長樹木的政府土地範圍」；「植林區」則指「種有樹木或灌木或已播下樹木或灌木種子的政府土地範圍」。

3. 另外，《林務規例》(香港法例第 96 章附屬法例)規定，任何人無合法辯解，不得售賣、管有、保管或控制二十七類種植於政府土地上稀有品種的植物及其部分。換句話說，除了上述二十七類稀有品種以外，其他品種的植物及樹木，不管樹齡大小，是否具有特殊文化、歷史意義或其他珍貴價值，均被視作一般樹木，並沒有一套針對性的保護法例。

4. 政府曾表明，政府內部指引清楚說明政府人員有責任保護樹木。有關指引更要求，在進行規劃、設計和建築工程時，必須先顧及保存樹木的需要，充分考慮各個可行設計，以盡量保存樹木。如無可避免需要砍伐樹木，有關人士必須事先取得批准。

現行做法的不足

5. 忽略樹木的其他珍貴價值。現行法例(《林務規例》)只集中關注樹木的品種，對於樹木擁有的其他珍貴價值，例如樹齡久遠；具

有獨特歷史、文化或生態價值；體型特大特高等，完全沒有顧及。鑑於這些古樹名木的價值甚為獨特，甚至是唯一而不可能有所代替。一旦被砍伐或遭損害而枯死，這些價值也隨之永遠喪失。為此，我們有需要訂立針對性的條文，確保這些古樹名木不會受到人為破壞，或者因為疏忽照顧而被損害。

6. **保護政策過於被動。**爲了保護珍貴樹木免受各種發展計劃威脅，政府除了依靠涵蓋範圍狹窄的《林務規例》之外，還訂出一套內部指引作爲最後把關。不過，從過去歷次民間保護樹木事件，清楚反映利用行政指引的規管方式，效果極不理想。政府往往在發展項目進行期間，遇上民間很大的反對壓力，才會反過來考慮設法保護有關樹木。我們因此認爲政府目前的做法消極被動，未能有效保護僅存的古樹名木，故此有必要以立法形式，化被動爲主動，先把上述珍貴樹木納入重點保護範圍，同時公布其所在位置。讓公眾人士一早知悉受保護樹木的具體位置，以便在擬訂發展計劃時能夠早有打算。

7. **欠缺專責部門保護樹木。**政府目前沒有專責管理樹木的統一機構。據了解，只有漁農自然護理署和康樂及文化事務署擁有專業的樹木管理隊，但兩個部門管轄範圍有限，分別負責郊野公園，以及路邊五米範圍內的樹木護理。至於生長在其他政府土地上，例如公共屋邨、醫院、政府大樓附近的樹木，則交由相關部門負責。鑑於這些部門缺乏樹木護理的專業人員，各部門自行其事，導致樹木得不到適當護理之餘，即使接獲市民舉報，指出樹木受到蟲害或者風雨威脅時，部門也無法及時妥善處理。爲了解決目前權責分散，欠缺統籌的弊病，擬議中的條例草案便規定，樹木一旦獲納入爲古樹名木，其護理工作便交由漁農自然護理署全權負責。

其他地方的有關法例

8. 不少地區政府已經制訂一套完備的保護樹木法例，包括英國、澳洲、中國內地及台灣等。而當中有些地方如北京、上海、廣東省、台北市等，更擁有專責保護古樹及名木的法例，可見香港在這方面確實比較其他地方落後。鑑於本條例草案屬於私人條例草案，涵蓋範圍有所限制，未能一如外地的相關法例對樹木有全面的保護。我們希望政府以本條例草案作爲起點，進一步制訂全面保護樹木的法例。

立法會過往就保護古樹名木的辯論

9. 立法會於 2001 年 5 月 23 日一致通過由蔡素玉議員提出的議案。議案措辭如下：

“鑒於目前政府未有一套有效的措施保護樹木，以致本港各種樹木，例如特老和特大、稀有和珍貴、具有歷史價值和重要意義的樹木，可能基於發展或其他理由而遭摧毀、損害或移去，本會促請政府提出更有效的措施，切實保護及保留上述古樹名木。”

公眾諮詢

10. 我們在 2003 年八月進行了公眾及專業團體的諮詢工作。我們向二十四個專業團體及環境保護組織發出諮詢文件(團體名單見附件一)，並將諮詢文件上載民建聯網站，向公眾諮詢。我們在諮詢期結束後收到的書面回應中(見附件二)，並沒有反對立法保護古樹名木的意見。

立法建議

11. 我們建議向立法會提交《2004 年林區及郊區(修訂)條例草案》，目的是把具保存價值的古樹名木逐一列入重點保護；並透過公布該樹木的具體位置，讓工程倡議者盡早知悉，以便在擬訂發展計劃時加以配合，並停止破壞上述珍貴樹木；同時能夠推動有關當局在保護樹木的工作上訂出更明確的目標。修訂條例草案的主要條文如下--

- (a) 古樹名木的定義 — 擬議中的條例草案將保護：
 - (i) “古樹”指一百年以上樹齡；
 - (ii) “名木”指樹木：
 - 屬於稀有品種；或
 - 具有歷史、文化和重要紀念意義；或
 - 具有獨特生態及科學研究價值；或
 - 樹幹直徑 0.8 公尺或以上；或樹幹圍 2.5 公尺或以上；或樹高 15 公尺或以上。
- (b) 適用範圍 — 適用於所有生長在政府土地上的古樹及名木。如特區政府將種植有古樹或名木的土地批租予第三者，本條例對該古樹或名木仍然適用。
- (c) 樹木保護範圍 — 指距樹冠層垂直投影 5 公尺、樹冠層以上 5 公尺及深入地底 5 公尺的範圍，或漁農自然護理署署長認為在實際不可行的情況下，考慮了有關樹木所在地的環境，並認為合適的範圍。在保護範圍內，任何人不准砍伐該樹木或者作出任何損害該樹木的行為。
- (d) 制定古樹名木冊 — 漁農自然護理署署長須制定，並載有宣佈古樹或名木的公告及圖則，和備存在其辦事處，以供公眾人士在任何合理時間查閱。署長亦可藉公告修改、更正、增加及刪減公告及圖則。
- (e) 對古樹名木的一般管制 — 漁農自然護理署署長及其以書面授權的任何人士，可在任何保護範圍設置圍欄；保護或護理修剪任何古樹或名木。政府如在任何政府土地進行的工程，特區政府須在有關工程合約加入有關保護古樹或名木的條

