

FROM THE EDITOR

Our PPP Conference has seen the many interests expressed by various sectors in society, some making enquiries to our President on the expertise to be contributed by our surveyors.

To many people, PPP, a relatively new term, is meant for mega projects stemmed from government initiatives like the WKCD or in a smaller scale conservation projects such as the Central Police Station or the TST Marine Police Station tender. Successful developments in the past included the PSPS housing scheme which is built by utilising surveyor's expertise and, of course, the Cross Harbour Tunnel as mentioned by our President in his opening speech at the PPP Conference.

For privately owned small parcels of land and property, development or redevelopment has been curbed by more tightening planning controls resulting in urban decays or unsightly city environs, giving the general public an impression that these would be in the URA's orbit when it is obviously a shared responsibility. Different sectors in the community perform their respective roles in maintaining a buoyant economy. We have mentioned the mega projects for the internationally renowned, and the initiative in caring for those who would wish to improve their living standards. It would be appropriate to do something for the middle class, some of the private owners of properties, the government being able to provide environs for their existence, which is the incentive motivating projects as well as certainty in investment. The government should leave as much flexibility as possible to property owners to decide rather than to 'control' by adding on from time to time restrictive policies. One way of achieving this may be through public participation in the process to let the community voice out their concerns or on the positive side their recognition of the plan.

Again, if we extend this to the private land in the New Territories, the development of which is now under various constraints such as planning, environmental, traffic, engineering, lease, and building regulations. Development virtually comes to a halt leaving land with no beneficial use, a waste of valuable resources. At present many planned land uses are not feasible which means that the plan will not be able to be implemented. Unless the Government buys them up on a compulsory basis, which we would doubt especially if the planned land use is not for public purpose let alone financial resources. We long for government initiative to create an environment for certainty in investment, together with an incentive for private owners to invest putting their valuable resources into beneficial use. One way to achieve this is to relax 'control' in the administration of development and redevelopment process, by deleting some burdensome procedures in building and land control, and by relaxing planning controls for feasible development.

New Approach to Building Management and Maintenance



Tony TSE
President

Like many other major cities, Hong Kong has grown rapidly since the 1960's. To meet the pressing needs for housing due to fast population and economic growth, much attention and resources have gone in for new developments. There have been little regards to the proper management and maintenance of the existing housing stock. Forty years on, Hong Kong is now facing a serious problem of urban decay. According to Government information, there are about 11,000 private buildings in the Metro Area which are over 30 years old with most of them lacking in proper maintenance and management. Furthermore, it is anticipated that the number will increase by some 50% in ten years' time. As most of these buildings are in fragmented ownership, urban decay becomes a very complicated and pressing social problem. The establishment of the Urban Renewal Authority three years ago does not appear to be an effective means to ease the problem so far.

The outbreak of Severe Acute Respiratory Syndrome (SARS) last year has no doubt heightened public concern for the importance of proper management and maintenance of our built environment. However, it is sad to note that those owners and occupants living in the poorly managed and maintained buildings have actually put not many actions

in hand. None would disagree that the maintenance and management of private buildings should be the owners' responsibility. But despite the Government's immense efforts in the past years in promoting and educating the public a better building care culture; the outcome so far has not been satisfactory. The recent publication of the Consultation Paper on Building Management and Maintenance would enable the Government to seek views and suggestions from the public and professional bodies for effective and sustainable solutions to this long overdue problem. The consultation ended last month and it is hoped that the Government could soon come up with new policies and measures to tackle the tasks.

Over the years, the Government seems to have relied too heavily on the private sector's own initiative and ability in resolving the problem. However, the operations of private service providers are hinged on profitability. They would have no hesitation in taking up management and maintenance of large housing estates with structured management organizations, but would unlikely be interested in managing small aging domestic blocks with the majority of owners who are aged and/or in the low income group. It is believed that the right approach is through some more stringent regulatory measures and controls together with the provisions of incentives, assistance and active involvement of the Government departments concerned. There are ample

examples that incentive schemes have proved to be effective driving forces for changes.

To facilitate good building management and maintenance, it is also important to tackle the some existing 700,000 unauthorized works mostly in the aged buildings. We have to admit that these problems could hardly be resolved alone by the property management companies with no government support. However, based on the current works progress and even assuming there would not be any further increase in the number of unauthorized works, it would take quite some years to clear all the identified illegal works by the Buildings Department. This is totally unacceptable and amendments to the existing legislation and regulations for an effective, low cost and simplified enforcement measures are essential. Mandatory building inspection and repair requirements as advocated by our Institute may be one solution.

Hong Kong features itself as Asia's World City. We must have effective means to deal with the urban decay problem. Whilst there may not be a standard solution, whatever the choice may be, it ought to be made sooner rather than later as the problem is deteriorating faster than ever before. As key players in the field, we all should assume a role in driving the matter forward.

HKIS views on Proposed Structure in Dealing with Unauthorized Building Works agreeable to the Secretary for Justice

The President, Tony Tse, BSD Council Chairman, Raymond Chan and the Hon PC Lau met with the Secretary for Justice, Elsie Leung, recently over luncheon. Amongst matters discussed, members may be delighted to note the SJ's positive response to this topic and that the Institute is compiling a more in-depth discussion paper, outlining the existing problems and deficiencies together with the Institute's proposed mode and procedures, to take the matter further.



Still on PPP – working group to be set up

Subsequent to the PPP Conference, it has been decided that a working group be set up to pursue the subject further. The Institute's commitment is crystal-clear. The President has been invited to speak at the 2QGM Luncheon hosted by the HKIA on "Property Aspects of PPP" in mid June.

If you have any views on the matter for the Work Group, please email them to: linda@hkis.org.hk. For information on PPP, please visit www.hkisppp.org

Working Group on HKIS and RICS Relationship

The General Council has authorized the setting up of this Working Group, chaired by Stephen Liu, past President and current Chairman of the International Committee, and consists of one representative from each of the five Divisions, Junior Organization and the three Boards, namely Education, Membership and Professional Development.

HKIS 20th Anniversary Conference on PPP took place on 29 May 2004 in the JW Marriott Ballroom

It is not really so sudden, but PPP has become talk of the town. When the Secretary for Environment, Transport and Works did address the key issues of PPP by saying

“... to ensure that the proposals are viable and present good value-for-money, it is necessary to conduct thorough studies on the various alternatives modes of delivery. The project to be delivered through PPP must be well-defined. The output specifications and performance requirements for the project should be clearly set out and agreed with the private sector partner at the outset...”

readers will recall that earlier on in the year, the Institute wrote a submission to the Government in connection with the West Kowloon Cultural District, pointing out painstakingly our worries of “moving goal posts.” A prayer now seems to have been answered!

The one-day Conference was garnished by doses of PPP being looked at from different perspectives, together with experience sharing on country-specific

projects. While some delegates might have had expected “a total solution”, obviously to their disappointment, a not-too-simple question like: how do we set the public sector comparator, prompted an invitation to run another conference. Delegates heard of examples on success and failure, it is obvious there is no blanket PPP application formula that can zoom from ground zero; however, it seems all are convinced that public debate on PPP must continue, understanding on PPP to be delivered. PPP seems to be here a fact for life – taxpayers and surveyors alike - making its presence felt.

If you do find yourself missing on something, you may want to have a check on the PPP e-corner by going to www.hkisppp.org ;or read from the Institute’s Library. Photographs of the Conference can be found on page 35.

To find out more on what was said, please read below the President’s welcoming speech, the opening address by the Secretary for Environment, Transport and Works as well as the closing speech by Senior Vice President.

Welcoming Speech by the President

The Honourable Dr. Liao, distinguished guests, fellow members, ladies and gentlemen,

Good morning! It gives me great pleasure to welcome you all to take part in today's Conference organized by the Hong Kong Institute of Surveyors. I am delighted to see so many guests, members, government policy makers, scholars, professionals and practitioners, from both local and overseas, are gathering here today to share their knowledge, experience and visions of a new approach to the delivery of public facilities and services ... Public Private Partnerships (PPP).

The PPP Conference today is one of a series of activities celebrating the 20th Anniversary of the Hong Kong Institute of Surveyors. Many of the audience today had attended the Cocktail Party at the newly opened Surveyors' Learning Centre on our anniversary day, 26th April 2004 when we pledged that whilst taking stock of what we have achieved, we must be prepared for future challenges and opportunities.

One of the key changes being witnessed in our profession is the changing roles of the government, developers, professionals, contractors and suppliers. The boundaries between the various phases of procurement have become less defined; cross-fertilization of expertise has become the norm. It was against this background that PPP gradually became popular in recent years in other parts of the world such as Australia, Canada, Japan, the United Kingdom and the United States of America.

To Hong Kong, Public Private Partnerships (PPP) is a relatively new term, a new subject. But it is not a new concept. BOT (Build Operate and Transfer) could be regarded as an early form of PPP. Our Cross Harbour Tunnel, completed in 1973, is an example of extreme success of BOT. For the local public housing, the Private Sector Participation Scheme (PSPS) was popular in the 80s and 90s as a model of delivery of the Private Ownership Housing. We have therefore had good knowledge and experience as well as a sound platform for public-private co-operation in the delivery of public facilities and services.

The PPP models that have been implemented in recent years in other countries (noticeably Australia, Canada, Japan, UK and USA) operate around the principle of capturing the private sector's expertise in design, finance, construction and management, while the government retains ultimate responsibility for delivery of core services to the community.

While there are many examples of success in other countries where PPP has resulted in innovative ideas in design / operation, and lower construction / operation costs, we also noted cases that the objectives of innovation and cost-saving are not met.

The concept of PPP was introduced to Hong Kong some years back, and became a hot topic recently with the public, the construction industry all talking increasingly more about it against the backdrop of public finance constraints; of course, the SAR Government did declare a "big market, small government" policy.

However, many in the industry and the public recognize PPP in a somewhat controversial background, stemming largely from the debate over the West Kowloon Cultural District project. I guess some of us on the floor this morning are expecting to hear what our expert speakers will have to say about the West Kowloon Cultural District project, when the tender closing date is only some two weeks away. However, I am sorry to say that you may be disappointed as I believe there will be little discussion on the West Kowloon Cultural District project today!

Having said that, today's conference will be packed with a wide range of topics around the theme of "Local Developments," "International Developments" and "Critical Issues" of PPP. We are particularly honoured to have a good number of renowned speakers from Australia, Canada, Japan, the UK and the USA. It will be a unique opportunity for us to hear from these experts, first hand, about what the other countries have done on PPP, and their stories of success as well as experience of failures.

Apart from overseas experience, we will also benefit from our speakers on a number of essentials for PPP, such as

- establishing a sound business case for a PPP project
- ascertaining affordability and value for money
- public consultation / accountability
- maintaining competitive tension
- risk management
- change management; and
- staff issues and how to achieve a "win-win" outcome.

I would like to thank in particular the keynote speakers: Sir Gordon Wu, Chairman, City University of Hong Kong; Mr. Steven Page of the Government of South Australia and Dr. A. Scott Carson of the Canadian Council for PPP. My sincere thanks also go to the Honourable P C Lau, Legislative Councillor and Professor KW Chau, Dean of the Faculty of Architecture, the Hong Kong University, for moderating the morning and afternoon discussion panels.

Being a professional institute with over 6,000 members specializing in infrastructure / real estate development and management, the Hong Kong Institute of Surveyors is committed to assisting the construction industry and the HKSAR Government

in building up a strong knowledge-base of PPP in Hong Kong. We would also like to see structured and transparent implementation of PPP in Hong Kong. We have recently published a pamphlet on "the Professional Services for PPP" – a copy of which is included in the Conference Proceedings Package. We have also set up an e-corner on PPP in the HKIS homepage to gather views and experience from practitioners.

The development of PPP will no doubt be a joint effort of the whole Industry. Dr. Liao, your presence as the Guest of Honour shows the highest level of support by the Government to this endeavour. The fact that we have 12 professional / educational institutions supporting our PPP Conference bear testimony to our readiness. In this regard, I am truly grateful to the following institutions:

- the Real Estate Developers Association of Hong Kong
- the Hong Kong Institute of Architects
- the Hong Kong Institution of Engineers
- the Hong Kong Institute of Planners
- the Law Society of Hong Kong
- the Hong Kong Institute of Facility Management
- the Hong Kong Construction Association Limited
- the Hong Kong Institute of Construction Managers
- the Chartered Institute of Building (Hong Kong)
- the University of Hong Kong
- the Polytechnic University of Hong Kong
- the City University of Hong Kong

Finally, I would like to thank the Conference Organizing Committee, led by Mr. Francis Leung and Dr. Paul Ho, for their visions and hard work in organizing this Conference, publishing the PPP Pamphlet, and setting up the PPP e-corner in the HKIS website.

Ladies and gentlemen, we may have different levels of knowledge, perception or views about PPP. But I am sure you all will agree on one fact: none of us knows enough about PPP. PPP is still very much under-researched in Hong Kong. It is a tool, good or bad, that we all need to practise before we can claim ourselves to be experts. Let's join hands to build a strong knowledge-base of PPP, devise PPP models that are most appropriate to the local context, and adopt a structured and transparent approach in its implementation.

With these notes, I declare the HKIS 20th Anniversary Conference on Public Private Partnerships open and wish you all an enjoyable and fruitful day.

Thank you very much.

Opening Address by Dr. Sarah Liao

Secretary for Environment, Transport & Works

President, distinguished guests, ladies and gentlemen,

I am pleased to have the opportunity to participate in the 20th Anniversary Conference organised by the Hong Kong Institute of Surveyors.

The theme of the Conference is "Public Private Partnership (PPP)". In the next 10 minutes or so, I will share with you all the Government policy in using public private partnership (PPP) in the delivery of public works projects and services, the latest progress made in this front and our way forward.

Government Policy

It is the Government's firm policy that consideration should always be given to involving the private sector in the provision of new services. We will also explore opportunities to improve private sector involvement in existing activities. The Chief Executive has, in his 2004 Policy Agenda, committed to the wider use of alternative approaches, such as PPP, in the delivery of large scale projects under the Public Works Programme. In the Budget Speech delivered by the Financial Secretary on 10 March 2004, the Government has undertaken to consider the way forward in the light of the encouraging results of the recently completed preliminary feasibility study on the in-situ re-provisioning of the Sha Tin Water Treatment Works (STWTW) through PPP.

The Government is fully committed to enhancing public sector productivity. We believe that PPP will bring about many benefits not only to the business sector but also the community at large. For example, the private sector partners can bring in market forces to achieve greater efficiency

in providing public services and help expedite implementation of public works projects. They may also bring in specific experience or know-how to provide services in an imaginative and creative manner while reducing the demand for public resources. Compared with the conventional approach of project delivery, the private sector could be more willing to employ new technologies and innovative ideas in delivering and managing public facilities. This will broaden the professional horizon of the public sector and enhance the quality of public services. In the light of the current austerity drive on public expenditure, PPP can help keep the momentum of delivering public works projects with less initial financial outlay from the Government, hence boost the economy on one hand and provide more job opportunities on the other.

Government Support

The Efficiency Unit (EU), under the Chief Secretary's Office, has issued guidelines on best practices for reference by government departments in involving the private sector in delivering suitable public works projects and services. A help desk and web-based resource centre have also been set up for this purpose.