款，包括在工程進行前進行樹木調查報告。

- (f) 禁止對古樹名木作出的行爲 — 樹木一旦根據本條例草案受到法定保護，除非按照漁農自然護理署署長批准的規定進行，否則任何人便不准砍伐該樹木或者作出任何損害樹木的行爲。惟在主管當局授權下，則可以對有關樹木作出具保護性的行爲。
- (g) 豁免 — 只有當漁農自然護理署署長合理地相信有關古樹或名木已死亡；會對公眾構成嚴重危險；或在別無其他可保存有關古樹或名木的情況下，並基於重大公眾利益的因由，才可宣布豁免任何古樹名木受本條例所規限，或修改、更正或增刪已宣布的古樹名木及其圖則。
- (h) 重新種植樹木責任 — 如任何人違反本條例草案而損害古樹或名木導致其枯萎或死亡，漁農自然護理署署長可令土地的使用人在原有地點重新種植另一棵大小及品種認為合適的樹木，及命令該古樹名木所在的原有地點不得用作其他用途。如原有土地被出售，重新種植樹木的責任將轉嫁在該土地將來的持有人身上。
- (i) 懲罰 — 任何人違反本條例，作出損害古樹或名木的行爲，一經循簡易程序定罪，可處罰款第 6 級及監禁 2 年。
- (j) 本部對特區政府具約束力。

如委員同意，我們建議在本立法年度內向立法會提交條例草案。

徵詢意見

12. 請各委員支持上文第 11 所述的各項建議。

蔡素玉議員辦事處
二零零四年一月

曾發出諮詢文件的團體名單

1.	香港工程師學會 (The Hong Kong Institute of Engineers)
2.	香港建築師學會 (The Hong Kong Institute of Architects)
3.	香港規劃師學會 (Hong Kong Institute of Planners)
4.	香港園境師學會 (The Hong Kong Institute of Landscape)
5.	香港建築業協會
6.	香港建造商會有限公司
7.	香港地產建設商會
8.	香港物業管理公司協會
9.	香港房屋經理學會
10.	香港測量師學會 (The Hong Kong Institute of Surveyors)
11.	香港律師會 (The Law Society of Hong Kong)
12.	香港大律師公會 (Hong Kong BAR Association)
13.	香港生態旅遊學會
14.	香港地產行政學會 (Hong Kong Institute of Real Estate Administration)
15.	市區重建局
16.	綠色和平
17.	綠的歡欣
18.	Professor C. Y. Jim Chair of Geography Hong Kong University,
19.	Friends of Earth
20.	長春社 (The Conservancy Association)
21.	綠色力量 Green Power
22.	綠田園基金會
23.	思匯 (civil-exchange)
24.	世界自然(香港)基金會 World Wild (Hong Kong) Fund



綠的歡欣 GREEN FUN

(By Fax and Post)

The Green Fun Committee
綠的歡欣委員會

范超洪女士 Ms. J. Betty Tung
Honorary Advisor

譚惠珠女士 Miss Maria Tam
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王碧瑜博士 Dr Rosanna Wong
Hon Secretary

李祖德先生 Mr Cho-jat Lee
Hon Treasurer

鍾逸傑爵士 Sir David Akers-Jones

陳鎮聖先生 Mr Thomas C Y Chen

周錦超博士 Dr Lawrence Chau

鍾瑞明先生 Mr Shui-ming Chung

馮國權博士 Dr Victor Fung

詹志勇教授 Prof Chi-yung Jim

簡楚茵先生 Mr Keith Kerr

張婉英女士 Mrs Lana Kinoshita

藍錫賢先生 Mr David Lan

梁榮英議員 The Hon Chun-ying Leung

李麗賢小姐 Ms Cecilia Li

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王倩儀女士 Ms Anissa Wong

王敏超先生 Mr Ronnie M C Wong

邱何恩德博士 Dr Katherine Yau

沈柏華先生 Mr Thomas Sin
Secretary

Hon Auditors
Messrs Charles Chan,
Ip & Fung CPA Ltd.

Publicity & Public Education
Sub-Committee
宣傳及公共教育委員會

詹志勇教授 Prof Chi-yung Jim
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馬家輝博士 Dr Ka-fai Ma

譚惠珠女士 Miss Maria Tam

邱何恩德博士 Dr Katherine Yau

沈柏華先生 Mr Thomas Sin
Secretary

10 September, 2003

Hon Choy So Yuk
DAB Secretariat
Rm. 523, West Wing, Central Government Offices
11 Ice House Street, Central
Hong Kong

Dear So Yuk,

Re: Green Fun Comments on the Proposed "Old and Valuable Tree Bill"

On behalf of Green Fun, I thank you for your letter of 13 August, 2003 seeking our comments on your proposed "Old and Valuable Tree Bill".

While we are appreciative of your kind concern and efforts for the preservation of old and valuable trees in Hong Kong, our Green Fun Committee feels that Hong Kong needs a comprehensive Urban Tree Ordinance and that the proposed Bill could better be included as a part of the proposed Urban Tree Ordinance drafted and submitted first to the HKSAR Government in April, 2002. Our more detailed response to your proposed Bill may be found in Encl. 1.

If you need further clarifications, please let us know.

*Yours sincerely,
Maria*

Maria Tam
Chairman

(Encl.)

c.c. Mr Alex Li, ETWB

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(Encl. 1)

**Comments from Green Fun on
Hon Choy So Yuk's Proposed "Old and Valuable Tree Bill"**

(1) The proposed Bill is too narrowly focused on one aspect of the much bigger urban greening panorama. It could better be included as a part of the proposed Urban Tree Ordinance drafted by the Green City Professional Group of the Green Fun Committee, and submitted to the HKSAR Government in April 2002. This more comprehensive Green Fun proposal attempts to provide a modern and encompassing legislation to Hong Kong with a view to:

"Promote and encourage the planting, maintenance, and protection of trees from unnecessary damage and removal, on both public and private lands, so as to enhance urban environmental quality, sustain environmental health and improve the quality of life of citizens, through establishing policies, guidelines and practices for an orderly and cost-effective system of achieving the intent of maximizing the green cover of the city in both quantity and quality terms with minimum danger or nuisance to people and property." (Extract from the preamble to A Draft Urban Tree Ordinance for Hong Kong, Green Fun Committee, 2002).

(2) If Hong Kong were to have a tree ordinance, we propose to have a comprehensive one that covers all aspects of urban greening rather than focusing just on the protection of a small subset of trees, albeit highly valuable and worthy of special protection effort. The Green Fun Draft Ordinance has a full section (Part V Tree Protection) which covers the stipulations in the proposed Old and Valuable (OVT) Bill. Taking the legislative procedure for urban trees in two stages (first the OVT Bill, and then the comprehensive one) may not be an efficient use of resources, efforts and time. We suggest to merge the two proposed Bills and promote it in one exercise.

(3) The proposed Bill covers only government land and land designated by the government as "protection area", and as such it does not give proper protection to many worthwhile trees situated outside these two categories of lands.

(4) The proposed Bill could include clauses to ascertain proper and timely care and maintenance of the designated OVTs.

(5) The term "protection area" has been given two different meanings in the

Consultation Brief, namely in the sense of a piece of land designated as protected area (para. 10), and in the sense of an defined area around, above and below a protected tree (para. 11, 13, etc.). This ambiguity needs to be rectified. We suggest to use the alternative term "tree cordon zone" for the second meaning in both the Consultation Brief and the Bill itself.

(6) The height at which both the trunk diameter and trunk girth should be measured should be fixed at 1.4 m height from the ground. This height is widely and internationally accepted by the forestry profession.

(7) There is a need to specify the measurement of the the trunk diameter or girth of Banyan trees (genus Ficus) which often have aerial roots lignified (becoming woody) and fused with the original trunk. Our suggestion is to include all the lignified aerial roots as part and parcel of the trunk if they are physically attached to the trunk.

(8) There is a need to specify that for a tree that branches at a level below 1.4 m, the trunk diameter or girth should be measured at a height immediately below the branching.

(9) There is a need to specify that for a tree that sends out multiple trunks, the trunk diameter and girth should be the sum of the constituent multiple trunks.

(10) We propose to specify that the Old and Valuable Tree (OVT) Register shall be part and parcel of the Ordinance.

(11) The term "Director" has been used in the Bill. Does it mean Director of AFCD? If so, does it mean that the AFCD will become the authority of OVTS regardless of whether a tree dwells on urban or countryside land.

(12) We propose to mark all the designated OVTS on Outline Zoning Plans, which have recently included antiquities and monuments. The OVTS should be considered as cultural heritage of the community.

(13) For OVTS that are damaged, the proposal to ask a person to plant a tree of comparable size, age and species is not practical, as it is quite impossible to find an old or rare tree to plant as a compensation.

(14) The maximum fine of HK\$100,000 is far too low to act as a deterrent. By

any yardstick, an old tree of over 100 years of age or a rare tree is worth far more than this sum. In addition to compensating for the value of the lost tree, there should be a punitive element in the fine. I propose to use a simple and widely adopted formula (such as the one adopted by the International Society of Arboriculture) to calculate the monetary value of a lost tree. The punitive portion could be raised to a maximum of \$1M. The fine thus could include two components, namely the monetary value of the tree and the punitive component.

(15) In paragraph 4 of the Consultation Brief, the fact that almost all US and Canadian towns and cities have a proper urban tree ordinance, and that Singapore had enacted one back in 1975, deserve to be mentioned.

(16) In paragraph 16E(1)(iii), the word "subsistence" should read "substance".

立法保護古樹名木問卷調查

民建聯將計劃於下個立法年度提出保護古樹名木的議員私人條例草案，草案主要內容是列出何為要受保護的古樹名木、具體的保護措施及罰則等條文。現以問卷形式將草案內的主要內容列出，以諮詢閣下/貴團體的意見。

完成之問卷請於九月十二日前傳真回本聯盟立法會議員秘書處(傳真號碼：2147 9493)。多謝!

1. 請問你是否同意一些有特別價值或特大特老的樹木，有需要特別法例加以保護？

1. 同意 2. 不同意 3. 無意見

2. 我們要求特別保護主要分三類，分別是古樹、大樹及具特別價值樹木。首先我們將古樹定為一百年樹齡以上的樹木須作特別保護，你認為一百年是否合適？

1. 應訂為五十年或以上 2. 應訂為八十年或以上
3. 一百年以上是合適的 4. 應訂為一百二十年以上 5. 無意見

3. 就如何界定何為大樹，我們參照外地類似的保護樹木法例，將樹幹直徑達 0.8 米(即係約 2 呎 8 吋)或以上的大樹納入受特別保護範圍，你認為這標準是？

1. 過緊，應將直徑的長度調高 2. 適合
3. 過鬆，應將直徑的長度調低 4. 無意見

I suggest 0.6 m

4. 同時，我們將受保護大樹的樹高定為 15 米(約 50 呎)或以上，你認為？

1. 過緊，應將要求的高度調高
3. 過鬆，應將要求的高度降低 4. 無意見

I suggest 10 m

5. 還有，我們將受保護大樹的樹幹圍定為 2.5 米(即約 8 呎 4 吋)或以上，你認為？

1. 過嚴，應將要求的圍度提高 2. 合適
3. 過鬆，應將要求的圍度降低 4. 無意見

I suggest 2 x 0 m

6. 至於具特別價值的樹木，我們將訂為具歷史、文化、重要紀念意義和具有獨特生態、科學研究的樹木，你認為是否合適？

1. 合適 2. 不合適 3. 無意見

立法保護古樹名木問卷調查

民建聯將計劃於下個立法年度提出保護古樹名木的議員私人條例草案，草案主要內容是列出何為要受保護的古樹名木、具體的保護措施及罰則等條文。現以問卷形式將草案內的主要內容列出，以諮詢閣下/貴團體的意見。

完成之問卷請於九月十二日前傳真回本聯盟立法會議員秘書處(傳真號碼: 2147 9493)。多謝!