Key Issues

The Government is mindful of the key issues which have to be properly addressed before implementing a project through PPP. To ensure that the proposals are viable and present good value-for-money, it is necessary to conduct thorough studies on the various alternative modes of delivery. The project to be delivered through PPP must be well-defined. The output specifications and performance requirements for the project should be clearly set out and agreed with the private sector partner at the outset. New legislation or amendments to existing legislation may also be required.

Current PPP Projects

PPPs are not new to Hong Kong. The Build-Operate-Transfer (BOT) model has been used in building tunnels since the 1970's. The Design-Build-Operate (DBO) model has been adopted in the operation of waste transfer stations located in Hong Kong. At the moment, active consideration is underway regarding the use of PPP in delivering a few public works projects.

LCSD's Pilot Projects

In April 2003, the Government launched a trial scheme to invite the private sector to participate in delivering 10 or so recreational and cultural facilities, including libraries, stadia, indoor game halls, etc, worth HK\$2.5 billion in total. An expression of interest (EoI) exercise for the first two pilot projects was conducted in July 2003. The two projects are an ice sports centre and a town park in Tseung Kwan O, and a leisure and cultural centre in Kwun Tong. The market response was positive and a total of nine EoIs have been received. The Leisure and Cultural Services Department has engaged a consultant to review the EoIs. The development parameters of these two PPP pilot projects have now been finalized. Subject to the granting of the necessary approval, the two projects will be awarded through a competitive bidding exercise.

STWTW Re-provisioning

Turning to water supply services which fall under my policy purview, the Government is actively considering whether the re-provisioning of the Sha Tin Water Treatment Works project can be delivered by alternative modes other than the conventional approach. Commissioned in 1964, the Sha Tin Water Treatment Works is the largest facility in Hong Kong providing a capacity of over 1.2 million cubic metres of water a day and meeting

about 40% of the total water demand in the territory. We plan to re-provision it on an in-situ basis in phases to replace the existing treatment facilities with new water treatment modules.

The Government commissioned a preliminary feasibility study in November 2003 with a view to establishing the business case and possible modes of the delivery of the Sha Tin Water Treatment Works and related facilities. The study has been completed recently and the reports were published in mid-May. It concludes that the use of the PPP approach for the in-situ re-provisioning of the Sha Tin Water Treatment Works and related facilities is both feasible and beneficial. There are in fact plenty of successful overseas experiences in providing water treatment plants and related facilities through PPP. We expect that the Sha Tin Water Treatment Works project will attract much market interest.

The consultants have also identified the various risks for Government and the private sector

operator associated with using a PPP approach in re-provisioning STWTW and delivering water supply, distribution and customer and support services thereafter. Noting that these risks would have significant implications for the successful adoption of the PPP approach, Government will thoroughly examine the possible risk mitigation or minimization strategies and the commercial principles involved before making a decision on whether and if so, the extent to which the PPP approach should be adopted. Apart from the technical and financial aspects, Government will also take into consideration other important factors, including potential implications for human resources, possible impact on the legislative and regulatory framework, the interfacing issues between public and private service operators and the feedback from interested parties and the public.

The Government briefed the LegCo Panel on Planning, Lands and Works on the study findings at its special meeting on 18 May and we are now gathering the views of the public and interested parties. We will consider the

way forward in the light of the outcome of public consultation.

We expect a decision on whether to use the PPP approach for this project will soon be made. This new procurement approach will not in any way undermine the Government's determination to provide a reliable, good quality and adequate water supply for the people of Hong Kong.

Way forward

The Government is also exploring other suitable large scale projects to be delivered through PPP, for example, waste management and sewerage treatment works. We would welcome any innovative suggestions from the private sector in respect of the major works projects and public services to be delivered through PPP. My colleagues and I stand ready to explore the feasibility of your brilliant ideas.

Thank you.

Closing Speech By Mr TT Cheung Senior Vice-President, The Hong Kong Institute of Surveyors

Mr. President, distinguished guests, fellow members, ladies and gentlemen,

On behalf of the Hong Kong Institute of Surveyors, thank you once again for attending and supporting the Conference. I am pleased to see so many of you stay through the Conference for the whole day on a lovely Saturday. I hope you all had a very enjoyable and informative day.

Having listened to the talks of our distinguished speakers, I am sure by now we have a much better idea of PPP, what it is, what it sets out to achieve, what has been achieved, and what the preconditions for its successful implementation are. We all note how quickly PPP has developed, in other parts of the world as well as in Hong Kong.

Just to show you how quickly PPP has developed. The idea of hosting a PPP conference came up around some 8 months ago, when our Institute had a chance of discussing a number of issues of international interests with our counterparts during an international congress in Tokyo on quantity surveying / cost engineering. All agreed that this was a good idea, but when it came to vetting / approving this project at the HKIS Executive level, there were some reservations, bearing in mind at that time not many people talked about PPP, and indeed not many people even knew about the term PPP. How could we guarantee that we would have the necessary attendance to finance this conference? Thanks to our President, Tony Tse and the Executive Committee, who had the vision to see the momentum that PPP was gaining and decided to take this theme for our 20th Anniversary Conference.

We went ahead. Eight months later, today we have a remarkable Conference. Looking at today's high turnout, the quality of presentation by the speakers, the questions from the audience, we can say, with some pride, that there is a good platform for PPP to develop in Hong Kong.

Dr. Sarah Liao, our Guest of Honour, started the Conference by emphasizing on the Government's commitment towards PPP. Whilst explaining the potential benefits of PPP, Dr. Liao was equally frank that there were many issues that the Government had to deal with in its implementation. Amongst them were the staff issues, which Dr. Liao spent some time assuring that these would be properly addressed.

Sir Gordon Wu, who was the next speaker, was somewhat critical of the government's bureaucracy, and questioned the need for employing consultants in many instances. He made some remarks about the West Kowloon Cultural District Development which I don't think need to be repeated here.

A wide range of issues concerning PPP were touched on by subsequent speakers, covering the financial, legal and political aspects. We had a chance to learn from our speakers what our friends in Australia, Canada, Japan, UK and USA are doing on PPP, we heard many examples of success. On the other hand, the examples of failures were particularly thought-provoking. We were advised not to repeat the same mistakes.

We heard other countries were taking steps to improve upon their PPP endeavours. Japan, for example, is working on some changes to their legislative framework. In Australia, a "harmonization" strategy is being developed to cater for a more systematic approach in PPP implementation.

In terms of measuring success and satisfaction level of PPP, there were some very interesting observations of focusing on the different perceptions by the clients, government, politicians and the general public as the ultimate users of facilities.

All in all, there was more than one could possibly consume in a one-day conference. I am sure that we all have benefited from the very informative, interesting and thought-provoking speeches presented today.

I would like to recap what HKIS would like to achieve in terms of helping the industry and the government in the PPP endeavours:

- we support a strong partnership between the public and private sector in the delivery of public facilities and services;
- PPP is relatively new to Hong Kong. HKIS is prepared to assist in setting up a knowledge base on the subject;
- in terms of "avoiding repeating the mistakes" that our friends in other countries have made, and taking the advice of one of our learned speakers "look before you leap", we would like to see structured and transparent implementation of PPP.

Ladies and gentlemen, the closing of today's conference only ends our activities today. In fact it opens a new chapter in our 20th year history. We sincerely hope that more conferences on PPP related subjects will be organized, in order to provide a platform for future exchange and research into this alternative delivery approach. We, as professionals in Hong Kong, have a duty to bring the right perspectives of PPPs to the people around us so that sensible decisions could be made at all levels for the benefit of Hong Kong people.

Lastly, on behalf of the Hong Kong Institute of Surveyors, I would like to express our thanks again to all speakers, distinguished guests and the supporting organizations. My special thanks go to the Organizing Committee led by Mr. Francis Leung and Dr. Paul Ho, for their hard work over the past months, without which we would not be able to have such a successful conference today. I would like to ask you to join me to thank them in our usual way.

Ladies and Gentlemen, thank you for coming. I now declare the HKIS 20th Anniversary Conference on PPP closed.

Thank you letter from the President to the Secretary for Environment, Transport & Works

Dear Dr. Liao

The HKIS 20th Anniversary Conference on Public Private Partnerships, 29th May 2004

It has been the Institute's great honour to have your presence as the Guest of Honour at the HKIS 20th Anniversary Conference on PPP on 29th May 2004.

The Institute is delighted that the Conference has been very successful, in terms of speakers' input, high turn-out, audience response, as well as the interest and publicity which the subject has attracted. Your presence has, of course, been the most important factor leading to the success.

In your Opening Address, you stated in clear terms the Government's policy and commitments to PPP. You have rightly pointed out that there exist many issues which the Government need to, and no doubt will address before implementing a project through PPP. These positive messages from the highest level of the Government are particularly important and timely. In this regard, we are delighted that the Hong Kong Institute of Surveyors is able to contribute to this very important stage of development of PPP in Hong Kong.

Institute members and delegates present have definitely benefited from the Conference; apart from knowing first-hand development and knowledge on PPP, the experience sharing with the experts and learned speakers from both local and overseas has been particularly invaluable.

As I said in the Welcoming Address, the development of PPP is a joint effort of the whole industry. The HKIS is supportive of a strong partnership between the public and private sectors in the delivery of public facilities and services apart from being committed to assisting the industry and the government in building up a strong knowledge base, thus ensuring structured and transparent implementation of PPP.

Once again, my sincere thanks to you. I look forward to closer co-operation between the Government and the HKIS in the development and implementation of PPP in Hong Kong.

Yours sincerely,

Tony Tse
President

Surveyors Learning Centre – Box Office

If you are looking at using the facilities, you better call Donna on 2526 3679 or email: slcbooking@hkis.org.hk quick. Donna tells us that bookings are now coming in for events in August, some even for the fourth quarter of 2004.

Since the Grand Opening on 26 April 2004, the Surveyors Learning Centre has housed numerous PQSL, CPD events as well as seated several Mainland delegations, members of which all marveled at the resources that the Institute has allocated on these facilities and its commitments to excellence.

General Council members spent an evening with Staff of the Administration Office

Like any racing Wednesdays, either the Happy Valley Stand or the Grandstand is the venue with a more than apparent agenda. It was no different one Wednesday evening in June when GC members met there. However, the top of the agenda had changed to read 'getting to know the Administration Staff' – their betting style, food preference, racing edu-tainment (some did make some money, that is really why we put in these parentheses to demonstrate hard-work pays off!).

The Jockey Club promised buffet with unlimited pouring of house beer, soft drinks throughout the event; they did.

Administrative Office may undergo renovation soon

With the meeting rooms being relocated to the other side on the 8th floor of Jardine House, the existing premises may be renovated to provide for a bigger library and members' area with amenities as appropriate. Tender is in progress.

Corporate Communication Projects Facelift

The Institute's resources are going to be re-deployed subsequent to a 'design and print' tender. The objective is to turn all publications into premium quality ones that echo with the profession's edge.

SURVEYORSTIMES Editorial Submission – in either the English or the Chinese language is welcomed

In line with its Mainland Membership Development Plan, the Institute has decided to turn all its publications into bi-lingual within a reasonable period of time. Submissions in either language are welcome, but do not translate them please. Please send all editorial submissions to: editor@hkis.org.hk

The closing deadline is the 10th day of the month preceding publication month.

Joint Professional Centre – tenancy renewal

In reply to a letter from the Chairman of the Joint Professional Centre Limited, the Hon PC Lau, which operates the premises at Unit 1, Ground Floor, The Centre, 99 Queen's Road Central, Hong Kong, the President has written to express the Institute's view as follows:

- a) the JPC premises has been offering good-value gathering, meeting and seminar facilities to professional as well as semi-professional bodies
- b) as to whether the tenancy agreement of the JPC Limited should be renewed, the Institute considered that it would be desirable for the Centre to operate on a financially viable basis
- c) the Institute does not object to the renewal of tenancy on the basis that there is no financial commitment from member institutes.

H15 Concerned Group

The Hon Secretary, Bernard Chan, has written to the H15 Concerned Group. For details, please visit www.hkis.org.hk

LegCo Bills

Second Report – Select Committee on Buildings Problem of Public Housing Units

The second report has been published on 19 May 2004 and the report may be downloaded at the Legislative Council website: www.legco.gov.hk/yr03-04/english/sc/sc_bldg/reports/rpt_2.htm

The recommendations made in the First Report addressed the problems identified in the overall policies and systems in the production of public housing units; these included the need for sharing of information on the geo-technical conditions of sites, improving the management of organizational changes as well as well deployment of staff and provision of induction training.

The Second Report made further recommendations as follows:

a) more stringent control over the work of contractors

- b) more vigilance in selecting and managing consultants for outsourced projects
- c) more constructive and positive attitude in the management and execution of works
- d) better link and co-ordination between foundation works and superstructure

The Second Report also noted that many recommendations contained in its First Report as being implemented and that the Government has taken disciplinary action against officers who were found to be responsible for the incidents. It was recommended that the relevant Panels of the Legislative Council to continue monitoring the Government's implementation to further improve the quality of public housing.

Land Titles Bill

The Bills Committee on Land Titles Bill is meeting on 8 June 2004 and the Institute has been invited to attend the meeting subsequent to the submission dated 13 May 2004. The Institute's general view may be summarized as follows:

- a) the Bill should cover the boundary aspect and not just the ownership aspect as it now reads
- b) the boundary survey should cover all types of lots including the DD lots
- c) the Government must ensure that 'a good title' is truly good in every aspect including the boundary description
- d) in respect of land boundary matters, the Government should seek advice of expert surveyors and not to draft the Bill based on unsolicited opinions.

The Bills Committee meeting is held in public and written submissions are made available to the media and the public, and uploaded to the Legislative Council web site www.legco.gov.hk

An oral presentation to the Land Titles Bill Committee in the LegCo

Mr. S C Leung, past president and the current Chairman of Boundary Survey Advisory Committee, in response to the call from the Land Titles Bill Committee, delivered a speech expressing the HKIS' view on the determination of lot boundaries, especially the Old Schedule Lots of the New Territories. The immediate feed back was positive that the Bill Committee would amend the Land Titles Bill to include Old Schedule Lots in lot determination. The speech is as follows:

"I represent the Hong Kong Institute of Surveyors to comment on the Land Titles Bill. We thank you for allowing us the chance of addressing your Committee in this respect.

Our Institute has been concerned with the general lack of coverage on land boundary matters in the Bill and has consistently advocated for a more balanced attention to the land boundary issue as against the ownership matters.

This Bill is meant to be providing good titles to land as its objective. The mere verbal description of ownership and land title could only fulfill half of its objective. A clear boundary description in the form of a decent survey plan should represent the completion of the other half. We are aware that the present Bill does represent a big leap forward in improving the Land Title matters and that a delay in introducing it may be undesirable. However, this should not mean an unconditional support of the Bill by our Institute because part of the Bill, as we see it, carries detrimental effects to the land boundary survey and this is not conducive with its objective.

In essence, what we are referring to are those parts of the Bill which collectively brands all plans as indicative only and which restrains the Director of Lands from providing services to the public. Perhaps this part of drafting might have been caused by certain misconceptions such as the burden of guaranteeing boundaries, the unmanageable amount of plan preparation and the arousing of boundary awareness. These worries, if indeed the case, should really be unnecessary. Our Institute had never suggested any guarantee of boundaries nor

a sudden upsurge of boundary surveys. Rather, we considered that if the Bill is not so shying away from addressing the boundary survey requirement, the ways and means for resolving boundary problems would be more readily available.

Without going too far into the technical aspect, we hereby confine to discussing only the most important point of the Bill that of section 92, subsection 2 (b). Here, the Director of Lands is not to entertain application from land owners of the Block Government Lease for determination of boundaries. In this way, the lands boundary determination in the New Territories which forms 80% of the land mass of Hong Kong could hardly be improved. As the boundary of a land lot may affect that of the adjacent lots, a system of centrally recording all the boundary surveys must be established to eliminate boundary conflicts. If the Director, who should be in the best position to contribute to such a system, is to withdraw from involvement in the survey, boundary problems will be compounded rather than resolved.

This is just a technical point to explain why this clause is unreasonable. The avoidance of attempting the rural surveys by the Director will result in more problems. In fact, the reasons for objecting to this clause is much more.

Firstly, the classification of the lots held under the Block Government Lease as not to be dealt with by the Director represents an unequal treatment by Government towards all landowners. Why could the other urban lots enjoy the services of the Director whereas these lots of about 210,000 in number are not. How could such a discrimination be explained to these lot owners.

Secondly, and further to the first reason, would these "rural" lots be implied as a second class land lots thus deserving a lower land value in the eyes of prospective purchasers or mortgagors? This aspect could be a realistic and serious problem for the Administration to face.

Thirdly, there have been many land resumption and surrender cases in the New Territories. As the Director has been determining the land boundaries of the affected lots, he will certainly get involved in the boundary determination of many adjoining lots. In fact, for lots not subject to resumption, he may still have to survey whole lots such as in the case of Black Spot enforcement and other legal activities. To restrict his action

to cover such lot boundaries but not the other "rural" lots can never be realistically achieved.

Fourthly, there are many old new grant lots mixed up with these "rural" lots. As discussed above, all land lot boundaries are inter-related. For the Director to just survey the new grant lots among all other "rural" lots will be impractical apart from the injustice factor. Similarly, there are some missing lots the cause of which can always trace back to the Government's responsibility. If the Director is not to handle these cases, he is virtually evading his responsibility which is his own making. Accordingly, we fail to see the logic of this clause 92, 2 (b).

Returning to the possible background situation of the Bill drafting under discussion, we suggest that conditions have now changed.

- (a) The original mid-night conversion proposal is being reviewed and replaced by a 12 years period as the day-light conversion. The time span is greatly extended and this should allow the Director sufficient time to provide far more services. The worry of being unable to deal with the "rural" lots could be allayed.
- (b) It is now clarified that no boundary "guaranteeing" was suggested. Technical mechanism can always be devised to allow all boundary surveys be done on a voluntary basis and to an acceptable standard. The "rural" lots should present no more problems than the urban ones and the Bill should not ignore the "rural" lots accordingly.

At this point in time, we also like to mention that only a couple of days ago, we received the comments back from the Administration on our letter of 13-5-04 to the Bill Committee. In this Administration's letter, it responded to most of our queries. As both their letter and ours are already available for your Bill members to peruse, we shall refrain from repeating much but to leave our argument to your judgement.

However, we must address to one particular point which is new in our exchange of comments. That is the 1862 Land Registration Act of the United Kingdom. In this Act, Land Boundary Plans were asked as a mandatory requirement and

HKIS wrote to the Secretary for Home Affairs on Review of Built Heritage Conservation Policy

At the end of 2003, there were 78 declared monuments, of which 60 were buildings and 18 were rock carvings, forts and archaeological sites.

The challenges for Hong Kong at present are:

- Majority would support but not all sharing the same understanding of the purpose and selection criteria
- Rapid pace of urbanization and high land values pose difficulties
- Heritage conservation work is in a rather ad hoc manner
- The Ordinance is rather rigid and stringent requirements are applied to alteration works after declaration
- It is extremely difficult to conserve a whole area or neighbourhood in order to retain its unique character and setting
- The Government does not have sufficient economic incentives to induce owner's consent for conservation

The Policy issues for consultation were:

- Holistic approach or not
- What should we conserve
- How to conserve
- How much and who should pay

In its letter to the Home Affairs Bureau, the HKIS stated its belief that everyone should enjoy the result of conservation one way or the other as much as we enjoy the new buildings. Conservation is to recognize culture and to benefit from memories. The HKIS pledged its support on the Government's effort to strengthen its policy and implementation works on Built Heritage conservation within resource limits and affordability.

The HKIS took the view that conservation should not be limited to a single building or monument but to include a whole area which may be zoned 'conservation area'. The size of the issue may include a building, an estate, a square or even an area. The Antiquities and Monument Advisory Council could be enlarged to comprise more members of the public and professionals

in order to work out exactly what to preserve. Monetary incentive may help to swiftly identify possible heritage sites.

A basic analysis on the initial and maintenance costs shows that it will be on the high side for a building, an estate and a square which, interestingly, only ask for normal maintenance costs.

Suggestions put forward included:

The Government – implementation agent such as the Housing Society, the Urban Redevelopment Authority could be considered

The Community – the Jockey Club, fund-raising campaigns, sponsorship by using naming right could be considered

Tourists and Visitors – entrance fee, heritage conservation fund could be imposed on tourists and visitors

Investors – some heritage buildings could have commercial values

The HKIS further pledged to give more specific views should the consultation proceed to second stage.

Around Legco

Meeting on 2004 LegCo Election held on 17 May 2004

Attendance

Convenor/Meeting Chairmen – Mr. F Y Kan and President, Mr. Tony Tse

Daniel Lam, Cecilia Wong, Samson Wong, Peter Wong, Charles Chan, Serena Lau, Daniel Mak, Marco Wu, Yu Kam Hung, Henry Chan, Lam Li Wah, Lesly Lam, T N Wong, T T Cheung, Paul Ho, P C Lau, Tony Wan, Gordon Ng (notes taking)

Notes of Discussion

1) Background and past events

Surveyors come under the Architectural, Surveying and Town Planning Functional Constituency (ASPFC) of the Legislative Council (LegCo). In the last FC election, our fellow surveyor, the Hon. PC Lau won and it was noted that the 2 architectural candidates totally scored more votes than what PC had got.

2) 2008 LegCo

Although it was understood from the consultation undertaken by the Administration on constitutional development, the LegCo will probably have more seats in 2008 election, with the same ratio of geographical members to functional constituency members kept, it would be possible to ask for a separate/independent surveyor seat. The threat from other real estate bodies taking up seats in the LegCo should not be overlooked. The stance and initiatives taken by the ASPFC representative will have a marked effect on the prospect of an independent surveyor seat.

3) One candidate from the surveyors sector

The meeting discussed and concurred that the surveyors should put forward the best single candidate for the ASPFC election. However, it appeared that several surveyors are interested in running and some kind of coordination aiming at one candidate from the surveyors is desirable for the interests of surveyors and the broader interests of the whole constituency.

4) HKIS Forum

In the event that more than 1 surveyor should be registered for the election. HKIS should organize forum(s) for candidates to introduce their election platforms to members.

5) Advocacy by HKIS

The issue of whether HKIS General Council (GC) could adopt a particular stance on any candidate was discussed and the view was that it is legitimate for GC to endorse any candidate who should make known their intention to the Council. The GC could include past presidents in giving their endorsement to the best candidate for election by surveyors, architects and planners.

6) FC election

The meeting was informed that for the 2004 LegCo election, candidates will be allowed to withdraw after their registration for election.

The GC took a liberal view that an open, transparent and well informed platform for surveyors to access and understand the candidates for the FC election would be beneficial at large for enabling

the best candidate to be elected to serve the whole FC.

7) HKIS GC

Members present urged the GC to do more in view of the potential vigorous intra and inter-sector competition as well as the uncertainty due to the alleged support of political parties on certain candidates.

It was suggested that the GC should frequently organize forums to focus discussions on the expertise and experience of potential candidates and in return, to understand the views and wishes of members.

8) Conclusion

- a) HKIS GC should take a proactive role in urging member voters to vote in the 2004 LegCo Election to show the strength of the surveying sector and their concerns on LegCo affairs. By taking an active approach and organizing forums, it is hoped the GC and the main stream members will come to a unified stance on a single candidacy.
- b) Members contemplating running the ASPFC election should show their intention, make themselves known as soon as possible.
- c) At the same time, the GC should bear in mind the single surveyor candidate should be the best candidate to serve all the members of the ASPFC.
- d) HKIS GC should be proactive in the coming LegCo Election.

Is Functional Constituency (FC) of any function? (功能組別有何功能?)

Lau Ping-Cheung (P.C. Lau)

Member, Hong Kong Institute of Surveyors

Legislative Councillor (Architectural, Surveying and Planning Functional Constituency).

In the early 1980s when Britain and China were negotiating the future of the then British Colony, Hong Kong, a group of surveyors, both local and expatriates, gathered together to discuss the future of the surveying profession in Hong Kong. It was no sheer co-incidence as we genuinely believed Hong Kong should have its own local set up for the long term development and benefit of the surveying profession. The idea of having a local professional body to represent surveyors was mooted in spite of the fact that RICS (HK) Branch was the then official identity.

When HKIS was finally established in 1984, which was very much in line with other local sister professional bodies such as architects and engineers, members particularly younger ones may not be aware that the Government was then hesitant to recognize the “HKIS” designation in full. In the meantime the colonial government started to introduce what was known as “representative government” with some of the Legislative Council seats to be filled by functional constituencies (and

some by geographical constituencies, some by appointments and some by key government officials). That was the concept of balanced participation (均衡參與) so as to balance different sectors’ interests in society. Yet in the initial conceptualization of the composition of the FC, the surveying profession was NOT included in the government’s plan. It was through the tireless and persistent effort of our senior members under the able leadership of our founding President Mr.F.Y.Kan that we managed to convince the government that HKIS should be and was ultimately recognized and included, together with architects and engineers, in the FC. As a current member of the Legislative Council representing the architects, surveyors, town planners and landscape architects, I am proud to be a surveyor.

Such statutory recognition provided us with a robust foundation upon which the surveying profession was able to gradually build up its status in society in the subsequent years to follow. Today, notwithstanding its short history of only 20 years HKIS has become a voice in society to be reckoned with not only in professional subjects but also on livelihood matters particularly those concerning housing, land, construction, planning, infrastructure, environment etc. which account

for a very substantial part of our GDP and is one of the four main pillars of Hong Kong’s economy.

Apart from this intangible asset, and in a more substantive way we gradually managed to convince the government to recognize and accept the “HKIS” designation as the only local qualification for recruitment of professional surveyors in the civil service appointments. Today, thousands of surveyors of different disciplines are employed in various government departments and statutory bodies such as ArchSD, Housing Department., Lands Department, Rating & Valuation Department, KCRC, MTRC, URA etc., many of them in senior positions. Similarly, in the private sector many surveyors are in key and influential positions in both small and large commercial enterprises and services companies, educational institutions etc. Surveyors are also fortunate enough to have a voice in the Executive Council through our senior member the Hon.C.Y.Leung. Thus, surveyors can shake and make policies in society.

To conclude there is one single message which I must convey to all HKIS members i.e. “united we succeed” or else we will sink into oblivion (結團就是力量).

TDC Council Delegation to Yang-tze River Delta 23-31 March 2004

The TDC had organized a delegation to better understand the latest economic situation, the future development plan of the Yangtze River Delta (YRD) region, to promote exchange and cooperation between Hong Kong companies and counterparts in the YRD cities in March 2004. The Delegation visited five leading YRD cities, namely Wenzhou, Ningbo, Hangzhou, Suzhou and Shanghai.

The core concept of the TDC's YRD strategy is to assist Hong Kong companies explore opportunities in the YRD and at the same time encourage YRD enterprises to make use of Hong Kong's business platform to expand into the world market. To achieve this objective, TDC pledged to take the follow measures:

- Strengthen cooperation and coordination with industry associations and related government departments in major cities of YRD to facilitate sector-to-sector partnership
- Organize more delegations of private enterprises to Hong Kong
- Organize Hong Kong service delegations, mini-expos and seminars in YRD cities and regular workshops at the CEPA Business Service Centres
- Consult Hong Kong industry representatives on feasibility and operation model of the proposed 'CEPA Hong Kong Service Centre' in Hangzhou
- Augment TDC databases on the private enterprises in the key YRD cities and collect success stories of YRD enterprises using the Hong Kong platform
- Conduct research study on the service needs of foreign-invested enterprises in YRD
- Create a new "YRD section" in the portal tdctrade.com with links to the websites of the municipal authorities
- Form a working group on 2010 Shanghai World Expo to proactively assist Hong Kong companies to capture the business opportunities
- Reflect to YRD authorities, via different channels, the concerns of Hong Kong companies in doing business in the mainland
- Organize a trade-oriented "Style Hong Kong" promotion in Shanghai in September and conduct business-to-consumer "Style Hong Kong" roadshows to the target mainland cities.

For more information, please visit:

www.tdctrade.com

**2004 Mainland and Hong Kong
Conference on Development of
Construction, Real Estate and
Professional Services, 16-17 August
2004 in Dalian (2004年 兩地基建與
房地產企業及專業服務發展研討會)**

The Environment, Transport and Works Bureau jointly with the Ministry of Construction and in association with the HKIS are once again organizing this Conference to provide a platform for the construction industry to meet their Mainland counterparts and to promote the exchange of construction technology and expertise.

Please visit the HKIS website www.hkis.org.hk for further details of the Conference and registration form.

**The 4th Across-the Straits
Geomatics Conference
16-18 August 2004,
Changchun, Jilin Province,
China**

**第四屆海峽兩岸測繪發展研
討會**

**2004年8月16-18日, 吉林省,
長春市**

二十一世紀是數位化，資訊化，網路化，智慧化蓬勃發展的新世紀。空間技術，電腦技術，互聯網技術和虛擬現實技術的快速發展，正在改變著包括測繪在內的許多行業，學科的面貌及生存環境。

本次會議主要研討內容包括：— (1) 測繪在國民經濟和社會資訊化的定位與作用；(2) 大地測量的新技術，新方法和新應用；(3) 新一代航空遙感系統的資料處理與應用；(4) 網路化,互操作GIS技術與應用；(5) 現代地圖制圖與地理資訊工程；(6) 工程測量，地籍測量，房產測量與海洋測量的新方法和新模式；(7) 地理資訊標準，政策,資料產品模式，(8) 測繪教育與人才培養；(9) 專題論壇 (A) 海峽兩岸測繪學名詞對照，及 (B) 測繪執業資格制度。

會議注冊費人民幣 1600

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中國土木工程學會 建築市場與招標研究分會 於5月28日來訪學會



左至右

鄭森興 - 香港測量師學會工料測量組副主席

張達棠 - 香港測量師學會高級副會長

年福禮 - 中國土木工程學會

建築市場與招標投標分會理事長

孫貴祥 - 中國土木工程學會

建築市場與招標投標分會秘書長

香港測量師學會高級副會長、中國土木工程學會建築市場與招標分會理事長與中國土木工程學會訪問團

湖南省房協中介專業委員會於5月31日來訪學會



1 林蘭珍 - 湖南省房地產協會中介專業委員會秘書長

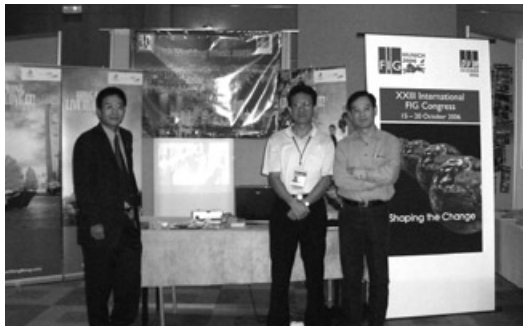
2 謝偉銓 - 香港測量師學會會長

3 李海浪 - 科長

湖南省建設廳房地產處



President and team returned home from FIG Working Week in Athens



The President Mr. Tony Tse (far right) with Mr. Raymond Chan, BSD Chairman (1st left) and Mr. Dominic Siu, LSD Vice-Chairman (in the middle) at the HKIS exhibition booth.