1. 請問你是否同意一些有特別價值或特大特老的樹木，有需要特別法例加以保護？

1. 同意 2. 不同意 3. 無意見

2. 我們要求特別保護主要分三類，分別是古樹、大樹及具特別價值樹木。首先我們將古樹定為一百年樹齡以上的樹木須作特別保護，你認為一百年是否合適？

1. 應訂為五十年或以上 2. 應訂為八十年或以上
3. 一百年以上是合適的 4. 應訂為一百二十年以上 5. 無意見

3. 就如何界定何為大樹，我們參照外地類似的保護樹木法例，將樹幹直徑達 0.8 米(即係約 2 呎 8 吋)或以上的大樹納入受特別保護範圍，你認為這標準是？

1. 過緊，應將直徑的長度調高 2. 適合
3. 過鬆，應將直徑的長度調低 4. 無意見

I suggest 0.6 m

4. 同時，我們將受保護大樹的樹高定為 15 米(約 50 呎)或以上，你認為？

1. 過緊，應將要求的高度調高
3. 過鬆，應將要求的高度降低 4. 無意見

I suggest 10m

5. 還有，我們將受保護大樹的樹幹圍定為 2.5 米(即約 8 呎 4 吋)或以上，你認為？

1. 過嚴，應將要求的圍度提高 2. 合適
3. 過鬆，應將要求的圍度降低 4. 無意見

I suggest 2.0m

6. 至於具特別價值的樹木，我們將訂為具歷史、文化、重要紀念意義和具有獨特生態、科學研究的樹木，你認為是否合適？

1. 合適 2. 不合適 3. 無意見

7. 除了樹木本身，我們會就樹木方圓五米範圍，包括樹頂及地底部份，列作保護範圍，如樹木本身同樣受到保護，你認為方圓五米的要求是？

- 1. 過闊，應將有關闊度降低
- 2. 合適
- 3. 過窄，應將有關闊度提高
- 4. 無意見

樹頂部份應保護

8. 我們建議的條文中，提出若將來有人故意破壞古樹名木令其死亡，政府有權命令違例者重新種植另一棵合適大小及品種的樹木。你是否贊成有關建議？

- 1. 贊成
- 2. 反對
- 3. 無意見

至少 15m 以
預留樹木生
長空間

9. 同時，我們亦建議若有人故意破壞古樹名木令其死亡，政府亦可命令該樹原本已劃作保護範圍的土地不能因樹木已死亡而重新獲得規劃發展，以減低因有人想發展該土地而故意破壞古樹名木的可能。你是否贊成有關建議？

- 1. 贊成
- 2. 反對
- 3. 無意見

10. 我們建議就破壞古樹名木行爲，最高可被判罰款十萬及監禁 2 年。你認為有關刑罰是？

- 1. 過低
- 2. 合適
- 3. 過高
- 4. 無意見

個人姓名/團體名稱：吳世捷 WWF



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Our Ref.: CHK/ LAW S1 (iii)

Hon. Choy So Yuk
DAB Legislative Councillor
6/F China Harbour Building
370 King's Road
Hong Kong

17 September 2003

Dear Hon. Choy,

**WWF Hong Kong's Responses on
Proposed Old and Valuable Tree Bill - Additional Comment**

Thank you for your consultation document on the Proposed Old and Valuable Tree Bill. Further to our comments to you on 10 September 2003, we would like to submit our additional comments to further improve the proposed draft Bill, which are as follows:

1. Under the draft Bill Section 16E (2c), if the Director reasonably believes that -
 - (c) there are other reasons for public interest, may, by notice of Gazette, declare -
 - (d) any relevant old tree, valuable tree or protection area to be exempted from this Part; or
 - (e) amendment, correction, addition or deletion in accordance with section 16C(7).

We would like to suggest that vegetation management (e.g., tree cutting and planting) for biodiversity conservation under an approved habitat management plan should be regarded as a public interest and should be exempted under the draft Bill.

2. Please clarify the full title, role and function of 'Director' as proposed in the Bill.
3. Moreover, the Bill also does not address the problems with the current Forestry and Countryside Ordinance in protecting old and valuable trees, such as the lack of a unified organization in maintaining trees. Therefore, even though the 'Director' may list old and valuable trees, these trees may still die through neglect.
4. Furthermore, we also concern which authority would decide whether trees are of historical, cultural, or memorial value. The judgement on whether particular trees are of memorial value may be controversial among different community members.

Thank you for your kind attention.

Yours sincerely,


Dr Alan Leung
Senior Conservation Officer

《2004 年林區及郊區(修訂)條例》

(草擬稿)

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本條例草案

旨在

修訂《林區及郊區條例》，就保存 —

- (a) 一百年以上樹齡的樹木；及
- (b) 具有下述特質的樹木 —
 - (i) 大樹；
 - (ii) 稀有品種；
 - (iii) 具有歷史、文化、重要紀念意義；或
 - (iv) 具有獨特生態及科學研究價值，