Chairman's message



Raymond Chan

Chairman

This month, I want to tell you a story. This is a story told by a building surveyor but it can be equally applicable to other surveyors.

In a busy morning of a weekday, a building surveyor, Mr. X, received a phone call. This phone call was from a man who introduced himself as Mr. Chan. He told Mr. X that he has never met him before but got his telephone number from a friend, Mr. Cheung. He told Mr. X that his boss is planning to build a 12-storey hotel in Dongguan comprising of about 500 guestrooms. The area of the site is about 5,000m² and the floor area of each floor will be about 1000m². He asked Mr. X whether he has any experience in project management of similar projects. He asked Mr. X whether his company is interested to act as the project manager for this project.

Mr. X immediately pointed out that 1,000m² per floor will accommodate about 25-30 rooms and a 12-storey hotel of this size should only have about 300 rooms. Mr. Chan's response was that he might have made a mistake in the figures. He would re-confirm it with his boss. He made an appointment for an initial meeting on the following day and requested for a company profile and a list of job references for similar projects.

In the meeting held on the following day, Mr. Chan gave Mr. X his business card and mobile phone number. He apologized for the mistake he made earlier and confirmed that the proposed hotel building would be of 20 storeys instead of 12 storeys. Mr. Chan was about 30 years of age.

After a brief discussion of about 20 minutes and viewing the company profile supplied by Mr. X, Mr. Chan appeared to be quite satisfied. He asked Mr. X whether he could attend a lunch meeting with his boss, who used to live in Singapore, and would be expected to be in Hong Kong on the following day. Mr. X expressed that he should be available. Mr. Chan phoned his boss immediately to arrange the meeting. Mr. Chan told Mr. X that as the project was still in the planning stage, it would be better for Mr. X to attend this meeting alone to keep it confidential at this stage. Mr. Chan said that Mr. Cheung would also attend this lunch.

The meeting was confirmed to take place in XX Hotel in Causeway Bay and Mr. Chan arranged to meet Mr. X in the hotel lobby at 12:45 p.m. as Mr. X had not met Mr. Chan's boss before. Mr. X arrived at the meeting place on time and met Mr. Chan. Mr. Chan phoned his boss to confirm the location of the lunch. Mr. Chan got confirmation over the phone that the lunch should take place in XXX Hotel which is located about 200 metres from XX Hotel and is within easy walking distance.

Mr. Chan and Mr. X went to the Chinese restaurant in XXX Hotel. Mr. Chan's boss, Mr. Tong, was already there in a VIP room. Mr. Tong, was a young man of about 35 years of age. In the room, there were 2 other persons. Mr. Tong introduced them as Mr. Wong and Mr. Kong. Both of them were Mr. Tong's friends. Mr. Tong welcomed Mr. X and apologized for the mistake made about the venue of the lunch. He continued to say that he was waiting for his business partner who was currently in a lawyers' office in Central with Mr. Cheung and were waiting to sign some land transaction document.

Mr. Tong ordered a round of sharks fin soup as an appetizer while waiting for his partner and Mr. Cheung. During the lunch, Mr. Tong questioned briefly on Mr. X's experience in similar projects. However, Mr. Tong didn't start to discuss his new

project. He wanted to wait for his partner in order to discuss it in his presence.

The lunch went on well. After some casual conversation around the table, Mr. Wong started to mention about a hand of "Dai Dee" he played with Mr. Tong in the previous evening. He said that Mr. Tong should have played better on that hand and achieve a much better score. After arguing for a few minutes on the details, Mr. Tong asked for a pack of cards in order to demonstrate clearly what should have been played. Mr. Chan went out of the room to order a pack of cards from the restaurant cashier. He came back with a pack of new cards. Cards were picked out to resemble what happened in the hand they played in the last evening. Finally, Mr. Tong admitted that he should have played better. Mr. Tong agreed to buy Mr. Wong a dinner in the following evening and also invited Mr. X to attend.

Time ran fast and it was already about 2:00 p.m. Mr. Wong suggested a small game of the cards to pass the time while waiting for Mr. Tong's partner and Mr. Cheung. Mr. Tong agreed and sponsored \$100 for the one who won the first round. Two cards each were distributed to start a poker game. Mr. Tong made a bid of adding \$20 for the issue of the 3rd card. When it came to Mr. X's turn, Mr. X declined to continue. When it come to the 2nd hand, Mr. X expressed that he never gamble and declined to join. He, however, encouraged others to continue. The game did not continue. Mr. X then said that he had another appointment and had to leave (it was about 2:15 p.m. already). Mr. Chan, sitting next to Mr. X, noting that the situation was not to his favour, quietly requested Mr. X to pay for the bill of this lunch. Mr. X ignored Mr. Chan's request, gave an apology for leaving early and left the room.

This story ends here. It sounds true. It can happen to any of you. Bless you too. 🙏

Chairman's message



YU Kam Hung
Chairman

As usual, the GPD Council has continued to be involved in a number of issues, detailed as follows:

Business Valuation (Convenor: Mr. KK Chiu)

A letter was sent to SFC on 19 April, which contained the following points:

"Business Valuation"

1. *The second meeting among the representatives from the Hong Kong Society of Accountants, the Hong Kong Society of Financial Analysts, the Royal Institution of Chartered Surveyors and the Hong Kong Institute of Surveyors will be held on 17 April 2004 to discuss the formation of the Forum.*
2. *As soon as the Forum is established, a proposal will be prepared and submitted to the Regulatory Authorities by the Forum on the following points:*
 - a) *To have a set of criteria of members who are eligible to do the business valuation within each member institute of the Forum;*
 - b) *To have a unified or recognized business valuation standard for the member institute to follow;*
 - c) *To have a set of disciplinary procedure of each member institute of the Forum;*
 - d) *To ensure a proper enforcement system is in place for each member institute of the Forum to follow.*
3. *The Business Valuation Standard prepared by the Hong Kong Institute of Surveyors will be ready shortly and will be circulated to other local professional institutes for comments. Representatives of HKIS were advised to proceed with public consultation so that the public would be able to comment on the standards.*
4. *A list of eligible business valuers within the Hong Kong Institute of Surveyors will be prepared and the Regulatory Authorities will be kept informed.*
5. *The Hong Kong Institute of Surveyors will provide the Regulatory Authorities with a list (not exhaustive) of local business valuation practitioners appearing in the Hong Kong public domains since 2002 for preparation of business valuation reports to publicly traded companies in Hong Kong. A list is attached herewith as Appendix."*

Education & APC (Convenor: Mr. Simon Wang)

As the GPD has agreed to accept applications for the APC from all other

types of surveying degree holders, we now intend to study the impact of overseas degree holders and are now reviewing the draft rules and regulations.

An APC guideline will be prepared and sent to all assessors before this year's interviews in June.

Government Practice & Local Affairs (Convenor: Mr. CK Lau)

The panel's first meeting with the Lands Department was held on 5 May 2004 and the next meeting is scheduled for 4 August 2004. The panel is currently preparing a letter to be submitted to the URA regarding the appointment of professional surveyors and fee arrangements. This will be followed up with the Housing Society.

Mr. Bernard Chan, Hon. Secretary of the General Council has replied to a letter to HKIS from the H15 concerned group in relation to URA's acquisition arrangement in the H15 project. The panel has provided comments on the matter and has asked Mr. Chan to provide a copy of his letter to H15.

Information and Technology (Convenor: Mr. Andrew Fung)

We are now discussing the matter of posting more information on the HKIS web site.

Mainland Affairs (Convenor: Mr. Francis Lam)

Members of the Shenzhen Real Estate Appraisers Association will visit HKIS in May 2004. The GPD Council will host the function.

Public Relations (Convenor: Mr. Daniel Mak)

A lunch meeting with Swire Properties will be arranged in May 2004.

Professional Advancement (Convenor: Ms. Serena Lau)

In April, the Professional Advancement Panel undertook a survey on **"Your Principal Areas of Practice"**. This is the first time such a survey has been undertaken by this Council; it is designed to obtain members' views in order to assist the Council in its strategic planning in the coming years. The results of the survey are as follows:

First Part of the Survey:

71 surveys were returned. As at 27 February 2004, we had 1,255 corporate members. This therefore represents a response rate of 5.66 %

| | Total | Members | Fellows |
|-------------------|-------|---------|---------|
| As at 27 Feb 2004 | 1,255 | 1,100 | 155 |
| Replies to survey | 71 | 57 | 14 |
| % | 5.67% | 5.18% | 9.03% |

Observations:

- This panel was concerned that the response rate is acceptable but not satisfactory. Improving communications between members and the Council is an important issue.

- The response rate from Fellow members is better than from Members.

Of the 69 valid replies:

| Principal areas of practice (a maximum of three areas can be selected) | Number of members selecting this area | % (out of 69) |
|--|---------------------------------------|---------------|
| Asset and portfolio management including property finance, investment performance evaluation, asset allocation and volatility management etc | 18 | 26.09% |
| Compulsory acquisition and compensation assessment | 25 | 36.23% |
| Land administration / land matter consultancy | 27 | 39.13% |
| Valuation for statutory purposes / mortgage purposes / others | 33 | 47.83% |
| Property education | 2 | 2.90% |
| Property and facilities management (including maintenance and repair) | 15 | 21.74% |
| Property or land development (including planning and / or project management | 20 | 29% |
| Property research and / or provision of a market study / feasibility study report | 24 | 34.78% |
| Property sales and / or leasing and negotiation | 27 | 39.13% |
| Others; please specify | 3 | 4.35% |

- Nearly half of the respondents (47.83%) reported that “valuation for statutory purposes / mortgage purposes / others” is one of their principal areas of practice.
- While “land administration / land matter consultancy” and “property sales and / or leasing and negotiation” are the next two principal areas of practice selected (39.13%), “compulsory acquisition and compensation assessment” (36.23%) and “property research and / or provision of a market study / feasibility study report” (34.78%) achieved very close results.
- Except “property education”, the remaining areas including “property or land development (including planning and / or project management” (29%), “asset and portfolio management including property finance, investment performance evaluation, asset allocation and volatility management etc” (26.09%) and “property and facilities management (including maintenance and repair” (21.74%) still attracted over the 20% ratio.
- The response rate for “property education” was only 2.9%.
- Three respondents selected “others”. The areas they mentioned are: “tourism related planning development”, “IT development on property information and valuation” and “business administration and human resource management”.

| No. of principal areas | One | Two | Three or more |
|------------------------|-------|--------|---------------|
| No. of responses | 5 | 12 | 52 |
| % (out of 69) | 7.25% | 17.39% | 75.36% |

Observations:

- The first part of the survey reveals the distribution of areas being practiced by our members.
- Rather than selecting one or two areas of practice, 75.36% of the respondents marked three (our survey in fact required the selection of a maximum of three). Meanwhile, the second part of the survey may expose more information regarding the number of areas being practiced and we shall discuss this topic later.
- The results certainly revealed that our members are not involved significantly in the education area. In fact, there is already a concern that there is a lack of GPD members teaching in universities.
- The results appear to reveal that our members can practice in a wide range of areas.
- “Property sales and / or leasing and negotiation” ranked second together with “land administration / land matter consultancy”. This result once again raises concerns that we should put more resources into agency matters.
- With the introduction of Real Estate Investment Trusts, we shall see if the market can create more posts in asset and portfolio management and job opportunities for our members.

Second Part of the Survey:

Of the 69 valid replies:

| Principal areas of practice | Number of members selecting this area | % (out of 69) |
|--|---------------------------------------|---------------|
| Asset and portfolio management including property finance, investment performance evaluation, asset allocation and volatility management etc | 36 | 52.17% |
| Compulsory acquisition and compensation assessment | 32 | 46.38% |
| Land administration / land matter consultancy | 26 | 37.68% |
| Valuation for statutory purposes / mortgage purposes / others | 13 | 18.84% |
| Property education | 48 | 69.57% |
| Property and facilities management (including maintenance and repair) | 40 | 57.97% |
| Property or land development (including planning and / or project management | 26 | 37.68% |
| Property research and / or provision of a market study / feasibility study report | 17 | 24.64% |
| Property sales and / or leasing and negotiation | 25 | 36.23% |

| No. of areas not dealt with | No. of respondents | % (out of 71) |
|-----------------------------|--------------------|---------------|
| 0 | 4 | 5.63% |
| 1 | 5 | 7.04% |
| 2 | 12 | 16.90% |
| 3 | 17 | 23.94% |
| 4 | 13 | 18.30% |
| 5 | 5 | 7.04% |
| 6 | 5 | 7.04% |
| 7 | 5 | 7.04% |
| 8 | 4 | 5.63% |
| 9 | 1 | 1.41% |

Observations:

- Most of the members indicated that they have not been involved in 2 to 4 areas of practice (out of a possible 9). Together with the results from part one, we can conclude that most of the members are usually involved in 3 to 4 areas of practice.

International Affairs (Convenor: Ms. Monita Leung)

The President will visit Singapore and Malaysia in late July/early August and there will be one representative from the GPD joining. The GPD Council is also arranging another visit to Japan/ Korea in August-October 2004.

Property Management (Convenor: Mr. Wing-lung Mak)

In conjunction with the BS Division and the Property and Facility Management Forum, we had prepared our comments in response to the government consultation paper on property management and maintenance.

Sales and Lettings (Convenor: Mr. Ronald Cheung)

The General Council has approved the GPD to organize "The Best Property Marketing Award 2003", which has been under preparation but will be postponed for about one month to July. It is agreed that the award-giving ceremony is to be held at a surveyors' luncheon.

Valuation Practice (Convenor: Mr. Charles Chan)

Regarding registration as valuers for HKSE and SFC Listing Valuation, the vetting panel will be formed by seven valuation practitioners in which two are from the public sector, three from valuation firms

and two from the private sector (such as developing companies, consultancy firms, banks etc.). A minimum of three members will be required to form a forum for each meeting.

The appeal panel will be formed by five individuals, with three surveyors and two from other professions. A minimum of three members will be required to form a forum for each meeting. The three surveyors will be the current positions of HKIS President and GPD Council Chairman and a surveyor appointed by GPD Council.

Technical Associates


Further discussion with the Board of Education will be carried out.

CIREA Working Group (Chairman: Mr. Alexander Lam)

A diploma presentation ceremony by the CIREA Working Group, which was scheduled in June 2004 has been postponed. Details to be further advised.

William Wong (FPD), Alexander Lam and Harry Chan (CBRE) will join as lecturers for two CPD courses held by CIREA on 11-14 May and 17-24 May.

It is suggested that the HKSAR government should be willing to help GPD Surveyors with market entry into the Mainland, on which matter we intend to comment and request formally.

The GPD Council has become increasingly busy. We need more hands. If you are available to assist, please call me on (852) 2820 2932. Alternatively, if you have any comments/suggestions on our works, please don't hesitate to tell us. 

Chairman's message

Continuing Professional Development (CPD)



LAM Li Wah

Chairman

Subsequent to the amendments of HKIS Bye-laws last October, the Board of Professional Development (BOPD) was formed a few months ago. LSD council nominated and appointed Mr. NG Tsan-wing and myself as LSD representatives in the BOPD for a term of 2 years. BOPD have held two meetings and discussed the standard of professional competence and matters relating to the promotion of continuing professional development in future. You will be kept informed of any major developments in CPD and you will be invited to express your views/comments in due course.