以及為附帶引起的事宜或相關事宜，訂定條文。

由立法會制定。

1. 本條例簡稱

本條例可引稱為《2004 年林區及郊區(修訂)條例》。

2. 詳題

《林區及郊區條例》(第 96 章)詳題現予修訂，在“事宜”之前加入“及古樹名木”。

3. 簡稱

第 1 條現予修訂，廢除“《林區及郊區條例》”而代以“《林區、郊區及古樹名木保護條例》”。

4. 釋義

第 2 條現予修訂 —

(a) 在“獲授權人員”的釋義之後，廢除句號而代以分號；

(b) 加入 —

““土地使用人” (land user) 指任何由特區政府以短期租約、歸屬令、撥地或其他非政府租契形式得到使用政府土地的權利的人；

“大樹” (large tree) 指任何樹木的 —

(a) 樹幹直徑 0.8 公尺或以上者；或

(b) 樹幹圍 2.5 公尺或以上者；或

(c) 樹高 15 公尺或以上者；

“古樹” (old tree) 指一百年以上樹齡的樹木及根據第 16C(1)條宣布的古樹；

“古樹名木冊” (old and valuable tree register) 指根據第 16C(6)條制定的古樹名木冊；

“名木” (valuable tree) 指 —

(a) 大樹；

(b) 稀有品種的樹木；

(c) 具有歷史、文化和重要紀念意義的樹木；或

(d) 具有獨特生態及科學研究價值的樹木，

及根據第 16C(2)條宣布的名木；

“政府土地” (Government land) 指並非以政府租契形式批租的任何政府土地；

“樹木保護範圍” (tree protection zone) 指 —

(a) 署長根據第 16C(3)條宣布的樹木保護範圍與及，在合適的情況下，該樹木保護範圍不小於 —

(i) 樹冠層垂直投影 5 公尺範圍內；及

- (ii) 樹冠層以上 5 公尺範圍；及
 - (iii) 樹冠層垂直投影 5 公尺範圍內的平均地面以下 5 公尺範圍；或
- (b) 在(a)(i)至(iii)段所述範圍是實際不可行的情況下，署長可考慮有關樹木所在地的環境並認為合適的範圍及根據第 16C(3)條宣布的樹木保護範圍；
- (c) 為免生疑問，現宣布：如第(a)段的條文與第(b)段的條文有任何抵觸之處，須以第(b)段的條文為準；

“樹冠層”(canopy) 指樹木最上一層樹葉及樹枝伸展範圍；

“樹幹直徑”(trunk diameter) 指離地面 1.3 公尺所量測之樹木直徑；

“樹幹圍”(girth) 指離地面 1.3 公尺所量測之樹木周圍。”

5. 加入副標題

在緊接標題“罪行、懲罰及沒收”之前加入 —

“第 I 部 - 林區保護”。

6. 加入副標題和條文

在緊接第 16 條之後，加入 —

“第 II 部 - 古樹及名木保護

第 16A 條 適用範圍

(1) 除第(2)款或其他條例另有規定外，本部適用於所有生長在政府土地的古樹及名木及其樹木保護範圍。

(2) 為免存疑，現宣布：如附表 2 所述的條文或其任何部份與

本部的條文有任何抵觸之處，須以本部的條文為準。

第 16B 條 條例的約束力

除本條例或其他條例另有規定外，本部對特區政府具約束力。

第 16C 條 古樹名木的宣布

(1) 署長如有理由相信任何生長在政府土地的樹木的樹齡在一百年或以上，可藉憲報公告宣布該樹木為“古樹”。

(2) 署長如有理由相信任何生長在政府土地的樹木是 —

- (a) 大樹；或
- (b) 稀有品種；
- (c) 具歷史、文化、重要紀念意義；或
- (d) 具獨特生態或科學研究價值，

可藉憲報公告宣布該樹木為“名木”。

(3) 根據第(1)或(2)款作出的宣布可包括該古樹或名木的樹木保護範圍，作為有關古樹或名木的一部分。

(4) 在根據第(1)或(2)款作出的宣布刊登前，署長須在清楚顯示其擬宣布為古樹、名木或樹木保護範圍(按情況而定)的位置的圖則上簽署。

(5) 根據第(1)或(2)款發出的公告，須包括存放根據第(4)款簽署的圖則的提述。

(6) 署長須制定古樹名木冊而該古樹名木冊須載有 —

- (a) 根據第(1)或(2)款發出的公告；及
- (b) 根據第(4)款作出的圖則；。

(7) 署長根據第(6)款制定的古樹名木冊須 —

- (a) 備存在其辦事處，以供公眾人士在任何合理時間查閱；及
- (b) 根據第(8)款的修改、更正、增加或刪減予以修訂。

(8) 署長可藉憲報公告修改、更正、增加或刪減根據第(1)或(2)款發出的公告及根據第(4)款作出的圖則。

(9) 爲免存疑，現宣布：本條中提述的“生長”包括“轉植”和“再植”。

第 16D 條 對古樹名木的一般管制

(1) 署長及其以書面授權的任何人士，爲施行本條例，可於任何時間 —

- (a) 在任何樹木保護範圍設置、維修或移走圍欄；或
- (b) 保護、護理、養護或保存任何古樹或名木。

(2) 如特區政府將在政府土地進行任何工程，特區政府須在有關工程合約加入有關保護古樹或名木的條款。

(3) 第(2)款所述的“有關保護古樹或名木的條款”包括 —

- (a) 在有關工程進行以前，有關承辦商須向署長提交該工程的書面樹木調查報告，而該報告須包括工程進行範圍(包括工程直接影響的範圍)內 —
 - (i) 是否有古樹或名木；
 - (ii) 所有大樹；及
 - (iii) 所有樹木的品種；及
- (b) 署長須在收到該報告的合理時間內 —
 - (i) 確認有否樹木應宣布爲古樹或名木而未有作出有關宣布，如有的話，他須立即根據第 16C 條作出有關宣布；或
 - (ii) 向有關承辦商發出保護或限制指示，而該指示包括禁止砍伐等作爲是署長合理地認爲需要保護有關樹木的作爲。

第 16E 條 禁止作出涉及某些古樹名木的作為

- (1) 除第(2)款另有規定外，任何人均不得 —
- (a) 在樹木保護範圍內 —
 - (i) 挖掘或進行任何工程(除非該工程獲署長根據第 16D 條許可)；
 - (ii) 種植；
 - (iii) 砍伐古樹或名木；或
 - (iv) 處理泥土、危害樹木生長的物料或垃圾；或
 - (b) 切割、焚燒、移走、污損、毒害、或作出任何蓄意損害古樹或名木生長的作為，

但如按照署長根據第 23 條授予書面特別許可，則不在此限。

- (2) 如署長合理地相信 —
- (a) 有關古樹或名木已死亡；或
 - (b) 有關古樹、名木或樹木保護範圍會對公眾構成嚴重危險；或
 - (c) 在別無其他可保存有關古樹或名木的情況下及基於重大公眾利益的因由，

可藉憲報公告宣布 —

- (d) 豁免任何古樹、名木或樹木保護範圍受本部所規限；
 - 或
 - (e) 根據第 16C(8)條作出修改、更正、增加或刪減。
- (3) 如署長合理地相信任何古樹或名木及其樹木保護範圍內由於任何人(包括其代理人、工人或承辦商)違反第(1)款而導致枯萎或死亡，他須 —
- (a) 除本條例另有懲罰外 —
 - (i) 命令該人或有關土地使用人於合理時間內在