HKIS has been making continuous improvements of the training facilities. The grand opening of

the Surveyors Learning Centre on 26 April 2004 (the date of the HKIS 20th anniversary) is one of the examples.

The Surveyors Learning Centre is equipped with audio/video facilities and can accommodate a maximum audience of 190. It is large enough for running CPD events as well as our AGM. The LSD CPD Committee has already planned to hold no less than 8 CPD events including a technical visit this year. We expect to organize more CPD activities in future to meet members' needs. Your participation in our CPD functions is the most encouraging support. We welcome your feedback which will be valuable to the improvement of our CPD functions as well as in meeting the ultimate objectives of the continuous development of our profession.

Apart from the divisional CPD functions, members are encouraged to participate in local and overseas conferences as far as possible. The

following conferences are highly relevant to our land surveying profession:

- **Towards a New Era of Land Tenure in the New Territories** (邁向新界土地管理新紀元) – **24 June 2004 at the Hong Kong Polytechnic University – Chiang Chen Studio Theatre.**
- **The 4th Across the Straits Survey Conference**(第四屆海峽兩岸測繪發展研討會) – **16-18 August 2004 in Jilin, Changchun, China.**
- **The 3rd Mainland-Hong Kong-Macau-Taiwan Land Administration and Surveying Conference** (第三屆中國大陸與港澳台學術研討會 - 地籍科學與地籍管理) – **14-17 September 2004 in Macau.**

Please visit our website for details. 

Chairman's message

Quantity Surveying Division



Gilbert KWOK

Chairman

I would like to report the following matters:-

Reciprocity Agreement between HKIS and China Engineering Cost Association ('CECA')

By the time you receive this newsletter, the open forum on the reciprocity agreement should have been held on 23 June 2004. The forum should have given the latest developments of the arrangement to those members who attended the event.

In anticipation of the reciprocity agreement to be signed and to implement the terms of the agreement, a working group has been set up to deal with matters such as training for members of the respective organisations and details of the examinations.

CPD events

As mentioned in earlier newsletters, if any members have any suggestions on CPD topics, he is most welcome to contact Mr. Sunny Chan at sunny.chan@hld.com, the Chairman of the CPD sub-committee.

Cape Town Congresses – PAQS and ICEC

Mr. T T Cheung, Mr. Sam Cheng and Ms Ellen Lau and Mr. Bernard Wu attended the 8th PAQS Congress and 4th ICEC World Congress in Cape Town, South Africa on 19-21 April 2004. A full report of the event by Mr. Cheung is reproduced below.

9th PAQS Congress

The 9th PAQS Congress will be held in Dalian, the People's Republic of China on 27-28 June 2005. The theme of the conference is "Culture of Quality Construction." The organiser, CECA, has invited Mr. T T Cheung, Mr. Sam Cheng and

Dr Anita Liu as honorary consultants for the conference.

Nomination to the Construction Industry and Training Authority (CITA)

Past Chairman, Mr. Nelson Cheng has been nominated as the representative of HKIS to the Board of CITA for a further term of 2 years.

Board of Education

The following members of the division have been nominated by the Divisional Council to the Board of Education for inclusion into the list of experts for accrediting courses:-

| | |
|------------------|------------------|
| Mr. Kim Berry | Mr. Jacob Lam |
| Mr. Nelson Cheng | Mr. H F Leung |
| Mr. Sam Cheng | Dr. Anita Liu |
| Mr. T T Cheung | Mr. Philip Lo |
| Dr. Paul Ho | Mr. Kenneth Poon |

8th PAQS Congress and 4th ICEC World Congress in Cape Town, South Africa



Reported by **TT CHEUNG,**

Senior Vice President

The 8th PAQS (Pacific Association of Quantity Surveyors) Congress and 4th ICEC (International Cost Engineering Council) World Congress were both held during 19 to 21 April 2004 in Cape Town, South Africa. It was the largest international quantity surveying and cost engineering event of the year with over 400 international participants from all over the world.

HKIS was represented by TT Cheung, Sam Cheng, Bernard Wu and Ellen Lau. Two Board meetings were held prior to the congress. We attended the 8th PAQS Board meeting and the 4th ICEC Council meeting on 17 and 18 April 2004. At PAQS level, the Board commissioned 3 research projects to be undertaken in the next year. We continued to work on the education and accreditation policy. We are also working towards WTO's recognition of the quantity surveying and cost engineering services by listing in their Central Product Classification (CPC).

The theme of the Congress was "Value Beyond Cost". Four papers from Hong Kong were presented:

1. "Organization culture profiles of the construction enterprises in China" by Dr. Anita Liu and Dr. Zhang Shuibou, presented by Ms Ellen Lau;
2. "Behind big shoulders" by Mr. Gregory Tung, present-ed by Mr. TT Cheung;
3. "Exploring relationship management as a business strategy for construction project management" by Ms Ellen Lau; and

4. "Sell but not pay" by Mr. Gregory Tung, presented by Mr. Bernard Wu.

These papers were presented together with 70 other papers and were all well received by the audience.

The host of the congress was the South Africa Association of Quantity Surveyors (SAAQS). They were really well thought people. Cape Town is a beautiful modernized city and is recommended to be one of the top 50 places in the world that one must visit before one dies by an international tourist-ranking agency. They offer spectacular scenery, good food and good wine. Cape Town is small and therefore one can get around most of the places within an hour's drive. We almost forgot that we were in Africa until the host brought us to the welcoming dinner in the evening of 18 April. It took more than an hour's drive from the city centre to somewhere very dark and deep in the jungle where we were greeted with the traditional African delight. It was fun to enjoy the show of 7 people from different parts of the world to explain in their own language the menu of the evening. Everybody laughed and burst into tears.

The highlight of the Congress was the Gala Dinner on 20 April where a number of honours of the ICEC, PAQS and AAQS were presented to the recipients in front of a truly international audience. I felt very hon-oured to have received the PAQS Medal and the ICEC




TT Cheung receiving the ICEC Distinguished International Fellow Award and the 2004 PAQS Medal



Distinguished International Fellow Award, 2 highest honours in International Quantity Surveying that evening. The honour is not just for me, but for HKIS and for Hong Kong people in the international arena.

At the closing session, there were 2 presentations by the future hosts: the 9th PAQS Congress in 2005 in Dalian, China and the ICEC Congress 2005 in Slovenia.

After the Congress, we took the opportunity to visit a few famous scenic spots: the Cape of Good Hope, the Table Mountain, the V&A Waterfront, the Robben Island where the then South African President Nelson Mandela was imprisoned for 10 years. The National Parks (known as safaris in Hong Kong) were great.

One last thing, to compliment the country: we were advised before the trip that South Africa is not safe. After this trip, I must say that this statement is not fair. We felt very safe in Cape Town. People are friendly (in hotels, restaurants, conference halls, shops and even taxi drivers!), there is good food, good wine, good value souvenirs and lastly good value golf courses around, even cheaper than our public golf course in Kau Sai Chau in Hong Kong! 

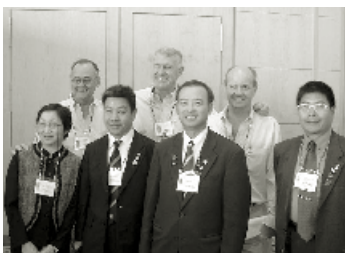
Presentation of souvenir to SAAQS



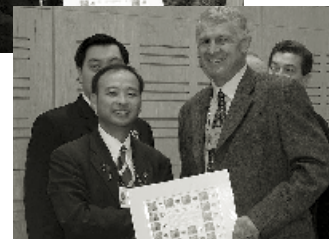
Cape of Good Hope headland



Cape Town



HKIS delegates and the host SAAQS



Presentation of souvenir to AAQS

News Flash



Tony WAN

Chairman

Study Tour 2003 Presentation – Melbourne & Sydney, Australia by Final Year Students, Building and Real Estate (“BRE”), the Hong Kong Polytechnic University

JO members were invited to attend the presentation organised by the BRE students on 3 May 2004 at the Hong Kong Polytechnic University.

We were most impressed with and enjoyed the evening presentation by the final year

students. We also appreciated their endeavour to publish a detailed and professional report on the property market in Australia, including urban regeneration in the Melbourne Dockland, REITs, Facilities Management and Shopping Centre Management in comparison with the Hong Kong context (please see page 21 for a detailed report).

We wish them a glorious future and become a new driving force in our surveying profession!

PQSL and CPD events – Invitation for topics

In the past few months, the JO have organised a number of PQSL and CPD events. We have received letters of appreciation and comments

from our members. To enable us to deliver a good service to our members, please email to me at tony.wan@ap.joneslanglasalle.com if you have any suggestions, comments, ideas and any topics you wish us to organise. We will try our best to meet your wishes!

Stay tuned for coming events including camping, a karaoke night cruise, snooker and football competition, golf driving range, war games, annual dinner and so on. 📧

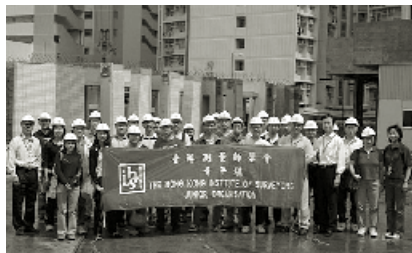
Site Visit to a Private Residential Development with Precast Technology in Fu Tei



Reported by Jo LAU and Sheldon IP
JO Committee Members

In a CPD event organised by Junior Organization on 24 April 2004, a site visit of the private residential development at Fu Tei was offered by Hip Hing Construction Co. Ltd., the pioneer in adopting the precast technology for the whole process of building construction in Hong Kong, to our members from different divisions.

Mr. Y.Y. Yip, Director of P. K. Ng & Associates (HK) Ltd., is the Authorized Person of the project, and demonstrated how the



precast technology was adopted in this private residential development by introducing Hong Kong's first precast structural element construction method including structural walls and volumetric precast kitchen and bathroom unit, with internal and external finishes, sanitary fittings, windows, and pipe works before delivering to site for installation.

As mentioned by Mr. Yip, the total in-situ concreting works has been reduced by 50% in volume and almost 70% of the building

components are using the precast technology. With the advanced precast technology, six main objectives - Quality, Speed, Cost, Safety, Environment and Buildability, can be achieved.

Quality: Less interference by other trades and more spacious working environment result in higher quality standard and better durability.

Speed: Production can be carefully planned in a controllable environment, productivity is enhanced by less disturbance from weather conditions and unexpected events.

Cost: Although slightly more expensive than traditional construction at the moment, the high quality can result in less defects, hence less rectification and maintenance cost.

Safety: More efficient safety control in factory, less scaffolds and temporary works in site resulting in cleaner and less risk working conditions.

Environment: Works causing nuisance are transferred from site to factory, less debris are incurred at site and hence a more hygiene environment.

Buildability: Modular design and jointing details are developed to ensure satisfactory performance in fabrication, transportation, installation and maintenance.

To achieve the above objectives, the professional knowledge on co-ordinating all disciplines issues including architectural, structural, building services, building technology, construction management, life cycle maintenance, etc., are required. The partnering approach is also a key success for delivering the final building product and results.

Mr. Yip also mentioned that the precast technology together with current I.T



technology can enable the project design and building construction more effective, reliable, visible, efficient and controllable.

Generally speaking, the concept of green construction will become more popular with the success of such construction project. The experience sharing with Mr. Y.Y. Yip, Mr. Alcohol Mok, Mr. Eric Chung, and other on-site professionals during the site visit have provided all participants an in-depth knowledge of the advanced precast technology for this 32-storey high-rise residential tower.

We are grateful to Mr. Alcohol K.H. Mok, the Chief Engineer of Hip Hing Construction Co. Ltd. for the arrangement of such fantastic site visit.



Review of Construction Law Cases in 2003

Reported by Owen TSE

POSL Working Group Member (QS)

and

Joseph CHONG

JO Committee Member



There were quite a number of important construction law cases in 2003. In the afternoon of 17 April 2004, we had the pleasure to invite Mr. Timothy Hill and Mr. Terence Wong of the Projects (Engineering and Construction) Group, Lovells Law Firm to share with us some of the important construction law cases in 2003.

The Central Reclamation Project, which was one of the most contentious projects in 2003 and probably in 2004, was chosen as the focus of the talk by Mr. Timothy Hill. Mr. Hill introduced to us the law and the procedures used by the Society for the Protection of the Harbour for challenging the project, that is, applying to court for a judicial review.

To succeed in bringing the administrative decision to the court, the review application has to be based upon one of the established grounds, namely "illegality", "irrationality" or "procedural impropriety". Having introduced the law and the procedures, Mr. Hill outlined a brief summary of the challenges brought against the Central Reclamation and the court's decisions for the same in 2003 and 2004. In July 2003, the challenge to the Wan Chai Outline Plan was allowed and the Court of Final Appeal upheld this decision in January 2004. However, the application to halt the Central Reclamation Phase III which

had been refused by the court in October 2003 was again refused in March 2004.


Following the brief explanation of the rationale of the court's decisions, Mr. Hill also spared some time to share with us the relevancy of the Government Procurement Agreement for challenging the tender award of the Central Reclamation Project. The mechanism for bringing a bid challenge by contractors through this means was also outlined.

Mr. Terence Wong chose to share with us three recent decisions regarding the Letters of Intent, which are closely related to the day-to-day practices of the construction professionals, particularly to Quantity Surveyors who are usually instructed to draft the same for the clients.

Terence mentioned the court's views on whether the contractor is entitled to claim quantum meruit as specified in the letter of intent should be enforced merely because the contract is not formalized. Whether a letter of intent constitutes a binding agreement between the parties and whether it is possible to impose a cap on the value of works by way of letter of intent were also illustrated with reference to three recent cases in turn.

In *Harvey Shopfitters v ADI*, it was held that the value of works should not be valued based on quantum meruit merely because of the parties' failure to formalize the contract. In *Schindler v Ocean Joy*, the nominated sub-contractor, relying on the letter of intent issued by the Employer, applied for a summary judgment against the Employer for the value of work done. It was held that there were triable issues as to

whether there is an estoppel by convention, the existence of which may render a binding agreement between the employer and the nominated sub-contractor no longer existed. The third case introduced by Mr. Wong was *BBC v ACC* whereby it was held the employer is obliged to pay the value of work done carried out by the contractor even if the value exceeded the authorized value specified in the letter of intent.

Apart from sparing their valuable time to introduce the recent development of construction law with us, Mr. Hill and Mr. Wong have also been generous to distribute a booklet summarizing the important cases and legal developments for the participants' reference. This booklet is really useful to keep ourselves up to date with the recent construction law development. 



Study Tour 2003 to Melbourne and Sydney, Australia by the Final Year Students of Building and Real Estate, the Hong Kong Polytechnic University

Reported by Margaret LAI Cheuk Yin
President of Real Estate Study Tour Committee
2003, HKPU

Tours are nice, but how about a study tour? Our fellow real estate surveying students in the Hong Kong Polytechnic University had a wonderful time in Australia last summer. Accompanied by their supervisors, Mr. Andrew K.C. Wong and Mr. Milton C. H. Lau, the attendants selected two well-planned cities, Sydney and Melbourne, as their destinations. Despite the unfortunate incident of SARS outbreak, the study tour committee had successfully managed to invite local institutions and private companies in Australia to share their valuable experiences on real estate practices. The committee would like to express their sincere thanks to those sponsors.

The study tour lasted for eleven days, which began on 9 June 2003. Studies on the urban planning system, redevelopment schemes and projects were their focuses on the first five days in the city of Sydney. After departure from Hong Kong on an overnight plane, the students established their local contacts and settled themselves in the next day. On 11 June, they were received by the Harbour Foreshore Authority, where the presenters had given an impressive speech on the development of Darling Harbour, the Rocks and other projects within the coastal area.

Students were welcomed by the private firm, DTZ Debenham Tie Leung in Australia, and attended the speech on local property market in the next morning. After grasping the general picture of Australia's market, the class

made their own way to Manly Beach to explore the development of tourist attraction. On 13 June 2003, the firm Colliers International led an intensive site inspection on the commercial development in Sydney and gave a seminar on the valuation practice of private properties to the participants. The students were fascinated about the growing property market in Australia and had learnt much in this city. At night, they were accommodated in King Cross, the famous Red Light District in Sydney.

After visiting the Blue Mountains, participants flew to Melbourne on 15 June. The next day they visited the Australian Property Institute (API) and University of Melbourne. More information on the local real estate investment trusts (REITs) and other derivatives were shared by the presenters. Concerning the aspects of facilities management, the students were invited to the Melbourne Cricket Ground on 17 June where they were offered a thorough site inspection of the stadium. The journey continued in the Docklands where the Docklands Authority gave a seminar on the redevelopment project of old industrial buildings there. They also visited the Urban and Regional Land Corporation where the officials introduced their marketing and planning strategy in their development projects, which is similar to that practiced within the comprehensive development area (CDA) in Hong Kong. The study tour concluded on 20 June and all the students traveled back to Hong Kong.

The organizing committee have just finished their open presentation on 3 May this year. It was

held in the Chiang Chen Studio Theatre in the Hong Kong Polytechnic University. In this two-hour session, the presenters shared with the audience what they had learnt in the twelve days in Australia. This year was also the last time Mr. Andrew K.C. Wong taught in the department, and the committee gave their heartfelt thanks to him during the presentation. ☺



Presentation at HK Polytechnic University



Visit to API



Melbourne Docklands



Sydney Central Business District

Applications of Global Positioning System (GPS) in Hong Kong - at sea and on land: Killing two birds with one stone

(Part One)



Eric MA

BSc., RPS (LS), MHKIS, MRICS, MHKSPRS,
MICES, Survey Manager/Fugro
Geotechnical Services (HK) Ltd.

atellite based positioning and tracking systems have received great attentions in recent decades. They have been widely used not only because of they are fast and accurate, but also they can provide real-time positioning which is a crucial element in the fields of survey, geosciences and geotechnics. Today, we will try to discover the reasons why one of leading positioning system - GPS is so attractive in the engineering industry in Hong Kong and discuss the applications of this system at sea and on land.

Marine Site Investigate Projects

Investigations, tests and trials are part of everyday work. In typical marine site investigation projects, two kinds of works shall be performed in order to determine the soil condition at sea. They are the Marine Cone Penetration test (CPT) and the Marine Drilling. Generally, CPT is carried out using a system which comprises four elements: a penetrometer with push rods and optional casing, a seabed deployment frame with ballast, a wheel drive and casing jack system to push the rods and casting into the seabed and a data acquisition and processing package (see Figure 1). The system shall be deployed from a floating barge with a lifting capacity of up to 30 tonnes either over the side or through a moonpool depending on vessel configuration. Conventional marine drilling is performed by rotary percussive and rotary drilling methods to sample sub seabed material and advance drill casing into the seabed following the sample attempt. The casing acts as a friction reducer

for the upper layers so that samples below the seabed can be recovered. The casing shall be terminated at the base of the hole or when rock head or similar hard material is encountered. Various sizes of drill casing are used depending on the soil type and the required depth.

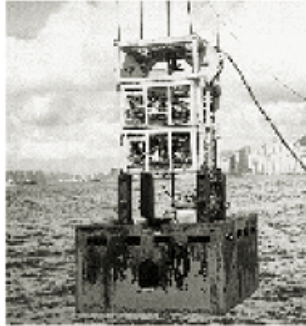


Figure 1: A 20 tonnes Wheeldrive CPT

GPS at Sea

Two types of GPS system can be used to determine accurate positions for the CPT and the Marine Drilling. They are the Fugro Seastar DGPS (Differential Global Positioning System) and the Trimble DGPS. Fugro Seastar DGPS is used for CPT installed in a barge (see Figure 2), while Trimble DGPS is employed for CPT installed in a jackup and Marine Drilling in a jackup (see Figure 3).



Figure 2: A 165-foot long "Standpiper" Drilling Barge



Figure 3: Jack-up Platform "Stork"

Fugro Seastar DGPS is one of the most prominent precision positioning systems in the world for use at sea. Its infrastructure consists of more than 80 base stations, two-manned Network Control Centres (NCC), an extensive data communication network and satellite uplink facility. All base stations are fitted with high quality GPS receivers and data communication links. The differential correction data generated is gathered centrally at the NCC's, then verified and broadcast to the mobile users using 10 different communication satellites. These include the 4 Inmarsat operational satellites for use with traditional Inmarsat communications equipment and high power channels on a further 6 satellites. Since Fugro Seastar differential corrections are based on multiple base stations, any hardware failure ashore generally has no effect on the quality of the vessel solution, whilst satellite broadcasts provide a level of dependability not seen in terrestrial communication, with brilliant immunity to interference and none of the vanishing or patchy reception often experienced with radio broadcasts.

This DGPS includes a beacon antenna, a GPS antenna, a Seastar 3000L receiver and a real-time data processing computer (see Figures 4, 5 and 6).



Figure 4: Seastar 3000L receiver and the real-time data processing computer



Figure 5: Seastar beacon antenna is mounted on top of a barge

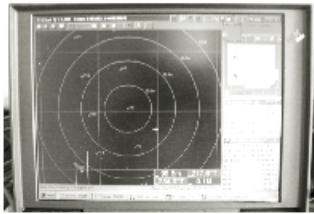


Figure 6: The real-time position of the barge was computing and shown on screen

The 3000L receiver first decodes all the DGPS signals for the operating region that are broadcast on the satellite channel, then combines these into a single new set of RTCM-format differential corrections that are continually optimized for the vessel position. Not only are these more reliable than using a single shore station, but also the DGPS position is always of the highest quality for the chosen


work area. Corrections can either be input into an existing GPS receiver onboard the vessel or an optional 8- or 12-channel GPS built-in to the 3000LR - which then provides a compressed, single box positioning solution outputting NMEA-0183 standard position, velocity and other data. The same omni-directional antenna can be used to receive both GPS and DGPS signals. The 3000LR receiver can either be set up for fully automatic operation, with no user action required, or can be left under surveyor control. By using the satellite link, every aspect of performance can be configured remotely. This DGPS service combines the advantages of consistent reliability with a low cost outlay by limiting coverage to a pre-defined local area.

The Trimble DGPS comprises of a beacon antenna, a ProXR receiver and a 4700 GPS system. The beacon antenna receives RTCM-format differential corrections from the government GPS base station and eliminating the need to postprocess the GPS data. This GPS base station is located in Kau Yi Chau which provide 24 hours, continuous DGPS corrections to public and private users in Hong Kong with tremendous supports.

Surveyor-in-charge places a significant role in these site investigation works, as the surveyor

has to lead the barge or jackup to the designed testing locations. What the surveyor shall do are to design and set up the configuration of the real-time data processing computer, analyze and ascertain the GPS survey result, maintain the accurate of final position of the testing site within required accuracy. Every minor errors or mistakes are totally not allowed in this type of survey as an inaccurate position may result in damage to the submerged MTR tunnel or cross-harbour tunnel. This system has been extensively applied in various private and public infrastructure site investigation projects in Hong Kong including the Central Reclamation Phase III, Wan Chai Development Phase II and Tai O Development-Sheltered Boat Anchorage.

Conclusion

In this issue, we discussed the applications of different systems of GPS at sea. The breakthroughs in technological development has made the role of surveyor become more and more important in controlling these GPS systems. All these GPS systems are very valuable to be adopted in the large development projects in China especially in the Zhu Hai regions. Another powerful strength of GPS in onshore surveying that will be detailed in the coming issue of Surveyors Times. 

Commercial Settlements between Employer and Contractor – The Impact on Sub-Contractors



John B MOLLOY

LLB (Hons), BSC (Hons), FHKIS, FRICS,
FInstCES, MAE, MCI Arb, RPS (QS)
Managing Director, James R Knowles (Hong
Kong) Limited

Construction contracts that end up in dispute often follow a similar course. The contractor will raise claims for loss and expense, and in the resultant arbitration or litigation the employer will counterclaim for defective works, damages for delays and maybe overpayment. Quite often the counterclaim will be for a significantly greater sum than the contractor's claim.

Fortunately in many cases common sense prevails and the contractor and the employer enter into a settlement agreement and thus avoid arbitration or litigation.

But in such circumstances what effect does such a settlement agreement have on sub-contractors? Can the contractor still pursue claims against the sub-contractors who he considers caused the delays or were responsible for the defective works for which the employer has counter-claimed, and if he can, does the amount of the settlement have any relevance?

This common problem was considered in the United Kingdom in the recent case of **Bovis Lend Lease Ltd v R D Fire Protection Ltd** (2003) QBD, and the decision will be of great interest to contractors and sub-contractors alike.

In 1997, Bovis Lend Lease Ltd ("Bovis") entered into a contract with a company called Braehead Glasgow Limited ("Braehead") for the construction of a very large shopping and leisure centre in Glasgow. The conditions of contract were the JCT Standard Form of Building Contract with Contractor's Design (1981 edition). The contract sum was £184,240,766.00.

There were substantial disputes between the parties, which ended up in court. Bovis claimed loss and expense of approximately £37.7 million and Braehead counterclaimed for alleged overpayment, liquidated damages and defective works in the sum of approximately £65 million.

Part of the dispute concerned defective works relating to fire protection and dry lining works which were carried out by a domestic sub-contractor R D Fire Protection Limited ("R D Fire") and Braehead's counterclaim in this respect was quantified at approximately £4.8 million, for the costs necessary to remedy the alleged defects.

Bovis joined R D Fire into the action as a defendant to the Braehead counterclaim, claiming an indemnity for any loss or damages it might incur as a result of Braehead's allegations of defective or incomplete fire protection works.

The litigation was eventually settled by agreement between Bovis and Braehead. The agreement was a global settlement under which all the claims and counterclaims in the proceedings were settled on the basis that Braehead would pay £15 million to Bovis and the parties would potentially enter into a construction contract in relation to another development.

Having settled with Braehead, Bovis brought action against R D Fire seeking damages in respect of the defective works.

Bovis argued that its settlement should have no direct bearing upon the case against R D Fire. Bovis maintained that they had made a financial loss in entering into the settlement with Braehead and that this loss was caused in part by the defective work carried out by R D Fire. Indeed they elected not to produce any evidence of the circumstances of the settlement, of negotiations leading up to the settlement, or of the make up or contents of the settlement itself, maintaining instead that it was impossible to say what part of the global settlement figure represented the losses suffered by Bovis which were attributable to the default of R D Fire.


Accordingly it was their position that they had suffered loss and were entitled to pursue an action against R D Fire in the normal way. R D Fire argued to the contrary that the settlement with Braehead was of critical importance and that it had the effect of extinguishing the entirety of Bovis' claim against them.

His Honour Judge Thornton QC was asked to

try a series of preliminary issues as to whether the settlement extinguished Bovis' claim or was relevant to that claim, and his decisions were as follows:

1. A sub-contractor such as R D Fire would be deemed to have foreseen that as a consequence of its breach, the contractor would be liable to the employer and that such liability may give rise to litigation and a settlement under which contractor would incur financial loss.
2. Accordingly, it was a general rule that a main contractor who settled with an employer could recover the sum paid in settlement against the sub-contractor provided it could establish that the relevant component of the settlement was reasonable, and that the sub-contractor was in breach of the sub-contract.
3. However the relevant component of the settlement would be taken as the upper limit of the sum recoverable (and for this the Judge relied on the case of *Biggin & Co v Permanite 1951*).
4. If the settlement was shown to be unreasonable it could provide no evidential foundation to establish the contractor's loss, but it would nonetheless still provide a ceiling on recovery.

In this present case, Bovis had not sought to adduce any evidence as to the circumstances and breakdown of its settlement with Braehead. On this basis, Bovis could not establish any relevant loss that was attributable to the alleged breaches of contract by R D Fire, and accordingly they could raise no claim against them.

The conclusion from this case is clear. If you are a main contractor entering into a commercial settlement with an employer the subject of which concerns breaches of contract by sub-contractors, your settlement agreement should assign a monetary value to specific aspects of the claims that relate to such items to avoid the difficulties that Bovis encountered in seeking reimbursement from their sub-contractor. 

Liquidated Damages – Proposals for a Radical New Approach



Paul SMIDDY

Brian E. Rawling & Associates

Introduction

Do the present liquidated damages procedures achieve an employer's aim of recovering damages for delay caused by a contractor? The answer must be yes.

However, from contractors, or particularly a finishing sub-contractors, point of view the present procedures for deducting and retaining liquidated damages are not satisfactory. When a fitting out sub-contractor, who had caused no delay, asks why it has not been paid, the main contractor replies *"pay when paid and I have not been paid as the employer has deducted liquidated damages"*, albeit that the delays for which liquidated damages were deducted were caused by an earlier sub-contractor.

If the delay for which liquidated damages were deducted towards the end of the contract were caused during the early part of the contract by, for example, the piling sub-contractor, or the concrete frame sub-contractor then, unless the main contractor has taken steps to withhold payment from these early sub-contractors in respect of the delays which they caused, including a contingency amount for possible liquidated damages which may be levied in the future by the employer, then the main contractor is placed in the position of having to seek recovery of monies already paid and this is no easy task. Therefore, from this point of view, the present procedures for liquidated damages do not directly impact upon the causer(s) of delay. Main contractors have to be aware of the causer(s) of delay and ensure that they withhold sufficient monies from interim payments in the event that the employer, at some time in the future, deducts liquidated damages.

Can improvements be made to the present procedures to make the causer(s) of delay pay for their shortcomings when the delays are

accruing? Well the answer must be yes but it would require a radical change to the present procedures to enable this to be done.

This article considers the potential effects upon employers and contractors, including the performance of contractors and sub-contractors, of introducing radical changes to the timing of the deductions of liquidated damages on construction contracts.

Such proposed changes would concentrate more on the performance of the contractor during the progress of the works and focus upon delays caused by the contractor, or its sub-contractors, on a month-by-month basis. Other advantages of this new approach are that it would focus upon programme achievement throughout a project, promote better time management, highlight programme awareness, and improve programme understanding and techniques. This has to be good for the industry.

The changes proposed would require a complete redrafting of the liquidated damages provisions in existing contracts and would mean a significant departure from the current approach of deducting liquidated damages only when a contractor has failed to complete the works by the time or date stated in the contract (as may be revised due to extension of time awards).

However, this new approach would inevitably attract potential disputes with regard to what constituted, and who was responsible for, delays during the progress of the works. There could be disputes concerning delays on critical and secondary paths in the programme and the changes to planned intentions brought about by delays. Such matters would likely be the subject of separate significant discussions.