該樹木保護範圍重新種植另一棵大小及品種
他認為合適的樹木；或

(ii) 如該人或有關土地使用人(不論任何原因)未
能依循署長根據第(i)段發出的命令—

(A) 命令該人作出懲處性(不少於 1,000,000
元)的金額補償；及

(B) 循民事程序追討根據上述(A)段作出的
金額；及

(b) 命令該樹木保護範圍不得作其他用途。

第 16F 條 政府土地內樹木保護範圍不因批租而撤消

(1) 如特區政府將任何政府土地以任何方式批租予第三者而
該政府土地包含任何樹木保護範圍，本部對該樹木保護範圍仍然適
用。

(2) 為施行本條，地政總署署長須在批租文件(不論以租契，撥
地或短期租約或其他文件) —

(a) 加入第 16E 條的禁止行為(在適當之處，可經或不
經修改)的條款；或

(b) 為有效施行保護古樹或名木，加入任何條款(須經署
長同意)。

第 16G 條 對署長的決定提出上訴

(1) 任何針對署長在本部的決定的利害關係人可根據《行政上
訴委員會條例》向行政上訴委員會提出上訴。

(2) 為免生疑問，現宣布：本條所提述的“決定”(decision)包
括—

(a) 根據第 16C 及 16E 條所作出的任何宣布；

(b) 根據第 16D 條所作出的任何授權或指示；

- (c) 根據第 16E 條所作出的任何命令；
- (d) 根據第 16F 條所作出的任何同意；及
- (e) 根據第 23 條所授予的任何許可證。

第 III 部 - 雜項條文”

7. 禁止在林區等地方作出的作為

在緊接第 21 條之後 —

“第 21A 條 樹木保護範圍的禁止行為

任何人無合法權限或合理辯解違反第 16E(1)條即屬犯罪。”

8. 懲罰和沒收

第 22 條現予修訂，加入 —

“(1A) 任何人違反第 21A 條，一經循簡易程序定罪，可處以第 6 級罰款及監禁 2 年。”

9. 特別許可證

第 23 條現予修訂，廢除“或郊區”而代以“、郊區或樹木保護範圍”。

10. 修訂附表

附表現予修訂 —

- (a) 將其重編為附表 1；
- (b) 在方括號內“19”前加入“18、”。

11. 修訂附表 2

加入 —

“附表 2

[第 16A(2)條]

如以下條文或其任何部份與第 II 部的條文有抵觸須以第 II 部的條文為準 —

條例	簡稱	條文等
第 106 章	《電訊條例》	第 17(1)條有關干擾電訊的樹木
第 357 章	《供電網絡(法定地役權)條例》	第 4 條有關法定地役權
第 372 章	《九廣鐵路公司條例》	第 27 條有關樹木的移走

12. “附表 1”取代“附表”

修訂第 17(1)及(2)(a)、18、19 和 22(2)、(3)及(4)條，廢除“附表”而代以“附表 1”。

相關修訂

《公職指定》

13. 修訂附表

修訂《公職指定》(香港法例第 1 章，附屬法例 C)的附表，廢除 —

“漁農自然護理署署長 林區及郊區條例(第 96 章)，第 22(5)及 23 條。”
而代以 —

“漁農自然護理署署長 林區、郊區及古樹名木保護條例(第 96 章)，
第 22(5)及 23 條。”

《水務設施規則》

14. 釋義

修訂《水務設施規例》(香港法例第 1 章，附屬法例 A)第 40 條規例“獲授權人員”的釋義中第(d)段，廢除“林區及郊區條例”而代以“林區、郊區及古樹名木保護條例”。

《野生動物保護條例》

15. 釋義釋義

修訂《野生動物保護條例》(香港法例第 170 章)第 2 條 —

- (a) “獲授權人員”的釋義中第(d)段，廢除“林區及郊區條例”而代以“林區、郊區及古樹名木保護條例”；
- (b) “自然生態區”的釋義中第(a)段，廢除“林區及郊區條例”而代以“林區、郊區及古樹名木保護條例”

《行政上訴委員會條例》

16. 修訂附表

修訂《行政上訴委員會條例》(香港法例第 442 章)附表，加入 —

“60. 《林區、郊區及古樹名木保護條例》署長就第 II 部作出的決定。
(第 96 章)”

《摘要說明》

本修訂條例草案旨在就保存一百年以上樹齡的樹木，大樹，稀有的樹木品種，具有歷史、文化、重要紀念意義，具有獨特生態、科學研究的樹木，修訂《林區及郊區條例》，以及為附帶引起的事宜或相關事宜，訂定條文。

2. 草案第 6 條修訂本條例，加入新條文(新第 16A 至 16G 條)，提供古樹和名木的宣布和保護。
3. 草案第 7 及 8 條修訂本條例，就違反第 6 條的新條文令的有關罪行可以處理。
4. 草案第 9 條修訂本條例，令特別許可證可以適用。
5. 草案第 11 條加入本條例新附表 2，處理第 6 條的新條文與其他條例的條文相抵觸之處。
6. 草案第 13 至 16 條制訂《公職指定》(香港法例第 1 章，附屬法例 C)、《水務設施規例》(香港法例第 1 章，附屬法例 A)、《野生動物保護條例》(香港法例第 170 章)和《行政上訴委員會條例》(香港法例第 442 章)的相關修訂。

FORESTS AND COUNTRYSIDE (AMENDMENT) BILL 2004

(Draft Bill)

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A BILL

To

Amend the Forests and Countryside Ordinance, to provide for the protection of –

- (a) old trees of over a hundred years old; and
- (b) valuable trees of which are –
 - (i) large trees; or
 - (ii) of a rare species;
 - (iii) of historical, cultural and memorial significance; or
 - (iv) of special ecological and scientific research value,

and for matters ancillary thereto or connected therewith.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Forests and Countryside (Amendment) Ordinance 2004.

2. Long title

The long title to the Forests and Countryside Ordinance (Cap. 96) is amended by adding “and of the old and valuable trees” after “the countryside”.

3. Short title

Section 1 is amended by repealing “Forests and Countryside Ordinance” and substituting “Forests, Countryside and Old and Valuable Trees Protection Ordinance”.