Hence, this article intends to promote debate concerning the current and the proposed radical new approaches to liquidated damages.

The Current Approach to Liquidated Damages

Standard forms of contract used in the construction industry usually require the

contractor to complete the works, either within a specified time, or by a specified date.

Failure to complete the works within the specified time, or by the specified date, normally results in the contractor being liable to pay liquidated damages to the employer, provided that the contractor was not entitled to an extension of time, or that time had not become at large.

Under Clause 21(1) of the HKIA Standard Form of Building Contract for use in Hong Kong (1999 Edition) the contractor is required to commence the works on the Date for Possession and to:

"..... complete the same on or before the Date for Completion"

Clause 22 of the same standard form provides that:

"If the Main Contractor fails to complete the Works by the Date for Completion stated in the appendix to these Conditions or within any extended time fixed under clause 23 or clause 33(1)(c) of these conditions and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Main Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said appendix as Liquidated and Ascertained Damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any monies due or to become due to the Main Contractor under this Contract."

Clause 49(1) of the Hong Kong Government General Conditions of Contract for Civil Engineering Works (1999 Edition) provides that:

"The Works and any Section thereof shall be completed within the time or times stated in the Appendix to the Form of Tender calculated from and including the date for commencement notified by the Engineer in accordance with Clause 47 or such extended time as may be determined in accordance with Clause 50."

Later, in the same Hong Kong Government Conditions, Clause 52(1) provides that:

"If the Contractor fails to complete the Works or where the Works are divided into Sections any Section within the time for completion prescribed by Clause 49 or such extended time as may be granted in accordance with Clause 50, then the Employer shall be entitled to recover from the Contractor liquidated damages in accordance with the provisions of Clause 83....."

By reference to the standard forms of contract currently in use, including those provisions in the two forms of contract mentioned above, it can be seen that the contractor's obligation to pay liquidated damages, or to allow them to be deducted by the employer, only comes into force once the contractor has failed to complete the works either on or before the specified date for completion or within the specified time frame.

Even then, some contracts only make provision for the employer to deduct liquidated damages providing the employer's representative has certified in writing that, in his opinion, the works ought reasonably to have been completed by the stated date for completion or within any extended time fixed in accordance with the contract.

The advantages and disadvantages of the present approach to the deduction of liquidated damages for employers, contractors and sub-contractors may briefly be summarised as follows:-

A. Advantages to employers:-

1. The amount of liquidated damages ought to relieve the employer of losses in revenue incurred due to the non completion of the project, provided they are a true estimate of the loss.
2. As the daily rate of damages is fixed, in advance, the level of recovery by employers in respect of liquidated damages is not normally disputed, other than in respect of the number of days for which the liquidated damages are applicable.

B. Disadvantages to employers:-

1. The deduction of liquidated damages after the expiry of the time or date

stated in the contract (or any extension thereto) is an action taken by the employer at too late a stage in the contract to influence the contractor to implement delay mitigation and/or acceleration measures to extinguish or reduce delay.

2. The deduction of liquidated damages could further disrupt the progress of the work, as the contractor and its sub-contractors are starved of cash at what is often a crucial time.
3. If the liquidated damages are capped then, after the cap has been reached, there is no incentive for the contractor to reduce delays to completion.

C. Advantages to contractors:-

1. The financial effects of the contractor's late completion, with respect to liquidated damages, can be assessed accurately.
2. The deduction of liquidated damages is not made until towards the end of the contract thereby preserving its cash flow for as long as possible.

D. Disadvantages to contractors:-

1. Liquidated damages deducted towards the end of a delayed project often occur at a time when the contractor is already experiencing adverse cash flow problems.
2. A contractor is likely to be less focused on maintaining adequate progress until the potential deduction of liquidated damages draws nearer.
3. A contractor is likely to be less focused on undertaking delay mitigation and/or acceleration measures as a consequence of his early delays if the deduction of liquidated damages are a long way off.
4. The less commercially aware contractors may allow a sub-contractor, who caused an early delay to the progress of the works, and ultimately to the completion of a project, to "escape liability".

E. Advantage to sub-contractors:-

1. The sub-contractor who causes an early delay and completes its sub-contract works prior to the original completion

date (or any extension thereto) may "escape liability".

F. Disadvantage to sub-contractors:-

1. Sub-contractors working during the later stages of a delayed contract are often not paid due to the contractor's adverse cash flow, particularly as contractors often use the "pay when paid" argument.

The Proposed New Approach to Liquidated Damages

Although most standard forms of construction contracts provide for the parties to fix a genuine pre-estimate of the daily rate of liquidated damages payable for late completion, which in turn permits the financial effects of a contractor's late completion to be assessed with some degree of certainty, the sudden deduction of liquidated damages by an employer at the end of the contract is often a severe blow to a contractor's finances and, as mentioned earlier, often a remedy realised by the employer at too late a stage in the contract to influence a contractor to implement delay mitigation measures which might otherwise have been actioned.

Therefore, if an alternative approach to the present procedures for liquidated damages could be adopted; more influence may be imposed upon contractors to mitigate delays wherever practicable.

One suggested alternative to the current approach of deducting liquidated damages after the due date for completion has passed would be to assess the contractor's actual progress against its planned progress on a rolling monthly basis, as is often done for progress reporting, and for there to be a provision to allow the employer to deduct "provisional liquidated damages" assessed at a pre-determined daily rate, as soon as it becomes evident, (i.e. on a month by month basis), that the contractor is in delay, or behind programme, as a consequence of events for which the contractor is held to be responsible (and is not entitled to an extension of time).

The assessment of progress v. pro-gramme would be an ongoing process throughout the duration of the contract and the assessment of "provisional liquidated damages" which become deductible would similarly be made on a monthly basis and adjusted month by month

as the projected delay to completion advanced or retreated.

Such a radical change to the approach to liquidated damages may have the benefit of influencing a contractor in the following ways:-

1. A contractor would likely focus more on achieving its planned progress in an effort to maintain its programmed intentions and would, more likely, monitor its progress more carefully on a daily basis with a view to averting the potential deduction of *"provisional liquidated damages"*. This would lead to better time management and more efficient resourcing by the contractor.
2. A contractor would need to undertake its duty of co-ordination more strictly, particularly that of its sub-contractors, and would have to enforce its sub-contractors to commit to strict target programmes.
3. A contractor would likely focus more on delay mitigation measures following the occurrence of delaying events for which it was responsible. A cost benefit analysis of undertaking delay mitigation, and /or acceleration measures could be prepared by a contractor to determine if it would be in its interest to employ such measures.
4. A contractor would likely focus more on the financial management of the contract. This would be an effect of the foregoing point where, if monies were deducted in the form of *"provisional liquidated damages"*

on a rolling monthly basis, the contractor would be pressured into considering what measures could be implemented to redress the adverse cash flow situation and reduce the amount deducted for *"provisional liquidated damages"*.

5. A less commercially aware or minded contractor may be prompted to focus more on the event, or events, causing delay to the progress of the works which, in turn, may influence its decision to apportion the appropriate *"provisional liquidated damages"* to the relevant sub-contractor, or sub-contractors, who caused the delay, at the time that the delay was being caused.
6. Such a less commercially aware or minded contractor may not otherwise make provisional deductions from its sub-contractors responsible for causing delays before they complete their sub-contract works and leave the site, leaving the main contractor to suffer the 'loss' to his finances when liquidated damages in respect of the sub-contractor's delay are deducted towards the end of the contract.
7. The deduction of monies from the defaulting sub-contractor's accounts at the time of the delay, consequent to the deduction of *"provisional liquidated damages"* from the contractor by the employer on a rolling monthly basis, would allow funds to become available from which the contractor could finance its obligation to undertake delay mitigation measures, and/or the option to undertake

acceleration measures.

It is emphasised that the impacts of this radical approach upon the performance of the contractor and its sub-contractors would undoubtedly provide benefits to the employer.

Who Would Monitor Programme v. Progress?

For Government projects, the dispute resolution advisor, acting independently and fairly, could monitor programme and progress and report monthly, to the certifier, the amount to be deducted for *"provisional liquidated damages"*.

For private developments, it is suggested that a time administrator is appointed and the fees shared equally between the employer and contractor to maintain the time administrators' independence. The time administrator would, as with the dispute resolution advisor, report monthly to the certifier.

Conclusion

If the proposed new approach to the deduction of liquidated damages was to be adopted the whole contracting process would be tighter and invariably more controlled. As such all parties would focus more upon programme achievement and hitting target dates.

For further information contact us at info@brianerawling.com
[www.brianerawling.com] 

Compensation on Creation of Right of Temporary Occupation -A Precedent Case Tested in the Court of Appeal



Connie YIU

MHKIS

Preamble

A temporary right of occupation was created on the subject lots to facilitate construction of Route 3. Failing to agree on the amount of compensation with the Government, the owner applied to the Lands Tribunal for an assessment, which decision was appealed by the Government. The Court of Appeal dismissed the appeal. The decision of the Court of Appeal was handed down on 2 March 2004.

This is the first case of its kind and is regarded as a precedent. The author was an employee of the owner during the litigation and considers members should be alerted of the presence of a precedent case. While every effort has been made to maintain impartiality and objectivity, members are advised to check the details from the relevant sources. The author cannot accept any responsibility of misrepresentation.

Background Information

Court References: LDMR 13/1999; CACV 18/2003

Applicant: Ease Gold Development Ltd
Respondent: The Secretary for Transport

Lot No: Portions of Lot Nos. 214RP & 215RP
in DD 103

Period of temporary occupation: 17
November 1995 to 16 November 1998

Area of land temporarily occupied: 31,706.9 m²

Use as described in Block Crown Lease: Padi
& Waste

Physical state of the land before creation of
TOA: fish ponds

Zoning in OZP dated 12 July 1991: 'OS'
annotated 'open storage'

Zoning in OZP dated 17 June 1994: 'U'
annotated 'undetermined'

Reason for Change of Zoning in OZP

The zoning of the subject lots was changed in 1994.

At paragraph 8.11.1 of the Notes attached to the OZP dated 17 June 1994, there was an explanation to the re-zoning of the subject lots from 'OS' to 'U':

'An area to the northeast of Ko Po Tsuen is zoned 'U' as there is a possible railway proposal which would run through the area as recommended by the Railway Development Study. Also, both the proposed Route 3 alignment and the proposed Main Drainage Channels for Yuen Long and Kam Tin will run through the area. In view of the above, it is proposed that the area be zoned 'U' pending finalization of the above-mentioned study and projects and the preparation of layout plan to guide development/redevelopment in an orderly manner.'

There was no argument between the parties that the change of zoning was to preserve the land for the Project.

Basis of Valuation

The power to create rights of temporary occupation is derived from Section 15 of the Roads (Works, Use and Compensation) Ordinance, Chapter 370. In accordance with Paragraph 2(a)(ii) of Part II of the Schedule of Chapter 370, the basis of valuation is "the amount of an open market rent for the claimant's interest in the land occupied during the period of the easement".

If the subject plot of land was resumed under S13 of Cap 370, there would be 2 pieces of laws applicable, i.e.

1. Section 12(aa) of the Lands Resumption Ordinance, Chapter 124, which stipulates:

'no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved or set apart for the purposes specified in.... the Town Planning Ordinance (Cap 131) ...'

2. The Pointe Gourde Principle.

As such, the 'U' zoning in the OZP should have been disregarded for the purpose of assessing compensation.

However, the subject case was not resumption. Argument then arose as to whether S12(aa) and the Pointe Gourde Principle can apply in creation of rights of temporary occupation to disregard the zoning, if not, whether the valuation should be based on its existing use value (i.e. fish ponds), or should it reflect its potential use (Melhado use).

Owner's Valuation

It was the owner's intention not to argue on S12(aa) or the Pointe Gourde Principle at the Lands Tribunal. It merely wanted to seek a more reasonable amount of compensation but did not want to set a precedent. Otherwise, the Government might pursue in the higher courts and the case might be dragged into a never-ending litigation which the owner could not afford.

The owner's expert witness put up the following arguments:

1. Although the land was zoned 'U', the owner should be able to obtain planning permission for open storage use. There was no reason to suggest that while the Government could use the land for construction activities, the owner could not obtain a planning permission for a 'Melhado' use.
2. The fact that the land was used as ponds at the material date should not deprive the owner's right to be compensated for its potential use. Otherwise, the Government does not need to pay if the land was left vacant.
3. The majority of the comparables gathered were being used for container storage without having obtained planning permission. If the subject lots were available for lease, they should be able to fetch a rent similar to the level set by the comparables.

By analyzing the comparables, he arrived at a unit rate of \$185 per sq. m. per annum, or a lump sum of \$14,300,000 after deducting the cost of site formation.

Government's Valuation

The Government was of the view that the rental value should reflect its optimal lawful use having regard to the lease conditions and the requirements under the Town Planning Ordinance.

The argument was that while a reasonable purchaser would be prepared to pay for the potential of the land in case of purchase, a reasonable tenant seeking a lease term of 3 years would not bother to seek planning approval and carry out site formation works for more beneficial use.

Since the existing use of the lots was ponds, the land was zoned 'U', and no planning approval was granted, the optimal lawful use of the land at the material time was 'pond' use. Hence, comparables on lettings for pond use were gathered and a valuation was arrived at \$2 per sq.m. per annum or \$191,000 in total.

Lands Tribunal's Decision

The Lands Tribunal's decision followed the following lines:

1. The assessment of the open market rental of the lots must be made subject to the zoning in force.
2. However, the tenant may perhaps be willing to pay an extra sum for leasing the lots for the likelihood of obtaining planning approval.
3. The Tribunal then analyzed the owner's comparables, which were used for open storage without planning approval, made adjustments to the accessibility, time of transaction and security of tenure and came up with a valuation of \$93 per sq.m. per annum after deducting the cost of formation at \$40 per sq. m. per annum. A 6-months' rent free was allowed at the beginning of the term for site formation work. Hence, the compensation was assessed at \$1,474,000 for the first year and \$2,948,000 per annum for the 2nd and 3rd years, i.e. a total of \$7,370,000.

It appeared the Lands Tribunal accepted that as the comparables on lettings for uses without planning approval could fetch such rents, the subject lots should be able to fetch a rent similar to the comparables.

The Lands Tribunal's decision to adopt comparables for illegal use was challenged by the Government in the Appeal.

Court of Appeal's Decision

The Government appealed on the decision of the Lands Tribunal. After the Government's counsels delivered their submission and before the owner's counsel did his part, the Court of Appeal dismissed the Government's appeal on the following reasons:

1. In the case *Melwood Units Pty Ltd v Commissioner of Main Roads* [1979] A.C. 427 where the Privy Council (per Lord Russell of Killowen) held that:


"Under the principle in Point Gourde Quarrying and Transport Co Ltd v Sub-

Intendent of Crown Lands [1947] A.C. 565, the landowner cannot claim compensation to the extent to which the value of his land is enhanced by the very scheme of which the resumption forms an integral part: that principle in their Lordships' opinion operates also in reverse. A resuming authority cannot by its project of resumption destroy the potential of the whole 37 acres for development as a drive-in shopping centre, and then resume and sever on the basis that that destroyed potential had never existed."

2. The change of zoning in OZP was to facilitate the Route 3 Project. It was a blight that should be disregarded for the purposes of compensation.

The Court of Appeal made a remark that the Pointe Gourde Principle was the only point considered in the appeal. It did not make a ruling as to whether S12(aa) of the LRO should apply to creation of temporary occupation, nor the argument on illegal use.