4. Interpretation

Section 2 is amended -

(a) in the definition of “Secretary”, by repealing the full stop at the end and substituting a semicolon;

(b) by adding -

““canopy” (樹冠層) means the highest level of leaves and sticks of tree and its extension area;

“girth” (樹幹圍) means the circumference of a tree’s trunk at a height of 1.3 meters above the ground level;

“Government land” (政府土地) means any Government land which is not leased by way of Government lease;

“land user” (土地使用人) means any person who acquires the right to use Government land by way of short term tenancy, vesting order, allocation or any other means other than Government lease;

“large tree” (大樹) means a tree which –

(a) trunk diameter is of or over 0.8 meter;

(b) girth is of or over 2.5 meters; or

(c) height is of or over 15 meters;

“old and valuable tree register” (古樹名木冊) means the old and valuable tree register prepared under section 16C(6);

“old tree” (古樹) means a tree which is declared to be an old tree under section 16C(1);

“tree protection zone” (樹木保護範圍) means –

(a) the zone declared by the Director as a tree protection zone under section 16C(3) and, where appropriate, which zone is not less than –

- (i) 5 meters within the vertical projection of the canopy of a tree; and
 - (ii) 5 meters above the canopy of a tree; and
 - (iii) 5 meters underneath the average ground level of the 5 meters area within the vertical projection of a canopy;
- or
- (b) In the event that the zone mentioned in paragraphs (a)(i) to (iii) is not practicable, the Director may consider the environment where the old or valuable tree is and such zone as he thinks fit and declare to be a tree protection zone under section 16C(3);
 - (c) For avoidance of doubt, it is declared that in case of inconsistency between the provisions set out in paragraph (a) and the provisions of paragraph (b), the provisions of paragraph (b) shall prevail;

“trunk diameter” (樹幹直徑) means the diameter measurement of a tree’s trunk at a height of 1.3 meters above the ground level;

“valuable tree” (名木) means –

- (a) a large tree;
- (b) a tree of rare species;
- (c) a tree of historical, cultural and memorial significance; or
- (d) a tree of special ecological and scientific research value, and declared to be a valuable tree under section 16C(2).”.

5. Subheading added

The following is added before the heading “OFFENCES, PENALTIES AND FORFEITURE” –

“Part I - Protection of Forests and Countryside”.

6. Subheadings and sections added

The following are added after section 16 –

“Part II - Protection of old and valuable trees

16A. Application

(1) Subject to subsection (2) and any other Ordinances, this Part applies to all old and valuable trees and their tree protection zones on Government land.

(2) For avoidance of doubt, it is declared that: in case of any inconsistency between the provisions set out in Schedule 2 and the provisions of this Part, the provisions of this Part shall prevail.

16B. Binding effect of ordinance

Except as otherwise provided in this Ordinance or other Ordinances, this Part binds the Government.

16C. Declaration of old and valuable trees

(1) The Director may, by notice published in the Gazette, declare any tree growing on Government land to be an old tree, if he has reason to believe that the tree is of or over a hundred years old.

(2) The Director may, by notice published in the Gazette, declare any

tree growing on Government land to be a valuable tree, if he has reason to believe that the tree is -

- (a) a large tree;
- (b) of a rare species;
- (c) of historical, cultural or memorial significance; or
- (d) of special ecological and scientific research value.

(3) A notice published under subsection (1) or (2) may include the declaration of the tree protection zone of the old or valuable tree.

(4) The Director shall, before the publication of a notice under subsection (1) or (2) sign a plan clearly showing the area intended by the Director to be declared to be an old tree, a valuable tree or a tree protection zone (as the case may be).

(5) A notice published under subsection (1) or (2) shall include a reference to the plan signed under subsection (4).

(6) The Director shall prepare an old and valuable tree register which shall contain –

- (a) notices made under subsection (1) or (2); and
- (b) plans signed under subsection (4).

(7) The old and valuable tree register prepared by the Director under subsection (6) shall be –

- (a) kept at his office for public inspection at all reasonable times;
and
- (b) revised in accordance with the amendment, correction,
addition and deletion under subsection (8).

(8) The Director may, by separate notice published in the Gazette, amend, correct, add to or delete the notice under subsection (1) or (2) and any

plan signed under subsection (4).

(9) For the avoidance of doubt, it is declared that “growing” (生長) in the section includes “transplanting” and “replanting”.

16D. Control of old and valuable trees generally

(1) The Director and any person authorized by him in writing, may at all time –

- (a) install, repair or remove a fence within tree protection zone;
and
- (b) protect, repair, maintain or preserve any old or valuable tree.

(2) If the Government will proceed any works on Government land, the Government shall superimpose old or valuable tree protection clause in the relevant works contract.

(3) The “old or valuable tree protection clause” mentioned in paragraph (2) includes -

- (a) the relevant contractor shall before the commencement of the works submit a tree survey report of the works in writing to the Director, and the report shall cover -
 - (i) whether there is any old or valuable tree;
 - (ii) all larges trees; and
 - (iii) species of all treeswithin the works area (including the area which may be directly affected by the works).
- (b) The Director shall within reasonable time after receipt of the report -

- (i) confirm whether there is any tree ought to be declared as old or valuable tree, if so, he shall immediately make such declaration pursuant to section 16C; or
- (ii) issue protective or prohibitive directions to the contractor, such directions to be made by the Director as he may consider reasonable to protect such trees which may include acts of prohibition to fell trees.

16E. Acts prohibited in relation to certain old and valuable trees

- (1) Subject to subsection (2), no person shall –
 - (a) perform the any of following acts within any tree protection zone –
 - (i) to excavate or carry out any work (other than the works authorized by the Director under section 16D);
 - (ii) to plant;
 - (iii) to fell old or valuable trees; or
 - (iv) to dispose of earth or substance harmful to the growth of trees or to dispose of refuse; or
 - (b) cut, burn, remove, deface, poison or willfully perform any act which may cause damage to any old or valuable tree,

except with a special permit granted by the Director under section 23.

- (2) If the Director reasonably believes that –
 - (a) any old tree or valuable tree is dying or dead; or
 - (b) any old tree, valuable tree or tree protection zone may

constitute grave danger to the public; or

- (c) there is no other alternative to preserve the relevant old or valuable tree and there are other grave reasons for public interest,

he may, by notice published in the Gazette, declare –

- (d) any old tree, valuable tree or tree protection zone to be exempted from this Part; or
- (e) amendment, correction, addition or deletion in accordance with section 16C(8).

(3) If the Director reasonably believes that any old tree or valuable tree is dying or dead as a result of any act of any person (including his agent, servant or contractor) committed in contradiction to subsection (1), the Director shall –

- (a) in addition to any other sanction in this Ordinance –
 - (i) order that person or the relevant land user to plant another tree of such size and species as the Director may deem appropriate in the tree protection zone within a reasonable time; or
 - (ii) if that person or the relevant land user (for whatever reasons) fails to comply with the Director's order made pursuant to paragraph (i), order that person–
 - (A) to make exemplary payment (not less than \$1,000,000); and
 - (B) the Director may recover such payment provided under the above paragraph (A) by civil proceedings; and

(b) order the tree protection zone not to be used for any other purpose.

16F. Tree protection zone within Government land shall not be revoked notwithstanding being leased

(1) If the Government in any way demises any Government land, which includes any tree protection zone, to any third party, this Part still applies to the tree protection zone.

(2) For the purpose of subsection (1) and upon demise (whether by way of Government lease, allocation or short term tenancy or otherwise) of any such Government land, the Director of Lands shall -

- (a) superimpose prohibited acts contained in section 16E (where appropriate, with or without modifications) in such demise instrument; or
- (b) superimpose any condition (having consent to the Director) in such demise instrument to the effect that protection of an old or valuable tree will be duly effected.

16G. Appeal against decisions of Director

(1) Any interested party aggrieved by a decision of the Director made under this Part may appeal against the decision to the Administrative Appeals Board.

(2) For the avoidance of doubt, it is declared that “decision” (決定) in this section includes -

- (a) any declaration made under sections 16C and 16E;
- (b) any authorization or direction made under section 16D;

- (c) any order made under section 16 E;
- (d) any consent made under section 16F; and
- (e) any grant of special permit made under section 23.

Part III - Miscellaneous Provisions”.

7. Section added

The following are added after section 21 –

“Section 21A Acts prohibited in tree protection zone

Any person who, without lawful authority or reasonable excuse, contravenes section 16E(1) shall be guilty of an offence.”.

8. Penalties and Forfeiture

Section 22 is amended by adding –

“(1A) Any person who contravenes section 21A shall be liable on summary conviction to a fine at level 6 and to imprisonment for 2 years.”.

9. Special Permits

Section 23 is amended, by repealing “or the countryside” and substituting “, the countryside, old trees, valuable trees or tree protection zone”.

10. Schedule amended

The Schedule is amended –

- (a) by renumbering it as Schedule 1;
- (b) within the square brackets by adding “18,” before “19”.

11. Schedule 2 added

The following is added –

“SCHEDULE 2

[s. 16A(2)]

In case of any inconsistency between the provisions in Part II of this Ordinance and the following provisions or any part thereof, the provisions of Part II of this Ordinance shall prevail –

Ordinance	Short title	Sections, etc
Cap. 106	Telecommunications Ordinance	s.17(1) in respect of trees interrupting telecommunications
Cap.357	Electricity Networks (Statutory Easements) Ordinance	s.4 in respect of statutory easements
Cap.372	Kowloon Canton Railway Corporation Ordinance	s.27 in respect of removal of trees

.”.

12. “Schedule 1” substituted for “the Schedule”

Sections 17(1) and (2)(a), 18, 19 and 22(2), (3) and (4) are amended by repealing “the Schedule” and substituting “Schedule 1”.

Consequential Amendments

Specification of Public Offices

13. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. Leg. C) is amended by repealing –

“Director of Agriculture, Fisheries and Conservation Forests and Countryside Ordinance (Chapter 96), sections 22(5) and 23.”

and substituting –

“Director of Agriculture, Fisheries and Conservation Forests, Countryside and Old and Valuable Trees Ordinance (Chapter 96), sections 22(5) and 23.”

Waterworks Regulations

14. Interpretation

Regulation 40 of the Waterworks Regulations (Cap. 102 sub. Leg. A) is amended, in the definition of “authorized officer”, in paragraph (d), by repealing “Forests and Countryside Ordinance” and substituting “Forests, Countryside and Old and Valuable Trees Protection Ordinance”.

Wild Animals Protection Ordinance

15. Interpretation

Section 2 of the Wild Animals Protection Ordinance (Cap.170) is amended –

- (a) in the definition of “authorized officer”, in paragraph (d), by repealing “Forests and Countryside Ordinance” and substituting “Forests, Countryside and Old and Valuable Trees Protection Ordinance”;
- (b) in the definition of “nature area”, in paragraph (a), by repealing “Forests and Countryside Ordinance” and substituting “Forests, Countryside and Old and Valuable Trees Protection Ordinance”

Administrative Appeals Board Ordinance

16. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding –

“62. Forests, Countryside and Old and Valuable Trees Protection Ordinance (Cap. 96) A decision of the Director of made Agriculture, Fisheries and Conservation under Part II.”.

Explanatory Memorandum

The purpose of this Bill is to amend the Forests and Countryside Ordinance (Cap. 96) to provide for the protection of trees of over a hundred years old, valuable trees of which are large trees, trees of rare species, of historical, cultural or memorial significance, or of special ecological and scientific research value, and for matters ancillary thereto or connected therewith.

2. Clause 6 amends the Ordinance to include new provisions (new sections 16A to 16G) to provide for the declaration and protection of old trees and valuable.
3. Clauses 7 and 8 amend the Ordinance to create offences in respect of contravention of the new provisions created under clause 6.
4. Clause 9 amends the Ordinance to enable special permits to be granted.
5. Clause 11 adds a new Schedule 2 to the Ordinance to cater for inconsistency between the new provisions created under clause 6 and other provisions in other Ordinances.
6. Clauses 13 to 16 make consequential amendments to the Specification of Public Offices (Cap. 1 sub. Leg. C), the Waterworks Regulations (Cap.102 sub. Leg. A), the Wild Animals Protection Ordinance (Cap. 170) and the Administrative Appeals Board Ordinance (Cap.442).