Observations

Due to the relatively small amount of compensation involved in case of temporary occupation, it is usually not justified to seek court rulings. This is the reason why the subject case is the first and draws attention of surveyors. There are a number of cases waiting for the decision of the subject one. However, there are still a lot of uncertainties not being sorted out by the subject case. It would be interesting to see if any claimant would be prepared to seek further clarifications in court. 

Luxury Homes — Which Way To Go?



Ronald Y F CHEUNG

BSc (Hons), MHKIS, MRICS, RPS (GP), Director of Midland Surveyors Ltd

In any property turnaround, the luxury homes sector has always been the frontrunner. Since the SARS-inflicted April 2003, the value of luxury residential properties has, on average, risen about 66.3%, compared with the average increase of 49.6% in small to mid-sized flats. This trend is not new. Such increase closely resembles that in the heydays of 1995-96, when the corresponding average increases for luxury homes and mass housing were 43% and 24.9% respectively. By luxury homes we refer to those priced HK\$7 million or above.

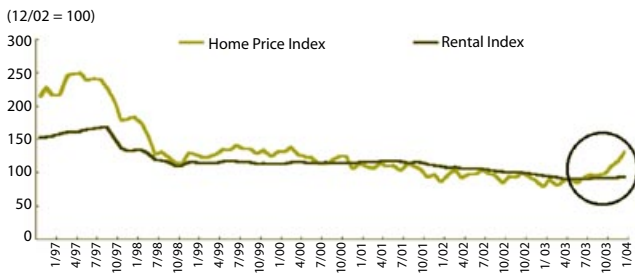
The question, of course, is "Can such growth maintain its momentum?" Now, with the property market seemingly slowing down and mortgage rates possibly going up, it is natural to have such reservations.

Let us examine a few factors.

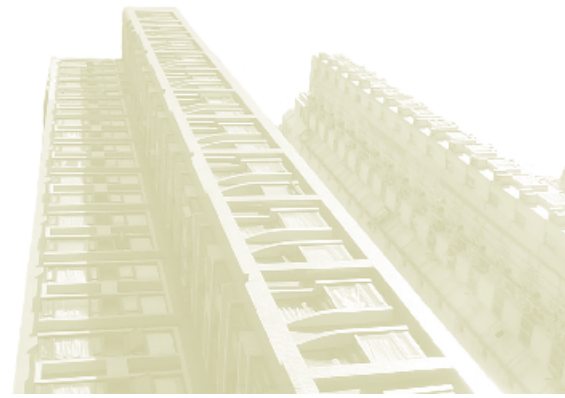
The Rental Factor

As opposed to mass housing, a higher percentage of higher-end houses are held as investment. Since the market recovery, in the case of luxury homes, rental growth has not kept pace with the surge in property price. In fact, after the hectic first quarter of 2004 a widening gap has occurred (See Chart 1).

Chart 1 Overview of Luxury Home Price Index and Rental Index



Source: Midland Realty, Research Department



As a result the current yield for luxury homes is now a mere 3.6%, resembling the 1997 level. This leaves room for growth. More importantly, such relatively low yield still remains attractive to investors because mortgage rates have fallen substantially since 2001, putting net return on luxury homes on the positive side and, therefore, making it still attractive (See Chart 2).

Chart 2 Rental Return and Net Yield Trends of Luxury Homes



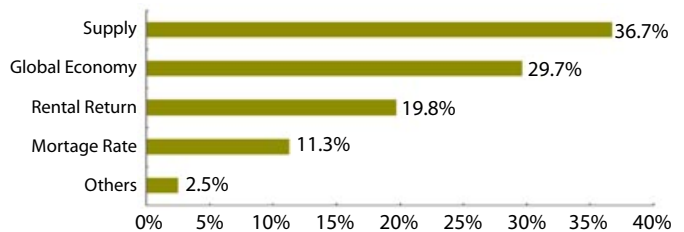
Source: Midland Realty, Research Department

Now, under the expectation of rising mortgage rates, which likely eats into the net yield, will the luxury homes still maintain its popularity?

Other Considerations

For illumination we undertook a telephone survey of over 354 luxury home purchasers or potential buyers during mid April. Surprisingly, only 20% of them considered rental return the dominant factor in house purchase. Other factors such as supply and overall economy fare more importantly (See Chart 3).

Chart 3 Factors Influencing Luxury Home Purchase Decisions



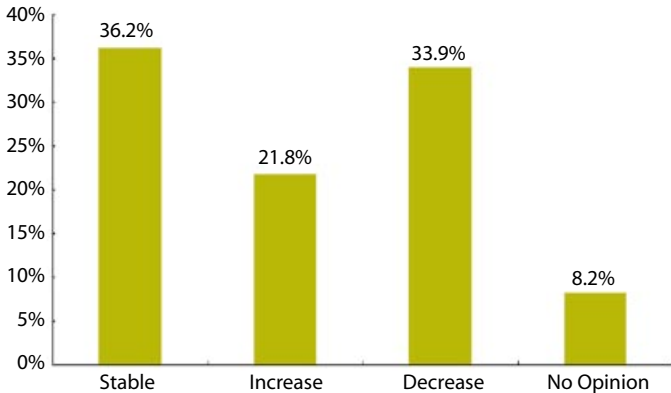
Source: Midland Realty, Research Department

On the other hand, 64.7% of the respondents aimed at higher rental return as a result of higher mortgage rates. That means, among other things, an interest rate increase could push up rents, keeping the level of net return and maintaining luxury homes' attraction.

Effect on Price Trend

Not all investors saw the gloomy side in the event of a mortgage rate rise. Actually, 36.2% of the respondents felt that the luxury home price would remain stable and 21.7% even expected a rise (See Chart 4).

Chart 4 Prediction of Price Trend on Luxury Homes after Rising Interest Rates



Source: Midland Realty Interest Rate Trend Survey

Looking at the above, we believe that the negative impact of a possible mortgage rate rise would be mild because:-

- Even with a rate hike, luxury home prices should, at least, remain stable.
- Rent rise is possible as supply of luxury homes for rent is always limited, compared with other sectors.
- The current net yield stands at 1.2%. The following table shows encouraging figures.

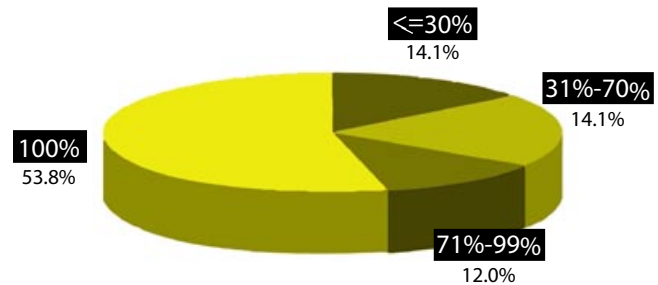
Effect of Mortgage Rate Trend and Rental Rate Fluctuation on Luxury Homes (Sensitive Analysis)

| Change in Net Rental Rate of Luxury Homes | | Change in Average Rental Rate of Luxury Homes | | | | | |
|---|-----------|---|-----------|-------|-------|-------|-------|
| | | No Change | Up 1% | Up 2% | Up 3% | Up 4% | Up 5% |
| Mortgage Rate Trend | No Change | 1.2% | 1.5% | 1.9% | 2.2% | 2.6% | 3.0% |
| | Up 0.5% | 0.7% | 1.0% | 1.4% | 1.7% | 2.1% | 2.5% |
| | Up 1% | 0.2% | 0.5% | 0.9% | 1.2% | 1.6% | 2.0% |
| | Up 1.5% | -0.3% | No Change | 0.4% | 0.7% | 1.1% | 1.5% |
| | Up 2% | -0.8% | -0.5% | -0.1% | 0.2% | 0.6% | 1.0% |

Increase in Housing Allowance

Meanwhile, we also conducted a survey on 207 tenants utilizing their housing allowance to rent luxury homes. 70% of them were expatriates and 80% worked in foreign/international companies. Of these, 19.1% had an increase in housing allowance while 69.6% had it maintained at the same level. 53.8% utilized their full allowance in renting (See Chart 5 below). As over 30% of the respondents received a housing allowance of HK\$20,000 to HK\$30,000, the luxury homes' rental market appears strong.

Chart 5 Correlation between Housing Allowance and Rental Payout



Source: Midland Realty Housing Allowance Survey

Conclusion

With the Closer Economic Partnership Arrangement (CEPA) coming into effect and more international firms sending senior staff to Hong Kong to tap into the Mainland China market, a better economy is on the cards.

Barring unforeseen circumstances, there seems no reason to doubt the luxury homes' future. 🏡

Calendar of Events 2004

| Event | Date | Organiser | Location |
|---|-------------------|------------------|----------------------------------|
| “Towards a New Era of Land Tenure in the New Territories” Conference | 24 Jun 2004 | HKIS LSD | Hong Kong SAR, China |
| Construction Insurance Compensation | 24 Jun 2004 | HKIS QSD | Hong Kong SAR, China |
| 内地有关工程造价的立法以及提供咨询服务应注意的法律问题 | 25 Jun 2004 | HKIS QSD | Hong Kong SAR, China |
| Pre-Qualification Structured Learning (PQSLs) Series – Examination of Tenders and Report Writing | 26 Jun 2004 | HKIS JO | Hong Kong SAR, China |
| 建设工程工程量清单计价规范简介 | 26 Jun 2004 | HKIS QSD | Hong Kong SAR, China |
| Dragon Boat Competition | Jun 2004 | HKIS JO | Hong Kong SAR, China |
| Value Engineering (VE) Methodology & Application – Module 1 Training Workshop | 28 Jun–2 Jul 2004 | HKIS & CITYU | Hong Kong SAR, China |
| FIG International Symposium on Engineering Surveys for Construction Works and Structural Engineering | 28 Jun–1 Jul 2004 | FIG | Nottingham, UK |
| Pre-Qualification Structured Learning (PQSLs) Series – Facilities Management in an Institution: Case Study in the HK Academy for Performing Arts | 29 Jun 2004 | HKIS JO | Hong Kong SAR, China |
| Is Value Engineering Successful Internationally? | 30 Jun 2004 | HKIS | Hong Kong SAR, China |
| ISPRS XXth Congress | 12–23 Jul 2004 | ISPRS | Istanbul, Turkey |
| “The Road Ahead for Hong Kong Surveyors and other Professions” – Surveyors Lunch with Mr Leung Chun-ying, Chairman of HK Coalition of Professional Services | 14 Jul 2004 | HKIS | Hong Kong SAR, China |
| Visit to ISM and SISV | 30 Jul–2 Aug 2004 | HKIS | Singapore & Malaysia |
| Year 2004 Conference on “Development of Construction, Real Estate and Professional Services” (兩地基建與房地產企業及專業服務發展研討會) | 16–17 Aug 2004 | MOC & ETWB | Dalian, China |
| The 4th Across-the-Straits Geomatics Conference (第四屆海峽兩岸測繪發展研討會) | 16–18 Aug 2004 | HKIS LSD | Changchun, Jilin Province, China |
| Social Services Programme | Aug 2004 | HKIS JO | Hong Kong SAR, China |
| The 3rd Mainland-Hong Kong-Macau-Taiwan Land Administration and Surveying Conference (第三屆中國大陸與港澳台學術研討會 – 地籍科學與管理) | 14–17 Sept 2004 | | Macau SAR, China |
| IVSC Annual Meeting | Sept 2004 | IVSC | Europe |
| Surveying Direction – Orienteering at one of HK Heritage Trails | Oct 2004 | HKIS JO | Hong Kong SAR, China |
| 3rd FIG Regional Conference | 3–7 Oct 2004 | FIG | Jakarta, Indonesia |
| BSD Conference 2004 | 16 Oct 2004 | HKIS BSD | Hong Kong SAR, China |
| AIBS National Conference | 7–10 Nov 2004 | AIBS | Tasmania, Australia |
| HKIS Annual Dinner | 19 Nov 2004 | HKIS | Hong Kong SAR, China |

Mabel and Janet

Two twin surveyors take the quantity surveying division by storm



Janet, Kevin and Mabel



Interviewed by
Kelvin NG
JO Committee Member

Did both of you study in the same secondary school?

Yes. We have actually been together since kindergarten. We were in the same school from kindergarten, primary school to secondary school (St Paul's Secondary School). We were both in the science class, studying the same subjects like physics, chemistry and biology.



Mabel and Janet

Why are both of you interested in the quantity surveying profession?

Mabel: I have been interested in building and construction since I was very young. Among the various professions involved in a construction project, I think quantity surveying is most suitable for females and it suits my personality as well. Quantity surveying was my first choice when selecting the university curriculum.

Janet: Same as Mabel.

Where did you obtain your degree in surveying?

Mabel: University of Greenwich.

Janet: City University of Hong Kong.

Do you often share what you learn from

the job with each other?

Mabel: Always. We share not only the knowledge, but also the observations and pressure we face in the job.

Janet: Yes, we discuss what we encounter at work.

What was your first job?

Mabel: After graduation, I was employed by Northcroft Hong Kong Ltd. as assistant quantity surveyor. I have been with the company for four years now.

Janet: After graduation, I joined Davis Langdon & Seah (HK) Ltd. Three years later, I joined Hsin Chong Construction Co. Ltd.

What are your expectations in your career?

Mabel: I do not have a detailed plan at this moment, but I will keep on studying, keep myself updated with the latest building technologies. Perhaps, I may study a master degree course in the near future. And, of course, do my best at work.

Janet: Keep on learning and be equipped with more skills to cope with the changing market.



Janet and Mabel



Janet and Mabel

How do you overcome problems at work?

Mabel: In our job we face difficulties and challenges every day. I ask and discuss with my colleagues, seniors and friends to solve the problems.

Janet: We discuss with each other and seek help from experienced people.

How do you feel about being qualified as surveyors at the same time?



Janet and Mabel

Mabel: Very happy. Frankly, I never thought that it would happen this way.

Janet: Very happy.

What do you do in your spare time?

Mabel: I like to read different kinds of books/magazines including the HKIS newsletter and the "Women in Surveying" column, join CPD events, watch movies and shopping.

Janet: Same as Mabel.

Do you have any particular interests?

Mabel: Gu-Zheng, squash, yoga and swimming.

Janet: Badminton and swimming. 🏸

HKIS 20th Anniversary Conference 2004

Public Private Partnerships



Conference Convenor Mr. Francis Leung, Senior Vice President Mr. T T Cheung, the Guest of Honour Dr. Sarah Liao, and President Mr. Tony Tse



Dr. Sarah Liao receives a souvenir from the President Mr. Tony Tse



The Hon. P C Lau, Panel Chairman, with guest speakers Mr. Steven Page, Mr. Akio Yamashita, Mr. Igor Rukuts and Dr. A Scott Carson in a discussion session



The Guest of Honour the Hon. Dr. Sarah Liao, Secretary for the Environment, Transport and Works, in an opening speech to the delegates



Dr. Paul Ho, Chairman of the Conference Organising Committee, with guest speakers Mr. Rupert Sydenham and Dr. Richard Larew in a discussion session



The Guest of Honour with the President and Senior Vice President, guest speakers and members of the organising committee



Chairman of the HKIS Board of Professional Development Professor Barnabas Chung, Keynote Speaker Sir Gordon Wu, the President Mr. Tony Tse, Legislative Councillor the Hon. P C Lau, Director of Buildings Mr. Marco Wu and Conference Convenor Mr. Francis Leung



Questions from the floor during a discussion session